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Wm. M. Evarts.

THEODORE TILTON

VS.

HENRY WARD BEECHER.

ACTION FOR CRIM. CON.

TRIED IN THE CITY COURT OF BROOKLYN,

CHIEF JUSTICE JOSEPH NEILSON PRESIDING.

Verbatim Report by the Official Stenographer.

VOL. III.

WITH PORTRAITS OF

Hon. WM. M. EVARTS. JOHN L. HILL, Esq..

Hon. WM. A. BEACH. HENRY C. BOWEN,

THOMAS E. PEARSALL.

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CHAMBERS, THE CITY COURT OF BROOKLYN.

BROOKLYN, February 22d, 1875.

"TILTON VS. BEECHER."

The numbers of your report have been of great use to me The testimony is given, as in the N. Y. Tribune, with substantial correctness. In thanking you for your courtesy, I beg to express my respect for your enterprise.

Very truly yours,

J. NEILSON, Ch. J.

To McDIVITT, CAMPBELL & Co., Nassau St., N. Y.

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THEODORE TILTON

against

HENRY WARD BEECHER.

SIXTY-FOURTH DAY'S PROCEEDINGS.

[Continued from Volume Two.]

CROSS-EXAMINATION OF MR. BEECHER.

When the answer to the last question was given, Mr. Evarts bowed, and, without saying a word, sat down. Seeing the movement, Mr. Fullerton understood that the direct examination was finished, and, opening a large portfolio, containing sheets of foolscap, with clippings from THE TRIBUNE'S report pasted on them, and comments in pencil in the margins, he rose and began the cross-examination, as follows:

WHY MR. BEECHER PREFERRED THE NEW-ENGLAND FORM OF OATH.

Mr. Fullerton—Mr. Beecher, when the Bible was presented to you with a view to administer the oath, I believe you refused to swear upon it—preferred to swear with the uplifted hand. Has that been your custom elsewhere in taking an oath? A. I had never taken—I had no custom of taking oaths; I had never to my memory taken an oath until this suit began, except to swear to a document or something of that kind, and always then I had been called to swear by the uplifted hand.

Q. Did you appear before the Grand Jury when the indictment was found against Theodore Tilton? A. I did.

Q. Did you then and there swear upon the Gospels? A. I presume I did, Sir.

Q. Don't you recollect that you did? A. I do not recollect distinctly, but I presume that I did.

Q. You did not state then and there that you had conscientious scruples against swearing upon the Bible? A. I did not.

Q. Have you no recollection upon the subject as to whether you did then and there swear on the Gospels? A. I have none at all, Sir.

Mr. Beach [to Mr. Fullerton]—What were his conscientious scruples?

Mr. Fullerton—Yes; what were your conscientious scruples when you were asked to take an oath in this case? A. It did not appear to me, Mr. Fullerton, until after I came into court here and heard the various witnesses swearing to examine into the oath minutely, and when I came to swear I felt that I was unwilling to swear except by affirmation; I should—my private preference would have been the oath, but if I swore in the ordinary sense of the term "swearing," by nothing else than by God, and not by any lower form or symbol of the Divine presence.

Q. Do you recollect how you swore to the document that you speak of—whether by the uplifted hand or upon the Gospels? A. To what document, Sir?

Q. The one that you alluded to. I refer to the answer in this case? A. I don't take your meaning, Sir; excuse me.

Q. The answer that you put in to the complaint of the plaintiff in this case is a sworn answer? A. Yes, Sir.

Q. It was not sworn upon the Gospels when you affixed your name and swore to the contents of it, was it? A. I think I did not, Sir.

Q. Have you any recollection upon the subject? A. I recollect of the time of swearing to it, and where I swore to it, but I don't recollect swearing upon the Gospels.

Q. Do you recollect that you did not swear upon the Gospels? A. No, Sir.

Q. Then you have no recollection on the subject, I take it? A. I have a recollection of everything except the particular form in which I took the oath. It was administered to me in New-Hampshire, and whatever the customary form there is, that I took.

MRS. BEECHER'S ABSENCE IN 1871.

Q. Following the course of the direct examination, I will now ask you whether Mrs. Beecher was not absent in the early part of 1871 from this city and from this country—from this city? A. The early part of 1871? She may have been gone in the month of January, 1871, but I cannot speak assuredly from memory now. She was not gone until about that time.

Q. Don't you recollect that Mr. and Mrs. Moulton met Mrs. Beecher in Florida during their absence in the early part of 1871? A. I recollect that Mr. Moulton spoke to me and my wife afterward of a meeting there, but Mrs. Beecher went down early in the year of 1871, and Mr. Moulton in March of 1871, and it was somewhere after the 1st of March, probably in April, that they met in Florida.

Q. You are not able to state, as I understand you, the particular time when Mrs. Beecher did leave for the South in that year? A. I think I could, probably, if you will allow me to look at my chronology.

Mr. Fullerton—Certainly.

The Witness—It may have been put down there. There are a few of those—— [Referring to a paper.] I don't see any record of it given, Sir.

Q. Do you recollect the duration of her absence at that time? A. I think she returned in May, Sir, but I cannot be very certain of it.

Q. Can you state who was your housekeeper during that absence of Mrs. Beecher? A. It was May, in 1871. [After thinking.] I cannot recall who it was.

Q. Was it not one of your sisters? A. My sister, Mrs. Perkins, kept house for me during two seasons, two absences, but I cannot just at this moment fix the date of them.

Q. Was she the only sister who kept house for you during any absence of Mrs. Beecher? A. She was.

Q. Can you now state that Mrs. Perkins did not keep house for you in the latter part of 1871, when Mrs. Beecher was absent in the South? A. I don't at present feel willing to make a definite statement on that matter, because it may have been in 1872, the Winters of 1872-3 and 1873-4, but I do not remember distinctly now.

Q. Was Mrs. Beecher ever absent at the South without your having a housekeeper? A. She was not; I think not. My daughter kept house for me one season, Mrs. Perkins two seasons.

Q. And can you name any other person? A. I don't recollect any now.

MR. TILTON'S RELIGIOUS DEFECTION.

Q. When did you first hear anything to the effect that Theodore Tilton had fallen from the orthodox faith? A. Well, in that very broad form, I don't know that I exactly had heard of it until quite late, but suggestions of looseness and of dangerous tendencies I heard as early as 1865.

Q. Looseness in what respect? A. Looseness in regard to his theological views.

Q. Well, then, you don't regard them as orthodox, if he was loose—— A. I did, substantially, in the early part. I thought only that he was going through that fermentation of mind which every ingenuous and active-minded man goes through, or ought to go through, by which the traditionary beliefs are changed to his present beliefs.

Q. When did you hear that he had got through? A. I have never heard it, Sir. [Laughter.]

Q. You never heard, then, that he was not orthodox in his faith? A. I have heard, certainly, that he was not orthodox in his faith; but you asked me when he got through that fermentation.

Q. Have you not heard, and frequently heard, that he had settled down upon what might be termed infidel notions in regard to religion? A. No, Sir; I don't know that I have.

Q. In your direct examination you spoke of some articles of his published in *The Independent* which excited some comment in the North-West. Among others you alluded to your brother, Dr. Edward Beecher. Do you recollect what those articles were, the subject of them? A. If I recollect aright, those articles—I never have read them since the day that they were published, that I now recall—they were giving the idea of the catholic mission of *The Independent*, of the largeness of its catholicity, and the comprehensiveness of the minds that it meant to include; and I recollect very distinctly saying that I regarded Mr. Tilton as stating what probably was a true and safe thing in an inexperienced manner that would excite the fears and alarm the prejudices of a great many good men.

Q. The doctrine there taught in those articles you approved of? A. There was no doctrine in them, in the technical sense of the term.

Q. The policy? A. No, Sir; I did not think the policy was wise.

Q. Did you think it was sound? A. If it was not wise it was not sound.

Q. Then you thought it was unsound. did you? A. I thought it was unsound in the sense of policy.

Q. Did you think the sentiments were true or untrue therein expressed? A. It was not a question of sentiment, Sir; it was a question of policy, the conduct of the paper.

Q. Did you think the criticisms of your brother, Dr. Edward Beecher, were well founded? A. No, Sir; I did not, because the criticisms were upon me.

Q. Supposing you to be responsible for the paper? A. Yes, Sir; he thought I still was responsible for the paper to a degree.

Q. Well, did you approve of the criticisms, so far as the articles themselves were concerned, irrespective of any question that was imputed to you? A. Did I——

Q. Approve of the articles? A. Of the articles?

Q. Yes, Sir? A. No, Sir; I don't recall that I ever did.

Q. Did you ever see in *The Independent* any article imputed to Theodore Tilton which you thought to be unsound in religious doctrine? A. I do not recall now that I ever had brought to my attention any article that discussed doctrinal questions by him.

Q. Did you ever read any of his teachings that you thought were pernicious in their effect? A. I don't now recall anything except that which I criticised on the ground of an injudiciousness in the conduct of the paper, or a partial or an unfair statement of truths which I thought he could have stated conscientiously better

Q. To what extent were complaints made of his religious doctrines and teachings? A. That I am not able to say, Sir, except——

Q. So far as they came to your knowledge? A. I have

an impression that with what are called the rigorously orthodox of New-England, and with what were called the orthodox of the North-West, there was a growing disfavor to his teachings; it was my general impression.

Q. Didn't they excite distrust in Mr. Tilton as a religious teacher? A. Did they not in the mind of these men?

Q. Generally, so far as you were informed of the effect of his articles? A. My impression was that the more rigorous orthodox were steadily being set against him, but that their place was being taken by what would be called the progressive wing of the Church.

Q. Well, judging from what you heard as to the effects of his teachings upon the public or Christian mind, did you think that he was a safe Christian teacher? A. I would not have said that I thought him to be a safe public teacher of doctrinal matters, but from the time that he assumed the chief management of *The Independent*, namely, from 1874 to 1875——

Mr. Evarts—1864.

The Witness—I beg your pardon—1864 and 1865; I did not think of him in the light of a doctrinal teacher; I thought of him in the light of one who applied ethical matter to practical things.

Q. He was the editor of *The Independent*, was he not? A. He was.

Q. And it was a religious paper? A. Not in the sense of a radically religious paper.

Q. In any sense was it a religious paper? A. Yes, Sir, I think it was in some sense.

Q. Was it not regarded as a religious paper? A. Yes, Sir; it passed in that class unquestionably.

Q. Didn't it promulgate the special doctrines of a class of Christians? A. It did when it was under the direction of Dr. Bacon, Dr. Storrs, and Dr. Thompson.

Q. Under the direction of Mr. Tilton? A. I don't think it did.

Q. Before that it did, you say? A. Before it passed out of the hands of those gentlemen it did.

Q. Had it fallen from grace in that respect? A. It had fallen from the grace of doctrinal teaching.

Q. And assumed what character? A. It assumed far more a question of vital religious form and of vital public ethics, and discussed living questions from the standpoint of Christian truth.

Q. Then, you never saw anything in *The Independent* as coming from Theodore Tilton, and never heard of anything, as I understand you, from any quarter, in the way of criticisms upon his teachings and sentiments, that caused you to distrust the soundness of his religious views? A. No, Sir; you don't understand me right if you understand me so.

Q. Then, please set me right by what you have to say upon that subject? A. I said that I regarded him as being in a transitional state, and as holding imperfect views which would gradually be ripened and become more perfect, but I had hope of him in his career, however much I might think that certain parts of it were impractical or crude.

Q. Did you think that he expressed his real sentiments in the articles that appeared in *The Independent*? A. Undoubtedly.

Q. When did you first hear of his wife complaining of him in respect to his religious doctrines? A. I cannot give you any further special date, Sir; I think as early as —it may have been as early as 1865 or 1866, along there somewhere.

Q. When was it she consulted you as to whether it was safe for her to bring up her children under such influences as he exerted in respect to religious doctrine? A. I could not recollect it any more than to say it was between a term of years.

Q. Locate it as near as you can? A. I should say between 1865 and 1869.

Q. Did you then learn specifically what his views were? A. I had learned from him during that time more or less of the unsettlement of his faith in the divinity of Christ. I learned also from him that he was inclined to what might be called not an unbelief in the inspiration of the Scriptures, but what is called a loose doctrine of inspiration.

Q. Well, is not a loose doctrine unbelief, in your judgment? A. It depends upon how loose it is.

Q. Well, as loose as Theodore Tilton's was? A. That is too remote, Sir, and the question itself is so precise——

Q. As loose as you learned it to be from him or from his wife? A. I regarded his doctrine of the divinity of Christ as worse than loose; I thought that to be heretical.

Q. And you learned that as early as what year? A. I cannot say, Sir.

Q. Prior to 1869, I understand you? A. Prior to 1869, I think, but I will not be very positive.

Q. Well, that being his belief upon that subject, do you think that he was a fit man to be at the head of a religious newspaper? A. I think that if he was at the head of a theological magazine he would be the last man that was fit for it, but as the head of a paper that didn't undertake to expound theology, but only the application of Christian ethics, I didn't see anything in that.

Q. You thought it was well enough? A No, Sir, not well enough.

Q. It might be better? A. But it was tolerable.

Q. Well, it was tolerable; that is all; it could be endured? A It was a thing to be endured.

Q. Did you not think it would be better to have some sounder man at the head of that paper? A. I do not know that it occurred to me.

Q. You read *The Independent*, did you not? A. Not much after I left it.

Q. Didn't its views accord with your own? A. Yes,

Sir, I suppose they did; I might have picked out of it a vast amount that did, but I didn't read it.

DISSATISFACTION WITH MR. TILTON IN THE NORTH-WEST.

Q. Now, Mr. Beecher, in that connection I desire to call your attention to something that has been said heretofore. Please look at that passage marked in red, and state whether it refreshes your recollection as to the——

Mr. Evarts—What page is it?

Mr. Fullerton [showing book to Mr. Evarts]—The pages are unlike. [To the witness.] See if you remember at any time of having said anything to this effect: [Reading.]

Some years before any open trouble between Mr. Tilton and myself, his doctrines, as set forth in the leaders of *The Independent*, aroused a storm of indignation among the representative Congregationalists in the West; and as the paper was still very largely supposed to be my organ, I was written to on the subject. In reply I indignantly disclaimed all responsibility for the views expressed by Mr. Tilton. My brother Edward, then living in Illinois, was prominent in the remonstrance addressed to Mr. Bowen concerning the course of his paper under Mr. Tilton's management. It was understood that Mr. Bowen agreed, in consequence of proceedings arising out of this remonstrance, to remove Mr. Tilton or suppress his peculiar views, but instead of that, Theodore seemed firmer in the saddle than before, and his loose notions of marriage and divorce began to be shadowed editorially. This led to the starting of *The Advance* in Chicago, to supersede *The Independent* in the North-West, and Mr. Bowen was made to feel that Mr. Tilton's management was seriously injuring the business, and Mr. Tilton may have felt that his position was being undermined by opponents of his views with whom he subsequently pretended to believe I was in league.

Do you recollect that? A. Yes, Sir, substantially that.

Q. Was that substantially true? A. It was, Sir, substantially true.

Q. There was, then, a storm of indignation among the Congregationalists with regard to his views? A. Of the North-West?

Q. Of the North-West—and you indignantly disclaimed all responsibility for the views expressed by Mr. Tilton, did you? A. I did, to my brother Edward; I was never brought into any relations with Congregationalists of the North-West, as such.

Q. What gave rise to your indignation? A. Because my brother wrote me a very severe letter.

Q. Well, you were not indignant at your brother? A. I was.

Q. Indignant at him—is that the sentiment expressed here which I have read? A. I don't know how, Sir.

Q. [Reading.] "In reply I indignantly disclaimed all responsibility for the views expressed by Mr. Tilton?" A. In reply I indignantly expressed—disclaimed all responsibility—for the views expressed by Mr. Tilton; my brother Edward, then living in Illinois, was prominent in the remonstrance addressed to Mr. Bowen concerning the course of his paper; I never was remonstrated with by anybody but my brother Edward.

Q. That is not the point—whether your indignation was directed to your brother Edward for having accused you of being responsible for these doctrines, or whether you were indignant at the doctrines themselves? A. I was indignant at the fact that, knowing that there was an uprising throughout the North-West upon the subject, my brother Edward undertook, in a private letter, to hold me responsible for Mr. Tilton's views, and for the publication of his views in the paper.

Q. Well, if his views had been correct you would not have been indignant because you were held responsible for them, would you? A. I should be indignant to be held responsible for anybody's views, if I were held responsible and blameworthy for them when I was not responsible nor blameworthy.

Q. Suppose the views were correct, wouldn't you defend yourself against the charge? A. I might, or I might not, according to circumstances.

Q. Well, Sir, didn't you understand that *The Advance* in Chicago was started to supersede *The Independent* because of the particular or peculiar views of Mr. Tilton on religious subjects? A. Partly.

Q. Growing out of that dissatisfaction, wasn't it? A. Partly, and only partly.

Q. Well, partly? A. Partly.

Q. Now, Sir, I read again. [Reading.] "This led to the starting of *The Advance* in Chicago to supersede *The Independent* in the North-West, and Mr. Bowen was made to feel that Mr. Tilton's management was seriously injuring the business, &c.?" A. Mr. Bowen made a visit to the North-West on that account——

Mr. Fullerton—Well, I don't care about Bowen's visit.

Mr. Evarts—There has no question been asked.

Mr. Fullerton—No, Sir. [To the Witness.] After my reading that are you still disposed to say that *The Advance* was started only partly for the purpose of superseding *The Independent*? A. I am, if I am rightly informed.

Q. Well, what was your information at the time of the writing of this article? A. In regard to what, Sir.

Q. In regard to the object and purpose in starting *The Advance*—whether it was to supersede *The Independent*? A. It was in part; this was not designed to give a detailed and perfect history, but a general history, a sketch, and it left out a multitude of things.

MR. TILTON'S PUBLICATIONS ON MARRIAGE AND DIVORCE.

Q. Yes, very well, now, what had you heard at that time as to his notions in regard to marriage and divorce, prior to December, 1870—I mean from *The Independent*? A. I had heard from various sources ——

Q. From *The Independent*? A. What, Sir?

Q. What were his teachings in *The Independent* in regard to marriage and divorce, as you understood it? A Do you ask me what was the opinion that at the time I formed in regard to those teachings?

Q. What were the teachings of *The Independent* under the direction of Mr. Tilton, in regard to marriage and divorce, as you understood them? A. I did not myself investigate his teachings, and I only took up that which I heard spoken about them by others; I saw that there was dissatisfaction with them.

Q. What did you believe in December, 1870, his opinions to be upon that subject—namely, marriage and divorce? A. I supposed them to be in 1870—I cannot give any very close description of what my belief then was, only that I believed that he had enlarged the causes of divorce, and made it so facile that I regarded it as being, in its practical tendency, very mischievous.

Q. Yes, Sir; loose did you not think they were? A. I thought they were very much too loose.

Q. And did you not judge so from his articles in *The Independent*? A. I cannot say that I did; for I am—I must confess that I was not a great reader of them.

Q. Didn't you know what they were without having read them? A. Only as I gathered it from the conversation of others.

Q. Well, as you gathered it from the conversation of others, did you not think these doctrines, in that regard, were pernicious in the extreme? A. I knew that that was the impression about them in the community; and, if I was correctly informed, that he held a doctrine of divorce that made it facile, and that caused it or put it all on the individual wish and volition; I should hold that to be a very dangerous doctrine.

Q. Well, did you think a man that taught those doctrines—— A. My own—excuse me.

Q. Did you think that a man that taught those doctrines was fit to be at the head of a paper such as *The Independent* was? A. If he had held doctrines of——

Q. No, no; I don't want any answer of that character—not "if he had held doctrines"—but I am alluding to the doctrines which you believed that he at that time held and inculcated. A. I did not believe in any definite doctrines that he held and inculcated; as I have said, I was not a close reader of his articles; I was not apprised——

Q. I am not referring to what you learned from reading the articles; I am referring to the conviction which you had at that time—whether from reading the articles, conversing with Mr. Tilton, or the common speech of people—judging from the information that you had at that time, did you think him to be a fit moral or religious teacher? A. I cannot answer your question very closely, Mr. Fullerton, because the question whether he was a fit moral teacher, based on grounds which I had not particularly examined, did not come to my mind.

Q. I am not asking you to give any opinion growing out of a particular examination of his doctrines; I am asking your judgment, based upon the views that you entertained at that time, from what you had seen, heard, or read? A. It did not affect in my mind his general fitness for the conduct of a great paper; it put him into the school—the great—on this one subject there are the two extremes in the great school.

Q. Well, we won't go into extremes in the schools, or in the answers; but, let me ask you if he did not begin at that time to shadow forth, editorially, his loose opinions of marriage and divorce? A. I understood that he did.

Q. Well? A. He shadowed those things which became substantial afterward.

Q. Well, did you think that, shadowing forth those loose opinions in a great paper like *The Independent*, that he was fit to be at the head of it? A. It might have been, Sir, in a man that was so young and that was in the field of discussion.

Q. Did you think his doctrines—the effect that his doctrines would produce upon the public mind, would depend upon his age? A. If his understanding depended upon his age, it would.

Q. So that if a person is young they may with impunity teach improper doctrines? A. A man that is young may with impunity teach crude doctrines.

Q. I am not talking about crude doctrines, Mr. Beecher; I am talking about shadowing forth editorially his loose opinions of marriage and divorce? A. I understand it, Sir.

Q. Now, then—— A. And I understood that the shadowing forth was a crude holding of certain views of divorce which I believed age might correct; and, at any rate, not yet expressed in any such form as to be definitely dangerous.

Q. You heard read the article from *The Independent* by your counsel in this case, did you not—published prior to that time? A. I heard it, Sir.

Q. Didn't you think that that doctrine was dangerous? A. I have forgotten it, Sir.

Q. You heard it read, did you not? A. I heard it read.

Q. Have you forgotten, so that you cannot call to mind, the particular features of it? A. I cannot.

Q. You understood, did you not, that it was read here for the purpose of showing to this jury that Mr. Tilton's doctrines at that time were pernicious? A. I did not understand it so, Sir.

Q. And didn't you think they were? A. I don't remember the article, Sir?

Q. Nor its meaning? A. I do not remember the article—of course, I could not know its meaning.

Q. You have forgotten it since it was read? A. I have forgotten it, Sir; but will read it and express at a later period, if you desire——

Oh, no, Sir; I am afraid you would forget it again. A. I surely would in less than a week.

Q. Now, what did you learn from Mrs. Tilton, at the

time that she consulted you, as to whether it was safe for her to bring up her children under such influences, in respect to his doctrines in relation to marriage and divorce? A. I don't think that that came so prominently, if at all, into our conversation. I think that her mind was——

MRS. TILTON AND MR. BEECHER TAKE BUGGY RIDES.

Q. Well, that is enough then. You have spoken, Mr. Beecher, of two occasions when you took Mrs. Tilton out to ride; I ask you to give, as near as you can now, the dates of those respective rides. A. I cannot give you the dates, Sir; I can do it by referring to my memorandum, I think.

Q. Can you give me the year? A. I think it was in the early part of 1870, Sir; but I will not be sure.

Q. Just refer to your memorandum, please? A. I don't seem to see——

Q. Well, how early in 1870 do you think they were? A. They were in the early part of the year, if I recall it aright, Sir; I thought that there was a memorandum made of these in my record, and there may be, but I don't see it.

Q. Those rides, as I understand you to say, were in a buggy? A. Yes, Sir.

Q. In each instance? A. In each instance, I think, Sir.

Q. Did you and Mrs. Tilton, on either of those occasions, alight from the buggy during your absence? A. I do not remember, Sir.

Q. I wish you would tax your recollection upon that subject. A. Well, Sir; I should be very glad to answer it, but it is perfectly blank.

Q. State where you went on the first occasion. A. I went, as near as I can recollect, on both occasions, to the Park.

Q. And did you go beyond the Park at all? A. Not that I remember, Sir.

Q. On either of those occasions did you go to Greenwood? Not that I recollect, Sir.

Q. Cannot you now recall that you went to Greenwood upon one of those occasions? A. No, Sir; I don't remember it.

Q. And you cannot now recall whether you alighted from the buggy on either of those occasions? A. No, Sir; I have no recollection at all of the details of the ride, except of the fact of going.

Q. Cannot you state how long a time was consumed in these rides? A. No, Sir.

Q. Are they the only rides that you ever took with Mrs. Tilton? A. I think that before these I had taken some rides, but I have no recollection of them definitely.

Q. In what year did they occur? A. I could not say.

Q. How long before the two rides in the buggy were these other rides that you speak of? A. That is more than I could tell you.

Q. In what kind of a vehicle did you take her riding upon these occasions? A. I don't recollect it, Sir.

Q. Were not those rides that you speak of in a close carriage? A. The rides past?

Q. Other than the rides in the buggy? A. I have no recollection whatever, Sir, of it.

Q. Do you recollect where you got the carriage from? A. No, Sir.

Q. Or who the driver was? A. No, Sir.

Q. Can you recollect whether any other person accompanied you besides Mrs. Tilton? A. I don't rcall it, Sir.

Q. Well, how many instances can you recollect when you took Mrs. Tilton riding, other than the two rides in the buggy? A. Two—before, none; two in the buggy, and I recollect none others.

Q. I understood you to intimate in answer to a question that I put to you that you did recall other instances. A. I believe that I made others; I don't recall the instances.

Q. Did you take her riding at any time when one or more of the children accompanied you? A. I don't recall any such.

Q. Don't you recollect of taking Mrs. Tilton out riding in the year 1868 in a close carriage? A. No, Sir; I do not.

Q. Did you ever take her riding when she entered the carriage at any place other than at her dwelling? A. I never remember any such occasion, Sir.

Q. Do you recollect any occasion when Mrs. Tilton left the carriage other than at her own dwelling? A. I have no recollection of it.

MR. BEECHER NEVER AT A PHOTOGRAPH GALLERY WITH MRS. TILTON.

Q. Did Mrs. Tilton ever visit you at Peekskill? A. Never, I think, Sir.

Q. You have no recollection of any such visit? A. I am quite sure there was no such visit there—that is, during my presence there.

Q. Did she ever accompany you to a photograph gallery? A. I have an impression that she did.

Q. Well—— A. Either that or else that she—I recollect a conversation about photographs, and it may have been that she told me where——

Q. Well, I don't—— A. I have no recollection of going to a photograph gallery except a very vague one, and whether it was produced by the conversation or the visit I cannot recall, Sir.

Q. Don't you recollect of her visiting a photograph gallery with you and being present when your picture was taken? A. A. I do not recall it, Sir.

Q. Didn't she accompany you to Sarony's in New-York? A. Not that ever I recollect, Sir.

Q. And you cannot recall now any occasion when she

accompanied you to a photograph gallery? A. No, Sir; I cannot recall any occasion.

Q. Either Sarony's or any other, as I understand you? A. I recall no occasion in which we were in a gallery together.

THE VISIT TO MRS. TILTON IN AUGUST, 1870.

Q. You have spoken of a visit to Mrs. Tilton in August, 1870; how do you fix the date of that visit? A. How I came to the date I cannot at present recollect, but I recollect making an inquiry about it and fixing on about that date; I had an impression that it was in July, and then I investigated, or had it investigated, and fixed upon August as the—early in August.

Q. I understood you to say that you received a note from Mrs. Tilton requesting you to visit her? A. I did.

Q. Have you looked for that note? A. I have not looked for that special note. I have looked for every scrap of paper that was connected with the case.

Q. Where did she address the note to you? A. At Peekskill; I had gone to my vacation there.

Q. Yes; you cannot say whether you preserved that note or not? A. I presume it is gone, destroyed; I have never seen it since.

Q. Did she disclose to you in that note that she was ill? A. She said that she was ill, and should be glad to see me if I came down to the city.

Q. How long after you received that note before you came to the city? A. I cannot precisely say; I have an impression that I was coming to the city the next day, at any rate, and that I went on the joint errand, but I cannot say with definiteness.

Q. Did you not come on purpose to see her? A. That was an added reason; I was coming at any rate.

Q. You have no distinct recollection of that now? A. I recollect that I was coming down to the city, and that I joined the two together.

Q. Do you recollect what you were going to visit the city for? A. No, Sir; I do not recall it.

Q. How long had you then been at Peekskill? A. That I cannot say, unless I can ascertain the date in which my vacation began; it varied by vote of the church.

Q. Well, it had commenced? A. Yes, Sir; I was there; the month of August originally was my whole vacation, but it had insensibly enlarged both ways.

Q. You were not in the habit of visiting your parishioners during your vacation, were you? A. Yes, Sir; some of them; Mr. Claflin, if there was a funeral or sickness, I should come to see him, or any of my near friends, I should go to see them.

Q. Well, not what you should do? A. I did do.

Q. I ask what you were in the habit of doing? A. When any of my friends, within that circle that I should call like my own family friends, were in trouble and sent me any word, I should, without hesitation, visit them.

Q. Did you find Mrs. Tilton confined to her bed? A. No, Sir; to her couch, or sofa.

Q. In what room? A. In the receiving room, in the second story.

Q. And how long did that visit continue? A. Perhaps half an hour.

Q. Did you return to Peekskill that day? A. That I could not say.

Q. Have you no recollection? A. No, I did not.

Q. When did you return? A. I think it must have been the next day.

Q. Did you call to see her more than once? A. I did.

Q. When with reference to the first call did you make the second one? A. About the same time the next day.

Q. Then I believe you did not see her? A. No, I did not see her; no.

Q. Have you now in your possession any letters written to you by Mrs. Tilton which have not been produced in evidence? A. Not a single one that I know of, Sir.

Q. Have you looked for the purpose of finding? A. I scoured my house with my eyes to find letters that would bear upon the matter.

Q. And did you find none? A. I found none, Sir.

Q. Have you ever returned to Mrs. Tilton any letters which she wrote to you? A. No, Sir, not within my knowledge.

Q. Has she ever returned any letters to you which you wrote to her? A. No, Sir; not to my knowledge; that is, I have never received any.

Q. I understood you to say that on the second occasion when you called upon her in August that she sent down a note to you? A. It scarcely could be called a note.

Q. Well? A. A scrap of paper—chance scrap of irregular form on which she wrote.

Q. Did you preserve it? A. I did not, Sir.

Q. What became of it? A. I don't know, Sir, I am sure; I am not a preserver of papers or letters.

The Court here took a recess until 2 o'clock.

BESSIE TURNER AS MRS. MORSE'S MESSENGER.

The Court met at 2 o'clock, pursuant to adjournment. Mr. Beecher was recalled and the cross-examination continued.

Mr. Fullerton—I come now, Mr. Beecher, to your visit to Mrs. Tilton in December, 1870. By whom were you requested to make that visit? A. By Mr. Tilton.

Q. December, 1870; the first visit to Mrs. Tilton in December, 1870? A. Oh, I beg your pardon; I did not recall the visit that you had reference to, Sir; I was requested to come by Mrs. Morse, through Bessie Turner.

Q. Where did Bessie Turner find you? A. At my house.

Q. And what did Bessie Turner say when she called upon you? A. She said that she had called at Mrs. Morse's request—I am not using her language—who

wished me to come to her house and see her; that Mrs. Tilton was there, and that she had left her husband.

Q. Is that all that you recollect she said at that time? A. No, Sir; that was the call; I then expressed my astonishment at such a state of affairs; she proceeded to say very strong—in strong and positive language to justify Mrs. Tilton in doing it.

Q. What did she say? A. She said that Mrs. Tilton had been so treated at home that she thought she ought to have taken some such step, or was justified in taking some such step; that was the substance of the representation; that Mr. Tilton had abused her, and that Mr. Tilton had struck *her*, Bessie, describing the passions into which he was accustomed—often fell.

Q. I want the words, Mr. Beecher? A. I cannot give you the words.

Q. The substance? A. I am giving you the substance.

Q. Well, you say "describing;" that is not giving the substance? A. Declared, that Mr. Tilton in his passion had on one occasion struck her; and that he had done more; that he had made solicitation of an improper character to her, namely, Bessie Turner, and that he had on two occasions done it. I said something to her of the —there might be a mistake, or something. She stated—gave me some description of what the solicitation was.

Q. Now, please state what that was? A. She gave me some statement of it.

Q. Yes; the substance of that statement? A. That he had come to her bed and had told her the matter that he solicited was no more—it was just as much an expression of love and affection as a kiss or as a caress. I think that phrase is very nearly in her own language, but generally I do not give her language.

Q. I want the whole of the interview? A. I do not at this moment recall more than this, for substance.

Q. Well, this was done by Bessie when she gave you the account of this solicitation, with a downcast look, wasn't it? A. Yes.

Q. Modestly said? A. It was modestly said.

Q. Did she state anything else at that time? A. I do not now recall anything.

Q. Did she enter into any particulars as to the ill-treatment of Mr. Tilton of his wife? A. Yes, Sir; there was more; it was enlarged, but that was the substance of it, and I cannot give further particulars or the language.

Q. Can you give us any particulars at all of the ill-treatment? A. No, I cannot give you any particulars.

Q. Well, she told you what she had seen, did she not, herself? A. She told me that she had seen him treating his wife with great rudeness and cruelty.

Q. Did she speak of great abuse, too? A. I cannot say that word, Sir; the whole of it was of abuse.

Q. Do you recollect at the time that you were shocked at this information? A. Of course I was shocked at it.

Q. Did you believe what Bessie Turner told you? A. Yes, Sir, I supposed it was so; I feared it was.

Q. Now, did she tell you——

Mr. Beach—No, he modifies that. Did he believe it.

Mr. Fullerton—Did you believe it was true? A. I believed it just as a man believes a thing which he has not yet verified; I supposed it to be so.

Q. Did Bessie Turner visit you more than once at that time?

Mr. Beach—About that time.

A. I cannot say as to that, Sir. I remember distinctly but one visit.

Q. Well, have you an indistinct recollection, or an impression that there was another visit of Bessie Turner to you? A. No, I cannot say that I have fairly; I have looked at that, but the more I look at it the less it seems to me there was two; but I have had an impression that there was two, but I recall no other visit—the contents of it—but this one.

Q. Did she, in that conversation, tell you anything that Mr. Tilton had said to his wife? A. She may have done so, but I do not now recall it, Sir, further than I have stated, for substance.

Q. Can't you recall anything upon that subject? A. No, Sir.

Q. What did you do when you received this message? A. I told her I would come.

MR. BEECHER'S VISIT TO MRS. TILTON AT HER MOTHER'S.

Q. And did you go? A. I did.

Q. How soon after you received the message? A. I cannot say; either that day or the next day.

Q. And where did you find her? A. I found her at her mother's.

Q. Now, what time did you arrive at her mother's? A. I don't know, Sir.

Q. Up to that time, had the relations between you and Mr. Tilton been friendly? A. I can scarcely say that we had been intimate; there was an external friendliness.

Q. Well, it is for you to say whether they had been friendly or not? A. I have stated it as it was.

Q. Externally there was friendliness between you? A. There was an external friendliness.

Q. Well, Sir, as to the sincerity of that friendliness; was it sincere upon your part? A. On my part; he had my best wishes, my kindliest wishes.

Q. And you felt friendly toward him, did you? A. I felt friendly toward him in regard to—— Yes, I can say that.

Q. When did you last see him before your visit to Mrs. Tilton at Mrs. Morse's? A. I don't recollect to have seen him to speak with him since—well, over six months before that.

Q. Before that; and where did you last see him before that? A. I passed him in the street; I did not stop.

Q. There had been no open rupture between you? A. No.

Q. No expression of ill-feeling? A. No, Sir.

Q. Now, whom did you find at Mrs. Morse's when you got there? A. I found Mrs. Morse and Mrs. Tilton.

Q. Any one else? A. No, Sir.

Q. Did you see Bessie Turner there? A. I did not, or if I did, I do not recall it.

Q. Were Mrs. Morse and Mrs. Tilton together when you saw them first? A. I think they were, Sir; at any rate they were very soon together. I do not remember whether they were actually together at the moment I entered.

Q. Well, that was a memorable interview, was it not, Mr. Beecher? A. Yes, Sir.

Q. One that is impressed upon your mind? A. Certainly it was.

Q. Then you will be able, probably, to give us the particulars of what occurred while you were there? A. No, Sir; that don't follow.

Q. Well, Sir, do the best you can on that subject. I want to know all that occurred from the time you entered until you left the house. A. I entered into some conversation; I stated what had brought me, and I expressed some regret.

Q. Just please state what regret you did express? A. I cannot state to you the language that I used.

Q. Well, the substance of it. A. It was the regret that there had been any occasion to call me to such a visit; that is, that there was a misunderstanding between Mr. Tilton and his wife; Mrs. Morse did most of the conversation, and she, in her practical, incisive and earnest way, gave me some statements of ——

Q. Now, what were the statements? A. I cannot give them to you, Sir.

Q. Give us the substance of them. A. I am proceeding to give you the substance ——

Mr. Beach—Well, the substance of the statements, not the substance of the conversation.

Mr. Fullerton—As to the substance of the statements that Mrs. Morse made to you. A. The substance of the statements was that her daughter had lived a life of great unhappiness, that she was subject to great cruelty, and to deprivation, and that her life with Mr. Tilton had become intolerable to her, and that she had come to the conclusion to separate from him.

Q. Did she not descend to particulars as to this cruelty? A. She did somewhat so, Sir, but I cannot recall the particulars.

Q. Can't you state the nature of them? A. I have.

Q. What the cruelty consisted of? A. I cannot.

Q. Did it consist of words or blows? A. I do not remember that she charged him with having struck her.

Q. Well, can't you recall what she said as to the nature of the cruelty, how it was inflicted? A. The violence of his temper was one of the elements; the failure to be a good provider for her was another, and it ranged over——

Q. No, no, don't range it over. Tell us the particulars, and then we will range it for ourselves? A. I should be very glad to recall and give you all the particulars.

Q. You have already given us two particulars which a moment ago you said you could not. Now, Mr. Beecher, see if you cannot give us all the particulars. A. I will endeavor to do so, Sir, with your help; I do not now recall anything else than what I have stated.

Q. Did she repeat any charges that Mr. Tilton had made against her? A. I do not recall now anything of that kind.

Q. Did she not say that Mr. Tilton imputed to her conduct unbecoming of a wife, in some respects? A. That what?

Q. That he imputed to her, charged her with conduct unbecoming of a wife? A. I do not recollect any such language as that, Sir.

Q. Well give us the substance of what was said on that subject. A. I have given you as nearly as I can now the substance of it. I might by suggestions or otherwise, perhaps, recall something else, but I do not recall anything else now.

Q. Well, she suffered from exhibitions of his bad temper, and—— A. From the effects of it; yes, Sir.

Q. And the failure on his part to provide properly? A. To provide properly; and there was more, but I cannot recall the more.

Q. You cannot recall the nature of it? A. Nothing further than I have stated to you, Sir.

Q. Anything said about the housekeeper? A. I think—I cannot tell, Sir, whether I heard it then or whether that came to me soon after. I heard about the housekeeper, but I cannot determine whether I heard it then or after

Q. Well, you have related now what Mrs. Morse said? A. Mrs. Tilton sat by and said very little.

Q. Now, what was that very little? A. I don't know Sir; it was in acquiescence.

Mr. Beach—Have that struck out.

Mr. Fullerton—I want to know what was said. A. I do not recollect now a single sentence that she spoke. Mrs. Morse was the spokesman, I said.

Q. Well, we have got through with Mrs. Morse; you have told us what she said. I want to know what, if anything, Mrs. Tilton said on that occasion, or the substance of it? A. I do not recall, except that she said very little.

Q. Well, it is that "very little" that I want. A. I should be glad to give it to you.

Q. Well, Mr. Beecher, this was an occasion which excited you somewhat; you were learning something that you did not expect, I suppose, from this family? A. I was.

Q. Well, can you have forgotton all that Mrs. Tilton, or anything that Mrs. Tilton said upon the subject of her ill-treatment from her husband? A. I don't think that she entered into that, but—though I am ashamed to say that I ought not to have forgotten, I must say it—that I have forgotten it.

Q. You have forgotten it? A. Yes, Sir.

Q. Cannot recall anything that Mrs. Tilton said? A. I do not recall that; indeed, if you will allow me——

Q. Well, I don't know until I hear what it is; then I will tell. A. Well, Sir.

Mr. Beach—I think we had better have answers to the questions.

Mr. Fullerton—Well, after Mrs. Tilton got through with whatever she had to say, did Mrs. Morse take up the subject again? A. I don't recollect it so accurately, in its joints and sections, as that, Sir; it was a brief interview.

Q. Let me read to you and see whether this refreshes your recollection:

I immediately visited Mrs. Tilton at her mother's, and received an account of her home life, and of the despotism of her husband, and of the management of a woman whom he had made housekeeper, which seemed like a nightmare dream.

Is that correct? A. Do you mean whether I remember it now?

Q. Yes. A. No, I cannot say that I remember it now, any other than in the way I have already expressed it.

Q. Well, reading that, does it not recall to your recollection something more than you have given us here of the interview? A. It does not, Sir. I have said that in regard to that housekeeper I could not tell whether it was then that I heard it or soon after, but that I had heard of it, I was sure.

Q. Well, what was the question under consideration at that interview? A. They wanted advice of me.

Q. Upon what subject? A. On the subject of perpetuating the separation which had begun.

Q. Well, have you given all that occurred between you and either of those persons while you were there, that you can remember? A. All that I can remember, Sir.

Q. Did you remain in the room with them until you retired? A. I did.

Q. How long did the interview last? A. I don't know, Sir; but I should think the interview did not exceed a half hour; but I am very uncertain about that.

Q. Well, Sir, did you believe what Mrs. Morse told you? A. Yes, Sir.

Q. Did you believe what Mrs. Tilton told you? A. The impression on my mind was that they had made a true statement.

Q. Well, you believed them then, did you not? A. I suppose I did, Sir.

Q. Don't you know that you did? A. I hold, if you mean by that if my impression was that these things were so, it was very impressive.

Q. Well, Sir, did not that impression amount to the dignity of belief? A. Not to absolute certainty, Sir.

Q. Then you distrusted Mrs. Morse a little, didn't you? A. No, I did not.

Q. Nor Mrs. Tilton? A. No; but when I hear one side of a story I hear it—I judge of it by its probabilities, and it is an approximate belief, or a belief with many "ifs."

MR. BEECHER TAKES HIS WIFE TO SEE MRS. TILTON.

Q. Well, did you predicate any advice of what you then heard? A. I did.

Q. What was it? A. That she should see my wife, who was a much better adviser about domestic affairs than I was.

Q. Did she see your wife? A. She did.

Q. When? A. The next day.

Q. And you went with her, I believe? A. I did.

Q. Well, now, what statements were made to you and Mrs. Beecher the next day, when you got there, by Mrs. Tilton or Mrs. Morse? A. None; not to us together.

Q. To you alone were there any made? A. They were principally made to my wife.

Q. In your presence? A. No, Sir.

Q. What complaints did you hear the next day? A. Very few; because——

Q. I didn't ask you the number of them? A. I don't know that I heard any.

Q. Cannot you state one that you heard? A. No, Sir.

Q. Then you heard nothing new the next day, did you? A. Nothing new the next day.

Q. And even the old complaints were not repeated to you? A. They may have been, but I do not recall them.

Q. Where did Mrs. Morse talk with Mrs. Beecher? A. Up-stairs.

Q. She took her by herself, did she? A. Took her by herself.

Q. Well, did Mrs. Tilton make any complaints to you that day? A. She did not of anything that I remember.

Q. Well, do you remember whether she did make any or not? A. I do not remember any definite—with any definiteness the substance of the conversation that passed.

Q. Do you remember whether she did or not make complaints against her husband that day? A. I cannot say that I recollect.

Q. Whether she did or not? A. Whether she did or not.

Q. Well, what occurred as the result of that interview before you left? A. Nothing, except that I prayed with them.

Q. Well, I mean a result other than that, Mr. Beecher. What was the upshot of the interview? A. That we would go home and talk over the matter and let them know to what decision—or what advice we should give them.

THE ADVICE GIVEN MRS. TILTON.

Q. Yes; you did let them know afterward? A. Yes, Sir; my wife went there again alone.

Q. And what did you say to her before she left to go there? A. We talked the matter over, more or less, I holding that it was not best to break up the family rela-

tion—she inclining, from what had been told her, and which I did not hear, to believe that Mrs. Tilton ought not to continue living with her husband, and that was a matter of some considerable interchange of views between us; but, in the last moment, as she had got her things on to go, the room being—having company in it, and she asking me what my last word was, what I concluded about it—I wrote on a little scrap of paper and handed it to her.

Q. This is what you wrote, I believe:

I incline to think that your view is right, and that a separation and settlement of support will be wisest?

A. That, I think, is the——

Mr. Evarts—A part of it.

Mr. Fullerton—A part of it.

The Witness—A part of it.

Q. As far as it has been given in evidence. Now, what did Mrs. Beecher state to you that Mrs. Morse had told her in regard to this matter? A. I don't think my wife told me the details; I know she did not tell me the details of her conversation with Mrs. Tilton.

Q. Then you gave this advice, "that a separation and settlement of support would be wisest," on the strength of what you heard the day before from Mrs. Morse and Mrs. Tilton, did you? A. And my wife's judgment.

Q. And your wife's judgment? A. Yes, Sir.

Q. And you acted upon your wife's judgment without getting at the facts of which that judgment was predicated? A. I did in a very considerable degree. I had very great confidence in her judgment in such things.

Q. How long had you then been acquainted with Theodore Tilton? A. I don't know, Sir; over—this was '70—'60—some twelve or fifteen years, I think.

Q. Before giving the advice you did not see Mr. Tilton? A. I did not.

Q. Nor communicate with him? A. I did not.

Q. In any way? A. Not in any way.

Q. Do you recollect the day of the month of this? A. This was about the middle of December, Sir, or a little earlier—varying.

Q. Of 1870? A. Of 1870.

Q. What degree of intimacy had existed between Mrs. Beecher and Mrs. Tilton up to that time? A. No great intimacy; they were in friendly relations.

Q. Had Mrs. Beecher been in the habit of visiting Mrs. Tilton at her home? A. I think not, Sir; her health was such that she could visit very little anywhere.

Q. Had Mrs. Tilton been in the habit of visiting Mrs. Beecher? A. Yes, she had called upon her several times.

Q. Within what period? A. That I cannot say, Sir.

Q. And do you know when the latest call was? A. I do not.

Q. Will you state the date of the latest visit that you remember? A. No, Sir; I could not give any date, early or late.

Q. Can you say that she visited Mrs. Beecher in the year 1870 at any time? A. I cannot.

Q. Or in 1869? A. I cannot.

Q. Can you state that she visited her at any time subsequent to those years? A. I cannot, Sir; I have no association with time.

Q. Can you state that Mrs. Tilton had visited Mrs. Beecher within three years prior to this interview at the house? A. No, Sir; I cannot state, Sir.

Q. Mr. Beecher, you had some conversation with Mrs. Tilton, had you, at the house at that time? A. Yes, Sir.

Q. Don't you recollect of giving her counsel as to bearing and continuing patient? A. I recollect saying to her that I thought that with the blessing of God she would be able to see light yet. She was very despondent.

Q. I didn't ask that question, Mr. Beecher. A. I understood you to ask me what counsel I had given.

Q. Yes, but I didn't ask about her despondency. A. It was the foundation on which I gave my counsel.

Q. I did not ask you for the foundation of your counsel. A. Pardon me; I will take it back.

Q. I will forgive you, Sir. I want to know what you said to Mrs. Tilton, if you please? A. I cannot tell you.

Q. Did you say to her, "Let patience have her perfect work?" A. I don't remember that I did.

Q. Did you not so state upon your direct examination? A. How?

Q. Did you not so state upon your direct examination in this case? A. Not any such language; I have never said that I gave the language.

Q. Well, let me read.

Mr. Evarts—Do you read from the direct examination?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—What passage?

Mr. Fullerton—Well, I cannot designate it, except by the matter.

Mr. Evarts—We have found it.

Mr. Fullerton—[Reading.]

I have a recollection of only one single thing that I said to Mrs. Tilton.

Q. When alone? A. When alone.

"How is it," I said, "that I have been so long with you and you never alluded before to me about distress in your household?" and she said that she—her general answer, I cannot give the words—was that she sought to conceal, in the hope that the difficulty would pass away. Then I talked to her in respect to the household relations. I recollect giving her some advice as to bearing and continuing patient—"let patience have her perfect work," and I joined with her in prayer. The most of the time that I was with her I was praying with her.

A. That is true, Sir.

Q. You did advise, then, patience? A. I advised patience; yes, Sir.

Q. And forbearance; that was after you had heard what Mrs. Morse had to say? A. That was after; it was on the second day.

Q. It was after you heard all that Mrs. Morse and Mrs.

Tilton had to say with reference to cruelty? A. All that they had to say to me.

Q. Yes? A. I had not heard what they said to my wife.

Q. You have told us that your wife did not tell you? A. She did not in detail; she gave me some general——

Q. And yet, notwithstanding that advice that you gave there, for patience and forbearance, you the next day advised the separation, did you? A. I did.

MRS. MORSE'S LETTER TO MR. BEECHER.

Q. I call your attention now to Exhibit No. 7—the letter of Mrs. Morse to yourself—and to this clause of it——

The Witness—Will you be kind enough to pass me my little satchel there, Mr. Abbott? That was in the year 1871, was it not?

Mr. Fullerton—Yes, Sir.

Mr. Shearman—January 27, Sir.

Mr. Fullerton [Reading:]

I did not think for a moment when I asked Mrs. B. as to your call there, supposing she knew of it, of course, as she said you would not go there without her.

Do you know what call Mrs. Morse referred to in that passage? [A pause; no answer.]

Mr. Fullerton [continuing]—I read still further: "I was innocent of making any misunderstanding if there was any."

A. I don't recall what it meant, Sir.

Q. Do you understand that "Mrs. B." there refers to Mrs. Beecher? A. I don't know of anybody else; I presume it does.

Q. What does Mrs. Morse mean, as you understand it, by saying, "I was innocent of making any misunderstanding if there was any; you say keep quiet." A. I do not recall, Sir.

Q. Had you directed Mrs. Morse to keep quiet with regard to any call of yours on Mrs. Tilton? A. Not that I recollect.

Q. Do you recollect you did not ask her to keep quiet about any such call? A. I never asked her to keep quiet about any call of mine, Sir.

Q. Can you explain the language of this letter written to you? A. I cannot, Sir.

Q. Do you know what call you had made upon Mrs. Tilton, to which Mrs. Morse referred in that letter? A. I do not.

Q. You don't understand it as referring to the call made in pursuance of the invitation of Mrs. Morse, through Bessie Turner, do you? A. I don't understand it, at all.

Q. Do you understand it to refer to the call of the following day when you and Mrs. Beecher went there? A. I do not understand to interpret Mrs. Morse's letter.

Q. You read this letter when you received it? A. I presume I did.

Q. Don't you know that you did? A. I don't recollect it.

Q. Don't you recollect taking that letter to Francis D. Moulton? A. I recollect that that letter went to Francis D. Moulton.

Q. Did you answer this letter? A. I did at the time, without doubt, and no doubt I understood it at the time.

Q. But you don't understand it now? A. I don't recall the circumstances.

Q. Did you call on Mrs. Tilton at any other time, about that period, other than when you called at the solicitation of Bessie Turner, and when you went with your wife the day following? A. I don't recollect that I did.

Q. Would not you be very apt to remember any such call? A. I do not remember.

Q. Will you swear that you did not? A. I will not swear that I did not make any; I will say that I do not remember to have made any.

Q. I think your answer was that this letter of Mrs. Morse got to Mr. Moulton? A. That it got to him?

Q. Yes. A. I don't know. I sent the letter or carried it to him.

Q. Are you enabled, from your indorsement, or memorandum upon it, to say when it was sent, or when it was received by you? A. Well, I can't tell whether that is my handwriting, Sir, there is so little of it.

Q. You mean there is so little of it there? A. So little of the writing.

Q. There? A. Yes, Sir. That pencil-writing is nothing but the date.

Q. Can't you tell whether that memorandum is in your handwriting or not? A. No, Sir, I cannot recognize it; part of it is Mr. Moulton's and part of it is mine, and they both look bad enough.

Q. Now, Mr. Beecher, I understand you to say that you now recollect no reason why Mrs. Morse should say:

I did not think for a moment when I asked Mr. B. as to your call there, supposing she knew it of course, as she said you would not go there without her. I was innocent of making any misunderstanding, if there was any; you say keep quiet.

I understand you know no reason and recall no event which justified Mrs. Morse in writing that? A. I do not.

Mr. Beach [to Mr. Fullerton]—He says part of this is in his handwriting, and part of it in Mr. Moulton's.

The Witness—Appears to be, but I cannot say with certainty.

Mr. Beach—If there is any part of that which you think is in your handwriting, just point it out. A. If there is any part, I should think it was the date.

Mr. Fullerton—Please read what you think is in your handwriting. A. [Reading.] "Received January 27th." I should not say the "71" was, but it may be.

Q. Was it received in January, 1871, according to your recollection, as now refreshed? A. Yes, Sir, I think it was in the early part of 1871; I have no other evidence of it than that.

Q. Did you call on Mrs. Tilton between the 1st of January, 1871, and the 27th of January, 1871, when that letter seems to have been received? A. Between Jan. 1, 1871, and the 27th of January?

Q. Yes, Sir, when that letter seems to have been received by you. A. I do not now recall any other visit—any visit; I was thinking of the 30th of December.

Q. This difficulty broke out on the night of the 30th of December? A. Yes, Sir.

Q. Are you not now enabled to state whether, subsequent to that date and prior to the writing of this letter of Mrs. Morse, you called on Mrs. Tilton? A. I do not recall any call.

Q. Do you think it is possible that you could have called on her in those troublous times without its being remembered by you now? A. I might or might not have remembered it.

Q. Did not Mr. Tilton, about that time, refuse his house to you? A. I understood, of course, that I could not go there.

Q. Did he not, in terms, tell you not to call at his house? A. I cannot recall that he did, although I have an impression that that was either conveyed to me or stated to me.

Q. When was that conveyed or stated to you? A. I cannot say.

Q. In reference to the 30th of December, 1870, when was it? A. When was what, Sir?

Q. This order or direction of Mr. Tilton that you should not call at his house? A. I cannot recall, Sir.

Q. Was it before or after that date? A. I cannot say, Sir; it must, I think from reasoning upon it, have been after.

Q. Well, how long after? A. I do not know.

Q. How soon after was it? A. It exists in my mind simply as an impression that there was such an injunction.

Q. Well, do you think that you called at his house after that injunction, and visited Mrs. Tilton, and have forgotten it? A. I certainly have forgotten it, if I called.

Q. But you cannot now state that you did not call? A. I can state that I have no recollection of calling.

Q. And that is as far as you will go? A. That is as far as I can go.

Q. Now, Mr. Beecher, do you recollect saying this: [Reading.] "In the same letter of February 7, you say: 'Of course, I cannot expect to see her again without his permission, and I do not know that even then it would be best.' Why did you say that? A. Because either at the time of that letter from Mr. Bowen, or in its immediate vicinity, Mr. Tilton, as I have the impression now, sent word by Mr. Bowen (though I cannot be sure of that), forbidding me ever to enter his house again." Do you recollect such a question being put to you, and giving such an answer? A. I do not recollect it, but I presume it was so, if it is in the examination; I do not recall the scenes of the examination, many of them.

Q. This same letter of Mrs. Morse I again refer to, and I read the opening sentence:

As you have not seen fit to pay any attention to the request I left at your house, now over two weeks since, I will take this method to inform you of the state of things in Livingston-st.

Do you recollect what that request was? A. I do not, Sir; I do not know that I ever received one.

Q. Do you know whether it was a verbal or a written request? A. I have no recollection about it.

Q. I read further:

T. has sent Bessie with the others away, leaving my sick and distressed child to care for the four children night and day, without fire in the furnace, or anything like comfort or nourishment in the house. She has not seen any one. He says she is mourning for her sin.

Did you know what interpretation to put on that? A. I did not. Mrs. Morse's report of Mr. Tilton's saying this was as I understand.

Q. My question was whether you knew how to interpret Mrs. Morse's sayings as I have read them to you? A. I wanted to see exactly where the passage was; I had not caught the passage so as to get the full understanding of your question. I see it now.

Q. Well, after having seen the passage can you give any other answer? A. No, Sir.

Q. I read again:

This she could endure and thrive under, but the publicity he has given to this recent *and most crushing of all trouble*, is what is taking the life out of her.

Do you know what she referred to by that language? A. Where is that, Sir?

Q. "*This recent and most crushing of all trouble*"—it is nearly midway in the letter. A. Oh, I see it; I do not remember what I thought of it at the time, Sir.

Q. Did you know to what it alluded at the time? A. I do not recall how I interpreted it. Undoubtedly in the light of the circumstances which were fresh at the time——

Mr. Beach—Wait, wait.

Mr. Fullerton—If you know how you did, I would like to know now. A. I do not know how I did.

Q. Then you won't tell me of course? A. No, Sir, I won't.

Q. [Reading.] I know of twelve persons whom he has told, and they, in turn, have told others.

Did you understand at the time what he had told to twelve persons? A. I did not; or at least if I did, I do not now, though I have my own supposition.

Q. I understand you to have said that you took this letter to Mr. Moulton? A. I either took it, or it was conveyed by me.

Q. Did you have any conversation with Mr. Moulton in respect of the interpretation of that clause which I have just read, to wit:

This she could endure and thrive under, but the publicity he has given to *this recent and most crushing of all trouble* is what is taking the life out of her. I know twelve persons whom he has told, and they in turn have told others.

A. I recollect having a general conversation with Mr.

Moulton on the subject of, not this letter, but allegations——

Q. One moment. Then it is not an appropriate answer, because my question is with reference to that clause which I have just read? A. Yes, Sir.

Q. Do you remember having a conversation with Francis D. Moulton with reference to that clause? A. I cannot say that the conversation that I remember sprung from a consideration of that clause—that is, as I now recollect.

Q. Do you recollect of entering a complaint to Mr. Moulton that Mr. Tilton had done as is here imputed to him, namely, had told twelve persons of this most crushing trouble? A. I do not—with such a definite number, and such a special and definite question.

COUNSEL AND WITNESS ON THEIR DIGNITY.

Q. Do you recollect that Mr. Tilton was sent for to know whether it was true that he had told that story to twelve persons? A. I do not know that he was sent for.

Q. Do you know that he was present when this subject was under discussion? A. Not when this subject, but when a kindred subject was.

Q. Well, I am talking about this subject, and not a kindred subject. A. You are talking about this letter, I understand you?

Q. Yes. A. And refusing to allow me to go outside of the letter.

Q. I don't want you to go outside of the letter, of course. A. That is the reason I reply as I do.

Q. Well, if you don't remember anything about this letter then it is easy for you to say so. A. I have said it.

Q. But you want to go outside of the letter? A. Not at all, Sir; not at all.

Q. Well, you manifest a disposition to do it, I think. Was that clause of that letter the subject of consideration between you and Theodore Tilton and Francis D. Moulton? A. I do not recollect that it was.

Q. Did not Mr. Tilton explain to you and give you the names of the persons to whom he had told this story? A. Told this clause?

Q. Yes. A. No.

Q. Didn't he mention the name of Mrs. Bradshaw as one of those persons? A. I do not recollect that he did.

Q. Will you swear that he did not mention the name of Mrs. Bradshaw? A. I will not swear that he did not.

Q. Did he mention the name of Oliver Johnson as one of those persons? A. I do not remember that he did.

Q. After the receipt of that letter, and after it was placed in the hands of Francis D. Moulton, was not the allegation there that Mr. Tilton had told some persons (whether it was more or less than 12) a story in regard to yourself and Mrs. Tilton, the subject of consideration? A. The allegation——

Q Answer my question, please. A. No, Sir; I do not recollect any such thing.

Q. Very well; that is an answer? A. Yes; Sir, I do not recollect any such thing.

Q. Didn't he state in that conversation that he had told the story, whatever it was, to Joseph Richards? A. I do not recollect that he did.

MR. BEECHER'S ANSWER TO MRS. MORSE.

Q. I now call your attention to Exhibit No. 8; I suppose you have it there. A. What date, if you please?

Mr. Beach—It is without date.

Mr. Fullerton—It is dateless, Sir.

Mr. Beach—It is immediately after the Mrs. Morse letter.

Mr. Fullerton—It is of your answer to Mrs. Morse's letter.

Mr. Shearman—It is "D, Jan. 28;" the next thing.

The Witness—What date did you say, Mr. Shearman?

Mr. Fullerton—Look for it under Jan. 28.

Mr. Beach—You will probably find it under Jan. 28; it is the next paper after Mrs. Morse's letter.

Mr. Evarts—It is your answer to this letter.

Mr. Fullerton—Have you found it?

The Witness—I have.

Q. Now, I ask you whether you think you understood, at the time of the receipt of Mrs. Morse's letter, these allusions therein made to "this recent and most crushing of all trouble," and the fact that it was alleged that Mr. Tilton had told it to twelve persons? A. What do I understand the question, Sir?

Q. Did you understand, at the time of the receipt of that letter, to what Mrs. Morse alluded? A. I cannot say from my recollection, that I did.

Q. Have you any doubt that, at the time of the receipt of that letter, you understood the allusions made by Mrs. Morse——? A. Have I now any doubt?

Q. Yes; now? A. I presume that I did understand them—that is, not correctly, necessarily, but that I had *an* understanding.

Q. Did you refer to them in the answer to that letter? A. I cannot say that I did.

Mr. Evarts—Has he answered that?

Q. I will read it. [Reading.]

MRS. JUDGE MORSE—*My Dear Madam:* I should be very sorry to have you think I had no interest in your troubles. My course toward you hitherto should satisfy you that I have sympathized with your distress. But Mrs. Beecher and I, after full consideration, are of one mind—that, under present circumstances, the greatest kindness to you and to all will be, in so far as we are concerned, to leave to time the rectification of all the wrongs, whether they prove real or imaginary.

I believe that is the last of it; the rest is struck out—"whether they prove real or imaginary;" you didn't ask her for any explanation of anything that she had inserted

in her letter, I see? A. Do you ask me whether I did?

Q. Yes. A. I did not, to my recollection.

Q. I will ask you one other question in regard to this letter: [Reading.]

He [Tilton] swears, so soon as the breath leaves her body, he will make this whole thing public; and this prospect, I think, is one thing which keeps her alive.

Did you know, at the time, what she referred to there? A. I presume I did; I cannot say that I recollect I did.

Q. Do you know now what she referred to? A. I presume I could make out a theory on it, Sir, if you wish.

Q. Well, I think you could. A. I think I could.

Q. I didn't ask you to make out a theory; I asked you whether you knew, now, what Mrs. Morse's meaning was? A. And I answered you.

Q. That you could make out a theory. A. That I had a theory of it.

Q. We don't indulge in theories here. A. It is a question of interpretation of that letter.

Mr. Beach—Not altogether.

Mr. Fullerton—I didn't ask you whether you could interpret the letter; but I asked you whether you now knew what she meant at the time she wrote this letter, in employing that language? A. I have only an opinion; I do not know.

Q. Did you know a servant in the employ of Mr. Tilton by the name of Kate Carey? A. I did not.

Q. You didn't know one of that name? A. I did not.

Mr. Shearman—I thought there was no such person.

Mr. Fullerton—I am not accountable for what you thought.

Mr. Shearman—Mr. Beach said so. He said she gave her name as Kate Carey Smith.

Mr. Fullerton—She gave her name as Kate Carey, or as Kate Carey Smith, and allowed you to take your choice.

Mr. Evarts—We have no choice.

JOSEPH RICHARDS CONTRADICTED.

Mr. Fullerton—Then you have no right to make one. [To the witness.] Do you recollect an occasion when you were visiting Mrs. Tilton, when Joseph H. Richards came to the house? A. I do not recollect ever to have seen Mr. Richards in that house.

Q. Do you recollect any occasion when he came to the house when you were visiting Mrs. Tilton? A. I do not.

Q. Do you recollect hearing that he had been at the house at any time when you were visiting Mrs. Tilton? A. I do not; I may have seen him there; I have an indistinct recollection of seeing him, but nothing that I can be positive about.

Q. Have you no recollection of an occasion when you were visiting Mrs. Tilton when Mr. Richards came to the door and opened it and found you in company with Mrs. Tilton? A. No, Sir, I have none whatsoever.

Q. Can you say that he did not open the door? A. I cannot say any such thing.

Q. Did you hear the testimony of Joseph H. Richards? A. No, Sir; I did not hear him.

Q. Have you read the testimony as reported? A. I have only read—I think I have not even read it, but it has been stated to me.

Q. Now, then, I want you to state whether upon a certain occasion when you were visiting Mrs. Tilton, Joseph Richards did not open the parlor door and find you in close proximity with Mrs. Tilton, she retreating from you in haste? A. I recall no such scene.

Q. Do you say that no such scene occurred? A. I do not.

Q. Mr. Beecher, were you in the habit of visiting Mrs. Tilton in the absence of Mr. Tilton? A. Yes, Sir.

Q. How frequently did you make such visits? A. I cannot say how frequently.

Q. Well, give us an approximate idea of the number of visits, or their frequency? A. I should say in general, that, with the exception of one season, I went to see her, I should say, once in two or three weeks, unless there was some special reason for going oftener. There was one season in which I was requested, and that season I went oftener.

Q. How many times do you think you visited her in Mr. Tilton's absence during the year 1870? A. I have no information, and I can get no information on that subject, which would justify me in making any definite statement.

Q. Did Mrs. Tilton ever show you any letters that she wrote to her husband before sending them? A. I think not, Sir.

Q. Are you certain upon that subject? A. I am not.

Q. Did she ever read to you any letter or letters which she had prepared to send to her husband, or parts of letters, relating to yourself? A. I do not recall any.

Q. Do you recollect calling upon Mrs. Tilton on an occasion immediately subsequent to your call upon a family by the name of Wheelocks? A. I do not think I can say that I do; and yet there is something in my mind about it, but I cannot tell precisely what it is.

MR. BEECHER'S INTIMACY WITH MRS. TILTON.

Q. Perhaps I can recall it to your recollection. I read from Exhibit 91:

To-day has been a quiet day. Mr. Beecher called. He is in fine spirits, making calls. He devotes Wednesdays and Thursdays until further notice. Has 300 to make. Made 20 to-day. Enjoyed it immensely. Called on the Wheelocks to-day, and kissed them all around, Lucy Wood included, he said.

Do you recollect that circumstance? A. Yes, Sir; it was pleasant enough to remember.

Q. And did you state it thus to Mrs. Tilton? A. If she says so, I did.

Q. Don't you recall it? A. I don't recall the statement to her.

Q. Did you at that time kiss Mrs. Tilton? A. I don't recollect that I did.

Q. Will you say you did not? A. I will not say I did not.

Q. Were you in the habit of kissing her? A. I was when I had been absent any considerable time.

Q. And how frequently did that occur? A. Very much; I kissed her as I would any of my own family.

Q. I beg your pardon. I don't want you to tell me you kissed her as you did anybody else. I want to know if you kissed her. A. I did kiss her.

Q. Were you in the habit of kissing her when you went to her house in the absence of her husband? A. Sometimes I did, and sometimes I did not.

Q. Well, what prevented you upon the occasions when you did not? A. It may be that the children were there then; it might be that she did not seem in the—to greet me in that way.

Q. Well, do you mean by that that you didn't kiss her when the children were present? A. I sometimes did, and sometimes did not.

Q. Did you kiss her in the presence of the servants? A. Not that I ever recollect.

Q. Was it not true that you did not kiss her in the presence of the children or the servants, but did kiss her when she was not in their presence? A. No, Sir, it is not true in any—as I understand your question.

Mr. Beach—It calls for a mere fact.

Mr. Fullerton—I don't know how you understand the question; it is about as plain as I can make it. Did you not purposely omit to kiss her in the presence of the children and the servants? A. No, Sir, I did not; in the presence of the children, certainly not.

Mr. Beach [to Mr. Fullerton]—Did he ever kiss her before Florence?

Mr. Fullerton—Did you ever kiss her in the presence of Florence, the oldest daughter? A. I don't recall ever having Florence there, but I have no doubt I have done it.

Q. I read to you from Exhibit 74, being a letter of Mrs. Tilton to her husband.

Mr. Shearman—What date?

Mr. Fullerton—Dec. 28, 1866. [To the witness.] In speaking of yourself she says:

During these early years, at the mention of his name, to meet him, or, better still, a visit from him, my cheek would flush with pleasure—an experience common to all his parishioners of both sexes. It is not strange, then, darling, that on a more intimate acquaintance my delight and pleasure should increase.

Q. Do you recollect of any instance in which these things were apparent on the part of Mrs. Tilton when you visited her? A. What things?

Q. That her cheek would flush with pleasure? A. Yes, Sir.

Q. You did not construe that into any undue affection for you? A. I did not.

Q. You thought it was proper and right? A. I did.

Q. Do you remember of walking out with Mrs. Tilton on any occasion other than you have mentioned on your direct examination? A. I do not.

Mr. Beach [to Mr. Fullerton]—Does he think he has not?

Mr. Fullerton—Can you say that you did not? A. Oh, no; I cannot say that.

Mr. Beach [to Mr. Fullerton]—Has he any impression about that?

Mr. Fullerton—Have you any impression upon the subject? A. Well, do I understand by "walking out," that you mean going with her on calls or visits?

Mr. Beach—Yes.

Mr. Fullerton—I mean anything in that line; I mean walking out with Mrs. Tilton.

The Witness—I asked you that question, because there are two distinct things, walking out and going out on errands, I hold to be very different. Walking out is a stroll for pleasure, or going with her to see a sick person or to see a friend; that was the reason I asked you more distinctly what your question comprehended.

Q. It comprehended the whole thing. Did you ever walk out with Mrs. Tilton? A. Oh! I have walked out with Mrs. Tilton.

Q. How frequently? A. I don't know, Sir; I can give you no gauge.

Q. How many times, do you think? A. I should say not very frequently.

Q. Do you recollect of going with her to look at the bust of Mr. Tilton? A. I do.

Q. Was it in the absence of Mr. Tilton? A. I cannot say.

Q. Do you recollect whether he was home or not? A. I do not.

Q. I will call your attention to October, 1871, if you have it there. A. No, Sir; I have not those letters; I have them at home, but I forgot to bring them.

Mr. Fullerton—I read to you this sentence from it.

Mr. Shearman—What date?

Mr. Fullerton—February 26, 1868 [reading]:

Mr. B. put our baby to sleep; laid him down and covered him up the last time he was here, and said whenever we could not quiet him to send for him and he would come.

Q. Do you recollect of that visit? A. No, Sir, I do not.

Q. How? A. I do not recall it now.

Q. Do you recollect of kissing Mrs. Tilton on that visit? A. I do not recollect the visit.

Q. You do not recall it? A. No, Sir.

Q. What was the duration of your visits when you called there? A. From five minutes to half—three-quarters of an hour.

Q. Never longer than that? A. I don't recollect—I should say that would be a fair statement of their duration; yes, I have, sometimes—I recollect now, sometimes an hour.

Q. Did you correspond with Mrs. Tilton in her absence? A. In her absence?

Q. Yes, from New-York or Brooklyn. A. I do not recollect that I corresponded with her more than once; that is, that I wrote to her more than once, and I cannot say positively about that.

Q. Where was she when you think you wrote to her? A. I think I wrote to her when she was at Marietta.

Q. Did you keep a copy of that letter? A. No, Sir.

Q. Did you write to her while she was at Monticello? A. I do not think I did, but I may have done so.

Q. I read to you Exhibit 100, Aug. 15, 1869, dated at Monticello [reading]:

Mr. Beecher wrote me a very simple, characteristic letter, which I would inclose, save for the fear that you would lose it.

Do you recollect that instance? A. No, Sir; I do not recollect it any better now.

Q. Have you any doubt that that was true? A. Not if Elizabeth Tilton said so.

MR. BEECHER'S WHEREABOUTS IN OCTOBER, 1868.

Q. I understand you to say, Mr. Beecher, that you were in the City of Brooklyn on the 10th of October, 1868. How do you recollect that you were in town on that day? A. Well, Sir, I only recollect now because my attention was called to it, and I refreshed my memory by conversations and documents, and my refreshed memory is that I was in town.

Q. And you recollect, I believe, of being in town also on the 17th of the same month and the same year? A. In the same way I remember it.

Q. Did Mrs. Tilton ever visit you at your house during Mrs. Beecher's absence? A. I do not recollect that she ever did.

Mr. Beach [to Mr. Fullerton]—Will he swear that she did not?

Mr. Fullerton—Will you swear that she did not visit your house? A. I will not.

Q. Can you say that she did not visit your house on the 17th of October, 1868? A. I cannot say so, Sir, but I do not recollect that she did.

Mr. Beach [to Mr. Fullerton]—Or on the 10th of October?

Mr. Fullerton—Do you recollect whether or not you visited Mrs. Tilton on the 10th of October, at her own dwelling? A. I do not recollect that I did.

Mr. Beach—That does not cover it.

Mr. Fullerton—Can you say that you did not? A. I cannot.

MR. TILTON'S LETTER DEMANDING RESIGNATION.

Q. I now come to the letter of the 26th of December, 1870, Mr. Beecher. Where were you when Mr. Bowen delivered that letter to you? A. At my house.

Q. And on what day of the month was it? A. I think it was the 26th, Sir.

Q. On the day the letter bears date? A. Yes. Sir; I think it was that day; I say "I think," because it is a question in my mind whether it was the 26th or 27th; I incline to believe it was the 26th.

Q. What degree of intimacy had existed between you and Mr. Bowen just prior to the delivery of that letter by him to you? A. Very little; there had been an intercourse between us.

Q. Of what character? A. Mostly an intercourse with relation to public affairs.

Q. Had you exchanged friendly visits? A. I had been, at his invitation, at his house in Woodstock in order to be present when Gen. Grant should make his visit there.

Q. And when was that? A. I think that was in the Summer of 1870, and Mr. Bowen requested me to be one of his guests.

Q. Was there not a coolness existing between you and Mr. Bowen just prior to December, 1870? A. Yes, Sir, on my part.

Q. Had he visited you at your dwelling in Brooklyn? A. He had not; I will not say never; but I will say it was not his habit.

Q. Are you quite sure that this letter was delivered at your dwelling in Brooklyn? A. I am.

Q. Or was it delivered at Mr. Freeland's house? A. No, Sir, at my house.

Q. How far apart did you and Mr. Bowen live at that time? A. Well, about a block—a block and a half.

Q. Did you not think it was somewhat strange that he should be the bearer of a letter from Theodore Tilton to you? A. In the first instance?

Q. Yes, Sir. A. No, Sir.

Q. He had not been in the habit of performing the office of postman or letter carrier, had he? A. He had not, but we can never tell what a man may do.

Q. No, I am finding that out. Did you read the letter in his presence? A. I did.

Q. Was it sealed or unsealed when he handed it to you? A. It was sealed.

Q. Are you quite sure he said to you he didn't know the contents of that letter? A. I am.

Q. And what did you do immediately after reading it? A. Do you mean what did I say? I did nothing except to express myself.

Q. Then, why don't you tell me what you said? A. I will do so with pleasure. I said, "This is sheer insanity; this man is crazy," or words to that effect.

Q. Is that all? A. That was my remark, Sir.

Q. What did Mr. Bowen say? A. Mr. Bowen then said that he was not aware of what the contents were; that he had merely taken it at Mr. Tilton's request; that he was

on his way home, and that was the substance of his remark.

Q. Were you satisfied with that explanation? A. Of course I was.

Q. Did you have any further conversation in respect of that letter and its contents that evening? A. I do not think I did, Sir.

Q. What was your answer? A. I do not think I did; I do not recollect that I did.

Q. Did you learn from Mr. Bowen where he had been? You say he left his letter on his way home? A. I cannot say that I learned from him. I know what my impression was.

Q. Well, what conversation did you have with Mr. Bowen that evening after the reading of that letter? A. Our conversation turned entirely upon Mr. Tilton.

Q. Well, that is only a commencement. A. I didn't understand you wished me to go on.

Q. What conversation did you have with Mr. Bowen, that evening, in respect of that letter? A. I beg your pardon. Do you wish me to state it in the whole, as near as I can recollect it?

Q. I want you to state what conversation you had with Mr. Bowen, that evening, in regard to that letter. A. Yes, Sir; I understand you now. Well, Sir, handing the letter to Mr. Bowen, and reading it, he then, I think, himself—am I to tell his conversation, too?

Q. I want you to tell me the conversation you had with Mr. Bowen, that evening, in respect of that letter. A. I have told you the conversation we had respecting that letter.

Q. Well, subsequent to the writing of that letter, what conversation did you have? A. After the letter was laid aside we proceeded to talk upon Mr. Tilton and his relations.

Mr. Beach—Oh, well!

Q. I want to know what was said; you are giving me the subject of the conversation without the conversation. A. I will try to give you the substance.

Mr. Fullerton—That is the text; I want to know the sermon.

The Witness—Well, Sir, now I will preach. Well, the conversation—I am trying to think whether it began with me or with him. He said he had been having an interview with Mr. Tilton, and what the steps of the conversation were that led to it I cannot tell you, but it came to this: He began to tell me about the steps which he had taken to dispossess Mr. Tilton of his editorial possession.

Mr. Fullerton—Now, don't you say he began to tell you something?

The Witness—He told me about——

Mr. Fullerton—Tell me what he said—the substance of it.

The Witness—He said, in substance, that he found the paper was being injured by Mr. Tilton's editorial course. That was the substance. That he had at last been obliged reluctantly to dispossess him from the editorial chair, but that he thought he could retain his services as contributor, and make him almost as useful as if he were editor—or in substance that; that no sooner, however, had it become known that he and Mr. Tilton had so far disagreed as that he had been put a contributor rather than an editor, than he was congratulated by his various friends, and that they began to tell him stories about Mr. Tilton which astonished him, and that he was amazed to find how many persons knew things ill of him. He made the remark that stories poured in on him like clouds. He opened one to instance many of them. He alluded to the Winsted affair. He alluded to an affair in the North-West, which he did not go into nor explain. He gave me an account of an occurrence that took place in his own office. I also expressed to him my astonishment, and said that it was painfully verified in some knowledge that had been conveyed to me. I told him of the visit that had been made to me by Bessie Turner, and the substance of her statement. I told him that there were rumors afloat respecting another person, which I heard from various sides, but I did not know how much truth there was in them, and that I had always hoped for the best in regard to such things. He then went on to say that Mr. Tilton was no friend of mine; that when he was discussing with Mr. Tilton the subject of his changed relation in the paper, Mr. Tilton's expressions and manner indicated great feeling against me. I expressed my feelings about Mr. Tilton; my long acquaintance with him; my exceeding regrets at the way things were shaping themselves. I told him that I thought that his relations to The Independent—that his judgment was just in regard to that; that I had been of the opinion for some time that Mr. Tilton's relations as editor were taking the paper out of the old channel—the religious channel—of its financial matters I knew nothing; that that paper, its interests, were always dear to me, because of my long connection with it from its foundation, and that my impression was that he scarcely would stop with Tilton upon the contributor platform. He then spoke of The Brooklyn Union, and said that he had been turning it in his mind whether he could continue him there even, and made some statements which I cannot recall. I said that it didn't seem to me that a man that was tainted could prosper any paper of his, and that I did not believe that Mr. Tilton was a man that could work with men unless he led them, and that as a conductor of the Republican journal in Brooklyn I thought he would be impracticable, and would be getting the paper into trouble continually. We then returned to some topics again touching morals, and I said that my wife was better acquainted than I was with some parts of Mr. Tilton's alleged history, and that if he would see her I thought it would, perhaps, give him some light. With that, soon after, he left, shaking hands with me very cordially, saying that he would be my friend, whatever

might happen as the result of this message. That is substantially as near as I can just now recall it.

Q. Did Mr. Bowen speak of letters which he had received upon the subject of Mr. Tilton's moral position? A. I do not recall that definitely.

Q. Did he state that he had held personal interviews with anybody upon the subject? A. Yes, Sir.

Q. Did he state with whom? A. I do not know but he may, but I don't recall anybody.

Q. You believed what Mr. Bowen told you that night, did you not? A. I did.

Q. And the observations that you made in regard to the propriety of continuing him as editor or proprietor of The Independent was in good faith? A. Yes, Sir.

Q. And the result of your best judgment formed at that time, was it not? A. At that time.

Q. What you said in regard to his ability to conduct The Brooklyn Union in harmony with the policy which it represented was also in good faith? A. Yes, Sir.

Q. You believed what you said at the time, did you not? A. Of course I did.

Q. This was a friendly interview between you and Mr. Bowen? A. And Mr. Bowen.

Q. Where you talked freely in regard to Mr. Tilton? A. We did.

MR. BEECHER'S SENTIMENTS RESPECTING MR. TILTON'S LETTER.

Q. Now, Mr. Beecher, what feeling did that letter of the 26th, written by Mr. Tilton to you, demanding that you should leave the pulpit and quit Brooklyn, excite in you? A. Well, it excited in me the feeling that the man was beside himself.

Q. Felt it was an insult? A. Yes, Sir, in that category, I should say.

Q. You did not know of any cause that he had for making that demand upon you, did you? A. No justifying cause.

Q. No justifying cause, and therefore you felt indignant that he wrote such a letter and sent it in that way? A. I was greatly surprised, Sir——

Q. Well, leave the surprise out until we get through with the indignation. I ask whether you did not feel indignant? A. Pure and simple?

Q. Did you feel indignant? A. A part of it was indignancy.

Q. Did you feel angry? A. No, Sir; indignation.

Q. Did you take any step after the receipt of that letter and the interview with Mr. Bowen to ascertain what Mr. Tilton meant by that demand? A. I did not.

Q. You did not go to see him? A. I did not.

Q. In any way? A. In no way.

Q. You took no measures, adopted no means, of ascertaining what the interpretation of all that was? A. None whatever, Sir.

Q. You settled down upon your indignation? Oh, no, Sir, I settled down on my work.

Q. On your work. Very well, now, when did you next see Mr. Tilton? A. I think the next time I saw Mr. Tilton was at Mr. Moulton's house, on the 30th of December.

Q. Of the same month? A. Of the same month; yes, Sir.

Q. And I believe it was on Friday night? A. On Friday night, Sir.

MR. MOULTON'S PEREMPTORY INVITATION ON DEC. 30.

Q. When had you last seen Mr. Moulton before that? A. Well, Sir, I can't exactly say, but my impression is that I had not seen him since 1869, if that was the time when I sat to Mr. Page.

Q. Then you were not intimate with him, I believe? A. No, Sir; I was acquainted with him, but not any time.

Q. You had never exchanged calls with him, had you? A. No, Sir.

Q. Somewhat surprised to see him come in that night? A. Oh, no, Sir; not at all surprised.

Q. You had not been expecting him? A. I don't expect one in ten thousand that call.

Q. What did he say when he came in first? A. "Good evening, Sir." [Laughter.]

Q. Well, what followed that? A. Well, Sir, I said "Good evening," too.

Judge Neilson—Gentlemen, will you please be quiet?

The Witness—And then do you wish me to state the substance of the whole interview?

Mr. Fullerton—If I didn't wish you to, Sir, I shouldn't ask you. A. Well. Sir, I am so constantly afraid of doing wrong that I sometimes do wrong just from my anxiety to do right.

Q. It is an unfortunate condition to get into; I want you to tell us the whole of that interview. A. Yes, Sir; I will.

Q. And fix your recollection so as to give it in detail as nearly as you can. A. Well, it wasn't very much of that; it was merely that Mr. Tilton had requested him to call and ask me to come down and see him; that was the substance of it. I then said to him, "Why, Mr. Moulton, it is my Friday night meeting, and it will be very inconvenient for me to do so." He said, in substance, "I think the matter is of sufficient importance for you to forego your meeting," and I said, "Well, I will; I can get somebody; Mr. Bell is near by; I can get some one to take my meeting;" and I either called or sent to Mr. Bell accordingly, and I accompanied him. The conversation was about that.

Q. Well, Mr. Beecher, the Friday night prayer meeting in Plymouth Church is an important feature of its

services, isn't it? A. It is now, far more than it was then.

Q. Well, wasn't it an important feature then? A. It was important.

Q. Did you not think it a little extraordinary that the man who had insulted you by that letter on the 26th, should send a somewhat peremptory message to you to come and see him at the house of a stranger? A. No, Sir; I thought that the man who would send me such a letter would send me just such a message.

Q. And you thought that you would leave your prayer meeting and answer that message, did you? A. I determined to leave my prayer meeting and see what he had to say--or hear.

Q. The request war that you should come to Mr. Moulton's house? A. Yes, Sir.

Q. Well, did you regard Mr. Moulton at that time as a friend of Mr. Tilton's? A. Yes, Sir.

Q. An intimate friend? A. Yes, Sir.

Q. You knew he had been a classmate of Mr. Tilton? A. Yes, Sir.

Q. In his early life, did you not? A. I knew that.

Q. Did you suppose that Mr. Moulton, at that time, knew the object with which that visit was requested? A. I don't know that that matter passed through my mind at the time of leaving.

Q. Why didn't you ask Mr. Moulton what Mr. Tilton wanted of you, and see whether he knew? A. I can only say that I did not.

Q. Well, did you get somebody to attend the prayer meeting in your place? A. Yes, Sir.

Q. And you went off at the beck of the man who had insulted you on the 26th, to know what he wanted? A. I did, Sir.

Q. Now, what was the manner of Mr. Moulton when he came there? A. That of a gentleman.

Q. Well, a gentleman can sometimes be excited and be a gentleman still; was he excited? A. No, Sir; not any external excitement.

Q. Well, was there any internal excitement? A. He had the manner of a man that felt that he had an important errand.

Q. Yes, and how did he manifest that? A. By his tones; by his general manner.

Q. Something a little peremptory in his tone? A. Oh, no! but there was something that conveyed to me the idea that he felt it to be important.

Q. Well, did you regard it as probably important? A. I could tell better after I had heard it; I thought it sufficiently important to go.

Q. Well, I am asking what you regarded it before you heard it? A. I thought it of sufficient importance to go.

Q. Well, was there anything in the manner of Mr. Moulton on that occasion which attracted your attention, or excited your observation? A. Yes, Sir.

Q. Well, what was it? A. It was that he had brought me a message, in a very earnest manner.

Q. In a very earnest manner? A. Yes, Sir.

Q. How did his earnestness manifest itself? A. In his tone and in his general demeanor.

Q. Talk loud? A. No, Sir.

Q. Excited? A. No, Sir; he was a gentleman.

Q. Well, gentlemen sometimes talk loud and get excited. A. But then they are not gentlemen.

Mr. Fullerton—Oh, yes they are, I beg your pardon.

The Witness—That is the exceptional part of the——

Mr. Beach [in an undertone]—I am afraid he has not been a gentleman on the stand all the time.

The Witness—We all of us come short in spots.

Mr. Beach—I don't agree in your definition.

Mr. Fullerton—Let me read now and see if you recognize the description given of this meeting on another occasion: "On Tuesday evening, Dec. 30, 1870, about 7 o'clock"—it ought to be "Friday;" "on Friday evening," then——

The Witness—There are many errors in that account from which you are reading.

Mr. Beach—We are only reading to refresh your recollection.

The Witness—Yes, Sir.

Mr. Fullerton: [Reading.]

About 7 o'clock Francis D. Moulton called at my house, and with intense earnestness said: "I wish you to go with me and see Mr. Tilton." I replied that I could not then, as I was just going to my prayer-meeting. With the most positive manner he said: "You must go; somebody else will take care of the meeting."

Do you recollect that that was about the way that the thing occurred at that time? A. His tones and emphasis were not like yours, Sir; he did not say you *must* go.

Mr. Fullerton—Did he say you must go? A. No, Sir, neither of those.

Q, Well, is that a description of the occurrence that evening without the emphasis? A. That is one description of it, Sir.

Q. Given by whom? A. I suppose it was given by Henry Ward Beecher.

Q. Was it correct? A. According to the best of my recollection then.

Q. You don't recollect any better now, do you? A. I recollect as I have now stated it.

Q. Well, that was your account of it once, was it? A. I suppose it to be so, if it was the account given before the Committee.

Q. Well, it was, Sir. Well. then you left, did you, and went with him? A. I left and went with him, Sir.

Q. Well, how did you get word to Mr. Bell to take charge of the prayer-meeting? A. I am at a loss to know whether I sent one of my boys or servants to him, or whether I called at the door; I had to go right past the door.

Q. Well, what was your object in going down to see Mr.

Tilton? A. To see what Mr. Tilton had for an object in sending for me.

Q. You didn't surmise that object, I suppose? A. I suspected many things, Sir; I thought very likely the letter of the 26th would come up.

Q. Well, why didn't you say to Mr. Moulton, "I will call to-morrow evening," or some other day? A. Possibly, that might have been the wiser course; but it was not the course that I pursued.

Q. Well, I haven't asked you about the wisdom of it. I have made up my mind about that. I only ask you why you didn't say. A. I cannot say why I did not, except that it did not occur to me.

THE WALK TO MR. MOULTON'S.

Q. You went right away. Well, did you go to Mr. Moulton's house? A. I did, Sir, as I supposed, and suppose.

Q. And you went in company with Mr. Moulton? A. In company with Mr. Moulton, Sir.

Q. Do you recollect what time in the evening this was? A. I should say not far from 7 o'clock, Sir.

Q. And how far did you live then from Mr. Moulton's? A. Mr. Moulton then lived just below—four doors below St. Ann's Church, on Clinton-st., if you are familiar with Brooklyn.

Q. Well, I am not; but I am afraid I am going to become so, though. A. I will be very happy to have you become more so.

Q. Do you recollect the character of the night? A. It was a snowy, stormy night.

Q. A very inclement night, was it not? A. It was an inclement night.

Q. Did you have an umbrella? A. I suspect not—I usually take none.

Q. Don't you recollect that you got very wet in going down there? A. No, Sir; I don't.

Q. Don't you recollect that you complained of the storm going down there? A. I did not; I don't think, at least, I did.

Q. Well, from the time that you left your house until your arrival at the house of Mr. Moulton, what occurred between you and Mr. Moulton? A. Well, Sir, I—I cannot recall any considerable conversation between Mr. Moulton and me on the way down there, but I have an indistinct recollection of some conversation respecting Mr. Bowen, but whether it was on the way down or between Mr. Moulton's and Mr. Tilton's, or on the way back, or all of them together, I cannot very well separate in my mind and say; that Moulton did not walk mutely by me I have a very strong impression, and that he conversed with me, but that it did not relate to the errand, I also recollect, because when I had reached about Montague or Remsen-st., I asked him what it was that Mr. Tilton wanted to see me for, and he said that Mr. Tilton would state it when I reached his house, or to that substance.

Q. And what was his manner and tone when he said that? A. There was nothing very special; it was as one gentleman would say it to another.

Q. Was it not peremptory in its style? A. Oh, no, Sir; it was simply the style of a man that in a gentlemanly way defers a request, and refuses a request for information.

Q. Did you infer from his answer, namely, "Mr. Tilton will inform you when you get there," that he knew what the subject of the meeting was? A. I don't know that I inferred one thing or another; I inferred that he did not wish to converse on the subject.

Q. Well, what inference did you draw from that? A. I don't think that I carried it any further, Sir; I think that the train of thought probably ceased there.

Q. Didn't Mr. Moulton, on the way from your house to his, say to you in substance, in reply to the question that you put to him, "He wishes to see you about your relations with his wife Elizabeth?" A. He never said such a word.

Q. Did he say in substance, "He wishes to see you in regard to domestic difficulties?" A. He did not.

Q. And you were, then, in entire ignorance of the object of that visit, so far as anything that Mr. Moulton said, were you? A. I can't say that decisively; I was, in so far as anything announced as the errand on which I was going, from Mr. Moulton to me; I was absolutely ignorant.

Q. I am asking you so far as Mr. Moulton said anything during that journey. A. I am replying to that; I understood that, Sir, and so far as he said anything to me disclosing the object that Mr. Tilton had, I was in profound ignorance.

Q. Do you recollect before you started from your house that you told any one where you were going? A. I do not.

Q. Were any of the members of your family at home that night? A. I know nothing to the contrary; I do not recall.

Q. Did you see Mr. Bell? A. I don't recollect whether I saw him or not; I heard afterward that he presided at the meeting.

Q. But you don't recollect of seeing him? A. I don't recollect.

Q. Do you recollect of seeing or communicating with any member of your family, or any other person, after receiving this message from Mr. Moulton, and before going to Mr. Moulton's house? A. My mind is unsettled between the two, whether I sent one of the boys, or whether I called myself, but I cannot determine which it was.

Q. Well, do you remember of giving any reason to any person that night why you should leave your prayer-meeting to go to Moulton's? A. I don't recollect of giving any reason.

Q. To any one? A. To any one.

Mr. Fullerton—If your Honor please, before going to

that interview at the house, I think we had better take a little rest.

The Court hereupon adjourned until 11 o'clock on Wednesday morning.

SIXTY-FIFTH DAY'S PROCEEDINGS.

CROSS-EXAMINATION OF MR. BEECHER CONTINUED.

THE SCENES WITH MR. TILTON AND MR. MOULTON AGAIN REHEARSED—EFFORTS OF THE COUNSEL TO INDUCE MR. BEECHER TO EXPLAIN WHY HE DID NOT ACT OTHERWISE THAN HE DID—FURTHER EXPLANATIONS OF THE APOLOGY.

WEDNESDAY, April 14, 1875.

A great crowd listened to-day to the cross-examination of Mr. Beecher, which was continued by Mr. Fullerton. The scenes with Mr. Tilton and Mrs. Tilton on Dec. 30; the pistol scene with Mr. Moulton on the following night, and the scene at which the "apology" was written on Jan. 1, 1871, were described. Mr. Beecher was pressed strongly and at great length on the last topic.

The interview with Mr. Tilton on Dec. 30, 1870; that with his wife on the same night; the Pistol Scene with Mr. Moulton on the next evening; and the circumstances of the writing of the letter of "apology," or "contrition," were the subjects touched upon by Mr. Fullerton this morning. Letters written years subsequently and Mr. Beecher's statement before the Investigating Committee, which contained references to these scenes and the famous document, were incidentally mentioned, and explanations were asked. But in general terms, the scope of Mr. Beecher's examination was confined to the incidents named above.

Matters went smoothly and quietly until Mr. Beecher was led up to the explanation of his famous letter through Mr. Moulton to Mr. Tilton. The examination on this point was therefore most elaborate and careful and very skillful, though to gain his point Mr. Fullerton was frequently compelled to resort to what is generally looked upon as a strange device of the cross-examiner, to require categorical answers to very intricate questions. Another peculiarity of the cross-examination was evinced in the frequent demands of Mr. Fullerton, after Mr. Beecher had stated what he had done in particular cases, to know why he did not do otherwise. Under the restrictions which prevented him from explaining his answers of "Yes" or "No," and the impossibility of answering why he did not do what the counsel thought natural under the circumstances, Mr. Beecher was considerably badgered and a little confused.

THE PROCEEDINGS—VERBATIM.

MR. BEECHER MAKES A CORRECTION.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Beecher was recalled for further cross-examination.

Mr. Fullerton—If your Honor please, Mr. Beach is unavoidably absent this morning, but I think that I will go on without him for a short time; I think he will be in in the course of half an hour.

Judge Neilson—You have not heard from him this morning, then?

Mr. Fullerton—No, Sir; but I was aware yesterday afternoon that he would be detained a few minutes.

Mr. Evarts—Mr. Shearman and Mr. Beach are both detained in court, in New-York, in a matter in which they are on the same side, and expect to be detained half an hour or so.

Mr. Fullerton—Mr. Beecher——

The Witness—Will you allow me to interrupt you, Sir?

Mr. Fullerton—Certainly.

The Witness—I wish to make a correction of an answer which I made to you yesterday. You asked me whether I had any letters in my possession from Mrs. Tilton, and whether I had made diligent search for any. I was informed afterward that there are letters—several—in the possession of my counsel. The circumstance that led me to make the answer was that, as I am informed, my wife communicated letters to the counsel, during the time last Summer when the Investigating Committee were in session, without my knowledge, as I recollect now; but after this trial began I ransacked the house for letters, and found none.

MR. BEECHER LOCKED IN WITH MESSRS. MOULTON AND TILTON.

Q. When you arrived at the house of Mr. Moulton, on the night of the 30th of December, did you enter it in company with him? A. I did.

Q. What did he do after entering the house? A. He locked the door.

Q. Did you see him lock the door? A. I did.

Q. Did he take the key out of the lock? A. He did.

Q. And what did he do with it? A. I cannot say what he then did with it.

A. Did you not notice or observe what he did with it? A. I did not.

Q. Did he make any observation when he took the key out of the door? A. I think the observation that he made was afterward, when he unlocked it, Sir.

Q. Did you not think it strange that he should lock the door and take out the key? A. I did not.

Q. It didn't excite your observation—surprise? A. Nothing specially.

Q. And you asked him no question in regard to it? A. Certainly not.

Q. You submitted to it without any remonstrance? A. Without the slightest remonstrance.

Mr. Evarts—The form of the question, if your Honor please, rather conveys an insinuation—"You submitted to it." It is not a question as to his attitude. It is as to the fact—what happened.

Mr. Fullerton—Well, it is a fact that he submitted to it.

Mr. Evarts—Oh! no.

Mr. Fullerton—Oh! yes.

Judge Neilson—You use the term in the sense of "acquiesce," I suppose.

Mr. Fullerton—The gentlemen may construe it upon the other side in their own way.

The Witness—Well, my reply was not on the supposition that you carried by "submission" anything more than that acquiescence which every gentleman has in any ordinary conduct of another gentleman in his own house.

Q. Was it an ordinary thing for gentlemen, after asking you as Mr. Moulton did, in an excited and emphatic manner to "go to Mr. Tilton's house—that he wishes to see you"—to Mr. Moulton's house or to any house, that he should lock the door after your entrance and take the key out of the door? A. I have seen gentlemen not only lock the door but put the chain on the door so as to make it doubly sure.

Q. When you made an ordinary call? A. When I have made an ordinary call.

Q. You didn't regard this as an ordinary call, did you? A. I could not tell what the call was to be, Sir.

Q. The language employed when the invitation was given was somewhat peremptory in its character, was it not? A. It was intense, rather, I should say—earnest and intense.

Q. And Mr. Moulton was under some excitement? A. Not visible—an excitement that showed itself in his general manner, but not in any such way as would develop itself in extraordinary action or anything of that kind.

Q. Well, it was visible if he showed it in his general manner? A. To that extent; yes, Sir.

Q. That excitement, however, that he manifested, did not cause you to inquire into the cause of it, as I understand you? A. It did not.

Q. Well, after the door was locked and the key taken from it, where did you go? A. I went up stairs.

Q. Was anything said to you to cause you to go up stairs? A. Yes, Sir; Mr. Moulton requested me to go up said that Mr. Tilton was waiting for me in the chamber above.

THE SCENE BETWEEN MR. BEECHER AND MR. TILTON.

Q. And what reply did you make, if any, to that observation of his? A. I asked him to be present at the interview, whatever it might be.

Q. And what did he say in answer to that request? A. He said he thought it was better that I should see Tilton by himself substantially.

Q. Well, why did you want a witness to the interview? A. Supposing that I was to have a business discussion with Mr. Tilton I wanted that there should be a witness.

Q. What business relations existed between you and Mr. Tilton at the time? A. No business relations, but it was a discussion, nevertheless, about business.

Q. Well, there were no business relations? A. We were not connected in business together.

Q. And how long had you been without any business connections? A. Since 1864–'65, or about that time.

Q. Well, was there anything in these anticipated business discussions that made it necessary, in your judgment, for you to have a witness present? A. It made it desirable to my feelings that there should be.

Q. Well, Mr. Moulton didn't go up with you? A. He did not, Sir, that I recall; I think he did not.

Q. Didn't you expect that the letter of the 26th of December would be brought under discussion? A. I thought it very likely.

Q. And did you want a witness present to hear that discussion? A. Yes; I did.

Q. Where did Mr. Moulton go when you went up stairs? A. I do not know, Sir.

Q. Did you not observe where he went? A. I do not recall.

Q. Did you find Mr. Tilton in the room indicated by Mr. Moulton? A. I did.

Q. And how long, in your judgment, did that interview last? A. I could not say with any considerable precision—half an hour, three-quarters of an hour—something between half an hour and an hour, I should say.

Q. How is that? A. I should say from half an hour to an hour, but I cannot give it with any precision.

Q. There was no other person present besides you and Mr. Tilton? A. Not to my knowledge, Sir.

Q. Was Mr. Moulton's family at home at the time? A. I understood not.

Q. Did you see any other member of the family, or any other person than Mr. Tilton and Mr. Moulton, whilst you were in the house? A. No, Sir; not that I recollect.

Q. I want you now to state, Mr. Beecher, all that you said from the time that you entered that room, on the night of the 30th, until you left it to go to the house of Mr. Tilton. A. "I did"—"This is a dream; I don't believe Elizabeth would say such an untruth of me"—I think that is about everything I said.

Q. Yes. Well, during that conversation, Mr. Tilton

charged you with making improper advances to his wife, did he not? A. That was the substance of the charge.

Q. Give us the language, if you recollect it, in which he made the charge. A. The language, if I recollect correctly—I cannot state it correctly—but it was substantially this: that I had solicited her to be a wife to me to all the intents and purposes indicated by that relation.

Q. And that charge in that conversation you did not deny then? A. Not in any other way than as I have stated.

Q. Well, you have told me that all that you have said while you were in that room during that interview was, first, "I did," and second, "I don't believe Elizabeth would make——"

Mr. Evarts—No, that is not all he said.

Mr. Fullerton—Just repeat it, then, Mr. Beecher.

Mr. Evarts—It is already there.

Mr. Fullerton—Well, we will have it again.

The Witness—That I did not believe that Elizabeth had made charges so untrue against me.

Q. Well, then, I am——

Mr. Evarts—"This is all a dream—" you omitted from your recital of what he had just told you.

Mr. Fullerton—No; I was repeating it when you interrupted me. [To the witness.] That was the only method in which you denied the charge preferred by him that you had made improper advances? A. It was, Sir.

Q. You felt indignant at that charge, did you not? A. I felt indignant at all the approaches to it; but I was stunned with the charge itself and its concomitants.

Q. Well, he charged you at the same time with having won the affections of his wife, did he not? A. He did.

Q. What feeling did that excite? A. The feeling that he was a violently jealous man.

Q. That the only? A. Yes, Sir, and regret and sorrow.

Q. Have you said referring to that interview, "I had listened with some contempt, under the impression that he was trying to bully me?" A. Very likely I may have said so.

Q. Was it true? A. In regard to the earlier part it was.

Q. When he charged you, therefore, with having interfered with the family relation and produced domestic discord you had a feeling of contempt for him? A. No, Sir; when he charged me with having been listening to stories unfavorable to his reputation, and having influenced Mr. Bowen to the course which he had pursued.

Q. It was that that gave rise to the feeling of contempt? A. It was the feeling with which we entered into the discussion; that was my idea of about what that conversation was going to be.

Q. Did he give you any reason for having made that charge to you that night—any one of those charges? A. I don't know that I quite take in the intent of your question, or rather its scope; the whole thing was, in some sense, a reason for the interview.

Q. Did he give you any reason for seeking that interview, and making those charges? A. I didn't seek the interview.

Q. I didn't say that you did; did he give you any reason for seeking the interview? A. With me?

Q. Yes. A. I don't recollect that he gave any special reason, Sir.

Q. Did he tell you that night that he had previous to that interview promised his wife that he never would disclose the relations existing between you and her? A. No, Sir; he did not.

Q. Did not he tell you in substance that the writing of that letter to Mr. Bowen on the 26th of December would, in the judgment of his wife, cause a revelation to be made of those relations which existed between you and her? A. Not a word of it, Sir.

Q. And did he not tell you that in consequence of those fears of his wife, he had sent for you to recall the letter of the 26th? A. No, Sir; he did not.

Q. Did he recall the letter of the 26th? A. He did.

Q. Did not he give you some reason for so doing? A. He did not, anything more than the general statement.

Q. Did you not think it somewhat strange that he should write you a letter such as he did on the 26th, and then on the 30th send for you to recall it? A. I waited to see what his account of the matter was.

Q. Well, did he give you any reason for recalling it? A. No, Sir; he did not give me any distinct reason for recalling it.

Q. Then, not having given you any distinct reason, why did you not ask a reason? A. I was waiting to hear what he had to say to me.

Q. Well, after you did hear what he had to say to you, why did you not ask a reason for that strange conduct? A. Because the end that the conversation came to so superseded everything else that I cared for no part of the conversation but the last.

Q. He tore up the paper from which he read, I understood you to say? A. He did.

Q. And threw the fragments away? A. He did.

Q. What did he say when he did that? A. Whether he said it before he did it, while he was tearing it, or in the act of throwing the paper, I will not be positive, but he said in that connection that there was only a copy of the paper which his wife had drawn up, the other being destroyed, out of self-respect and affection for his wife; and now he tore up, or should tear up, or had torn up, whichever it might have been, this paper, so that there should be no written record of the matter.

Q. Well, did Mr. Tilton make any demand upon you that night? A. None that I recall now.

Q. He did not ask that you should do anything, did he? A. No, he did not ask that I should do anything, that I recall.

Q. Did he demand that you should do anything? A. No—he did not demand; he expressed a wish.

Q. What wish did he express? A. "I wish you now to go down and see Elizabeth."

Q. Is that the only wish he expressed during that evening? A. The only one that I recall at present, Sir.

Q. Well, did he by actual demand, or by insinuation, or intimation, make known to you that he wanted you to do anything beyond that? A. I do not recall that he did, Sir, at present.

Q. He made no demand of money? A. Oh, no.

Q. Nor of aid of any kind? A. No, Sir.

Q. He did not ask you to see Mr. Bowen on his account? A. He did not.

Q. Or any other person or persons? A. Nor any other person except Elizabeth.

Q. Mr. Beecher, did you not think it somewhat strange that during that long interview he did not make known some object that he had in view in seeking it? A. I don't know that I did.

Q. And you did not ask for any explanation? A. I asked for no explanation.

Q. You heard these charges that he made against you? A. I did.

Q. Made these replies that you have given us? A. I did.

Q. And then went away? A. Then went down to see Elizabeth.

Q. Why didn't you ask him for some of the evidences that you had won his wife's affections and created discord in the family? A. I was not allowed to talk, you will recollect, Sir; when once or twice I moved it I was imperiously waived silence.

Q. Well? A. I was getting ready to do it, but the termination of that discourse was such as that there was but one thing in it that could move me, and that was that terminating matter.

Q. And then in the presence of Mr. Tilton, having been charged with that grave offense, you kept silence because he waived you silence? A. I kept silent until he had finished his statement to me.

Q. Did you not keep silence because he waived you silence? A. He did not wish the conversation——

Q. Now, Mr. Beecher, I am not asking you for his wishes; I am asking for your action. Did you not keep silence because he waived you to keep silence? A. I kept silent because he indicated to me that he did not wish to be interrupted.

Q. Did he indicate that by words? A. I do not—I will not speak positively about that.

Q. Did he use no word indicative that he desired you to keep silence? A. He indicated that he did not wish to be interrupted by that which was stronger than words.

Q. Now, Mr. Beecher, answer my question. A. I will, Sir.

Q. Did he indicate it by words? A. I say again I do not recollect that he did.

Q. Now, will you be kind enough to show us how he indicated that he wanted you to keep silence? A. By his whole manner, and by a kind of repressive gesture.

Q. And under those terrible charges, involving your moral character, you was silent under a gesture, were you? A. I did not consider——

Q. Were you silent under a gesture? A. I was silent under the intimation of Mr. Tilton that he wanted to tell the whole story.

Q. Yes, and after he got through with the whole story involving these charges against you, all that you said to him you have given us, have you? A. I have, Sir, to the best of my recollection.

Q. Now, before leaving the house that night, after this interview, did you believe in the truth of any one of these charges? A. I did not, except so far—I did not believe in any of them; I was thrown into a state of great astonishment, rather than belief.

Q. You did not believe any of them. Was the charge that you had made improper advances to his wife, or solicited her to be a wife, with all that that term implies, as you say you understand the charge to be, that night, true or false? A. It was false.

Q. Did you think that night that Theodore Tilton believed it to be true or false? A. I thought it quite likely that he believed it to be true, but I was very much perplexed and uncertain.

Q. You thought, then, it probable that his wife had made to him that charge against you, did you? A. I hardly thought it probable.

Q. Then how did you think or suppose that he thought that it was true? A. That was the very question. I did not believe that he thought it so in full, except as a jealous man would, until he told me to verify it by going down to see her; then I thought that he would not dare do that unless there was some truth in it—in what he stated in respect to his wife.

Q. Now, state whether or not you did leave that room that night in the belief that Theodore Tilton believed in the truth of the charge made? A. I left that room in a divided and perplexed state of mind; if his wife had made those charges, I could not doubt that he believed them; if he stated that she had made those charges when she had not, then I should not believe that he believed them.

THE WALK TO MR. TILTON'S HOUSE.

Q. Now, you left and went to the house of Mr. Tilton, I understand you to say? A. I did.

Q. You did not go alone? A. I did not.

Q. Mr. Moulton, you say, accompanied you? A. He accompanied me.

Q. How did it happen that he accompanied you from his house to Mr. Tilton's? A. He volunteered to go.

Q. Before starting upon that journey did he say anything to you? A. He asked me if I was going to Mr. Tilton's.

Q. Had you said nothing about going to Tilton's up to that time? A. Nothing.

Q. You thought then that he knew where you were going? A. I don't know whether I thought so or not.

Q. Did not that observation warn you of the fact that he knew where you were going—where you were probably going? A. It naturally would follow that he knew where I was going, but it was not a subject matter of reflection.

Q. Before leaving the house to go to Mr. Tilton's, did you not say to him in substance, "Have you seen Elizabeth's confession?" A. No, Sir, I neither made then nor at any time such a remark to him.

Q. Was there nothing passed between you upon the subject of the interview which had just closed between you and Mr. Tilton? A. Not a word that I now recall, Sir.

Q. He did not ask you anything with regard to it, nor you did not disclose anything that had taken place? A. He neither asked me nor did I tell him unasked.

Q. Now, I will ask you again, Mr. Beecher, did you not think after that interview closed, when you met Mr. Moulton at the foot of the stairs, that he knew what the subject matter of that interview was, or had been? A. I don't know that I thought about that at all.

Q. On the way to Mr. Moulton's house that night, I understand you——

Mr. Morris—To Tilton's house.

Mr. Fullerton—No, to Moulton's house, that night, I understand you to say that you asked him what Mr. Tilton wanted of you? A. I did.

Q. And his reply was, in substance, "It is better for Mr. Tilton to tell you himself?" A. Yes, Sir.

Q. Now, then, did not you infer from that, that he was privy to the object of Mr. Tilton in sending for you? A. No, Sir; I cannot say privy to it. It was very evident to my mind that Mr. Moulton and Mr. Tilton had conferred, but how far Mr. Moulton had been made the recipient of Mr. Tilton's confidence I neither knew nor had I the means of knowing.

Q. Why didn't you when you came in contact with Moulton, ask him the question? A. It was not my way; after I had asked a gentleman, and he politely declined, I did not choose to ask any further.

Q. The interview had not excited enough interest in you, then, to ask Mr. Moulton? A. It had not taken place.

Q. I mean after your return, after you came down stairs and encountered Mr. Moulton. A. Oh, my mind was full of a far more important thing than what Mr. Moulton was thinking about.

Q. Well, Mr. Moulton accompanied you, did he? A. He went with me; yes, Sir.

Q. To Mr. Tilton's house? A. To Mr. Tilton's house.

Q. You say you did not want him to accompany you? A. I meant by that, or I mean by that, that it was not at my desire. Mr. Moulton's company was always agreeable enough, but it was not at my request or desire.

Q. Didn't you think it somewhat strange that he should propose to accompany you? A. I thought it an act of politeness.

Q. Nothing more? A. I do not recollect that I did.

Q. Well, he went to the house with you, did he? A. He did, Sir.

Q. He did not enter it, I believe? A. I believe not, Sir; I will not be sure.

THE INTERVIEW IN MRS. TILTON'S SICK-ROOM.

Q. Well, you went up stairs and found Mrs. Tilton in bed, I think? A. I did.

Q. In what room was it, Mr. Beecher? A. The left hand room, front, as you go up, and turn toward the street.

Q. As I understand you, you then informed her of the charges which her husband had made against you? A. That was the result of our interview.

Q. Had Mrs. Tilton retired for the night? A. I am sure I do not know, Sir; she was in bed.

Q. Well? A. Your question implies the act of going to bed.

Q. Yes, sir. A. I know nothing about that.

Q. Was she dressed in the ordinary costume of a lady who had retired for the night? A. She was dressed in white; whether it was the dressing gown of a sick-room or a night-gown, I do not recollect that that occurred to my mind.

Q. What time in the evening was it? A. I should say not far from 9 o'clock, or in that neighborhood.

Q. She was ill, was she not? A. She was ill; yes.

Q. Well, didn't you suppose that she had retired for the night? A. I supposed that she was in bed for the night; my impression was that she had been in bed all day, being ill.

Q. In your direct examination you emphasized the fact that "she was dressed in pure white; her face was as white as the bed?" A. I did.

Q. Were you surprised to find her dressed in pure white under those circumstances? A. No, Sir, I was not surprised.

Q. What did you first say to her, Mr. Beecher, after arriving in the room? A. I don't know that I can say what I did, except to ask her good evening.

Q. And what was her reply? A. Nothing.

Q. What next did you say? A. I will not be positive as to the order of the opening remarks, but in general I said that I had just come from an interview with her husband, and that he had been making a good many serious charges against me. I think I introduced it in that way.

Q. State all that you said before she made any answer? A. I can't.

Q. All that you recollect? A. I can't divide it in that

way. I think that it was not until I had begun to say to her, "He charges me with improper—with having withdrawn your affections from him," or something to that effect. I think it was only then that she began to show responsiveness.

Q. And how did she show responsiveness? A. By the tears falling down her cheek, and by a little motion of her hands.

Q. Did she make no other motion? A. Not that I recall, Sir.

Q. Didn't she bow her head in acquiescence to something that you said? A. Later she did.

Q. Well, Mr. Beecher, I want you to give us the whole of that interview, as you now recollect it.

[Mr. Fullerton here paused, and asked to have better ventilation in the room.]

Q. Now, Mr. Beecher, will you give us the interview between yourself and Mrs. Tilton as it occurred on that occasion? A. I will give it to you in substance as near as I can recollect; when I went in, and after a salutation, I sat down by her side and said to her: "Elizabeth, I have just come from an interview with your husband, and he has been making very serious charges against me;" I do not now remember distinctly whether I alluded in detail to business charges, but I said: "He has charged me with having withdrawn your affections from him, and with inducing great distress and discord in his family," or words to that effect, "and he—is this so?" she made no response to it; I said to her in substance: "Elizabeth, he says that you have told him that I had won your affections from him, and that you had transferred your wifely affection to me," and at that, I think it was (though I will not be certain about that matter), the tears ran down her cheek, and she made still no response; I went on and said to her: "Elizabeth, Mr. Tilton says that you have declared to him that I have made improper advances toward you;" and she was very much agitated. Said I: "Elizabeth, have you ever said that to your husband?" and she bowed her head, and then it was that I spoke to her with more emphasis than I had (for she was a sick woman), and said to her, "Elizabeth, what could have tempted you to do such a thing as that? Wherein have I acted wrongly toward you?" I said—I expostulated with her on the subject, and said to her: "You know that it is not true that I have intentionally drawn you away from him, or that I have ever made—been guilty of impropriety, intentionally." She then began slowly to speak, or at about that time; she was feeble, and her conversation was somewhat hesitating. I plied her still—she seemed reluctant and grieftful, and I still dwelt upon those charges, and my astonishment at her making such charges, and—"How could you have done such a thing?" She, in a slow, and in a sad voice, said, "I could not help it; I was tired out with his persistence; he pursued me, and importuned me;" and then I think she alluded to an interview of the Summer before about which I was not—I yet had not any clear or distinct idea, but I think it was in connection with that interview that she said that he had told her that if she would confess to him her strong and undue affection for me, it would be easier for him to confess his alien loves, and that they should, standing together again for a reformed and a better life, go on more happily than they had, or words to that effect, which, according to my recollection, referred to the interview of July which he said that he had had with her; I plied her in respect to that—that is, in respect to the course of conduct that she had pursued toward me, and she said, "Well, what can I do?" I don't know but that was in response to some saying of mine that she ought to retract and to do me justice; I know that that occurred somewhere in the conversation, but I cannot say in that order; but at any rate, the question came up, "What can I do?" and I said, "You ought to make a written retraction, as you have made written charges." She made some reply in respect to that, that it would be an injury, if I should have such a paper, toward her husband; and my general reply was that I intended it not for an offensive document at all; that I wanted it for my own justification; that if matters should ever, by rumor or otherwise, come to the knowledge of friends, or of the church, I ought to have something which should be a clearance of me from her; or words to that effect. She said if I would not use it to the injury of her husband, she would be willing to give me such a statement, and I told her I should not, certainly; that that was not my object, but simply self-defense.

THE WRITING OF THE RETRACTION.

I went, by her direction, to the little private writing desk which she had in the other room, which was open, and took out the note paper and the pen and the ink, and brought them to her. She had meanwhile sat up in the bed, upheld by pillows behind her, and she took the paper and wrote it on her wrapper, upon her knee, and, reading it over, she held out her hand for some ink (I held the inkstand,) and added something which—another sentence—and then signed it with her full name. Some further, but not very much pertaining to that, conversation took place, and I told her that I thought she had only acted justly and rightly toward me, and I then expressed solicitude for fear the excitement of this interview might be of injury to her in her sickness, and I took my leave.

Q. You state in your direct examination that as she lay upon the bed "she appeared as one dead;" do you remember that? A. When I first entered the room, yes, Sir.

Q. She rose up in bed without your assistance, did she not, to write that paper? A. Yes, Sir.

Q. Who placed the pillows behind her when she wrote it? A. I don't know, Sir; I did not.

Q. Did she do it herself? A. I don't know, Sir.

Q. Was there any other person in the room during that interview? A. Not to my knowledge, Sir. I can give you only the inference; I saw nothing.

Q. She indicated where the paper and the ink could be found? A. She simply said that it was in her secretary; I knew the little secretary very well; I was familiar with it.

Q. And she wrote the paper in your presence? A. She wrote the paper before me.

Q. You were acquainted with her handwriting, were you not? A. Oh, yes.

Q. I place the letter in your hands, and I ask you whether it is not in her ordinary handwriting? A. [Looking at the letter.] I recognize it as her handwriting, but not as her ordinary handwriting.

Q. Not as her ordinary handwriting? A. No, Sir.

Q. What is the difference between it and the ordinary handwriting? A. Well, there is a feebleness and a—the letters are not full formed; she writes a strong, bold hand; this is a letter of weariness.

Q. That is your judgment, is it? A. That is my judgment.

Q. Do you discover any difference between the handwriting, anything indicating more feebleness, or illness, in the one than in the other? [Handing another letter to Witness.] A. Oh, I do—oh, yes, Sir.

Q. That last one I handed to you is Exhibit No. 12? A. Exhibit No. 12 the last one; Exhibit No. 5 or 6, the other.

Mr. Fullerton—I desire the jury to look at these two specimens of handwriting and compare them. [Mr. Fullerton here handed the papers to the foreman of the jury, and they were passed from hand to hand, and the jurors spent some moments in inspecting and comparing them.]

Q. Were you informed at that time that the attending physician had ceased to visit her on that day, for the reason that she was convalescent? A. No, Sir.

Q. You did not know that? A. No, Sir.

THE RETRACTION NOT DICTATED.

Q. Did you suggest any part of that letter? A. No, Sir; only the general suggestion that she ought to give me something that should be an effectual retraction.

Q. When she wrote the first part of it did she pass it over to you to read? A. No, Sir; I think not, Sir.

Q. Are you sure upon that subject? A. According to my best recollection she did not.

Q. How certain are you of that, Mr. Beecher? A. Sufficiently certain to say that, according to my best recollection, she did not. I remember—I remember nothing of the kind, and I remember some things that are inconsistent with it.

Q. Do you remember that you were made aware of the contents of that letter before the supplementary part of it was written, either by reading it yourself or by hearing her read it to you? A. No, I do not, Sir.

Q. Will you swear positively and directly that you did not dictate any part of that letter? A. I will.

Q. I show you Exhibit No. 1, and ask you when the contents of that paper were first made known to you? A. [Looking at the paper.] I suppose that this letter was read to me by Mr. Moulton on the 31st—the evening of the 31st.

Q. On the evening of the 31st? A. Yes, Sir.

Q. That is the evening next following? A. Next following.

Q. Next following the interview between you and Mrs. Tilton? A. Yes, Sir.

Q. I will read it, because I want to ask you some questions in regard to it.

[Reading.] "Saturday morning. My dear friend, Frank"—referring to Mr. Moulton, I suppose?

The Witness—That is not for me to say, Sir.

Mr. Fullerton—It is for you to say what you think about it.

The Witness—I presume it did, Sir.

Mr. Fullerton—That is enough.

The Witness—Yes, Sir.

Mr. Fullerton [again reading]:

I want you to do me the greatest possible favor. My letter which you have, and the one I gave Mr. Beecher, at his dictation last evening, ought both to be destroyed. Please bring both to me, and I will burn them. Show this note to Theodore and Mr. Beecher. They will see the propriety of this request. Yours truly, E. R. TILTON.

Now, after reading that letter, I ask you whether it refreshes your recollection upon the subject as to whether you did dictate the letter, as therein declared by Mrs. Tilton? A. It does not refresh my recollection at all; I know that I did not dictate it.

Q. Did you make any observation to Mr. Moulton when he read that letter to you, in regard to that allegation? A. I do not recollect making any statement to him about that at all.

Q. Well, didn't you regard that as an imputation upon you—I mean the charge that you had dictated the letter, as contained in this note from Mrs. Tilton? A. Yes, Sir; I considered the word as a very suspicious word.

Q. But you did not defend yourself to Mr. Moulton at that time? A. I did not, Sir.

Q. Now, Mr. Beecher, I understand you to say that Mrs. Tilton expressed a willingness to retract the charge if you did not use it to the injury of her husband? A. I understood it so, Sir.

Q. And you promised not to so use it? A. I did.

Q. Did you, in consequence of that promise, conclude that you would not show it to her husband? A. I cannot say that.

Q. Well, did you mean when you obtained it to show it to him? A. I do not now recall that I did; that is a line of thought that is now first suggested to me.

Q. Well, you did not show it to him that night. A. Oh, no.

Q. You did not make known the fact to him, in any way, that you had it? A. No; I did not interchange any further conversation with him that night, nor do I recollect to have seen him, even.

Q. Nor did you the next day, did you? A. No, Sir.

Q. When you left Theodore Tilton, however, to go to Mrs. Tilton, you were under the impression that he might believe the charge? A. That if his wife had made such statements to him really, he might believe the charge.

Q. Well, you were informed by her that she had made such statements? A. I was.

Q. And yet you did not go to the husband to disabuse his mind in regard to those charges? A. No, I did not.

Q. You were willing, then, to put that retraction of Mrs. Tilton in your pocket and keep it, and leave the husband in ignorance of the fact that you had been vindicated against that charge? A. Not at all, Sir; I was perfectly willing to put that retraction in my pocket, and leave the husband to find out the retraction where he found out the charge. [Murmurs of applause.]

Q. Yes. You were willing, then, that he should rest under the idea or in the belief that you had committed this offense, were you? A. No; I was not willing that he should do so, nor did I think that he would do it.

Q. Then you did not think after you left Mrs. Tilton, that the charge was made in good faith, did you? A. I thought that whatever might have been the circumstances of the making of the charge, all that had transpired in my interview with Mrs. Tilton would be known to him, and that I need not——

Q. That is not an answer to my question, Mr. Beecher. When you left the presence of Mrs. Tilton with the retraction in your hands, did you then believe that Theodore Tilton had made the charge against you in good faith? A. I don't suppose, Sir, that I had that thought in my mind in any form.

Q. Did you believe that she was wearied with importunity to make the charge? A. I did not know what to believe.

Q. She told you so? A. Yes, Sir.

Q. Didn't you believe her? A. I didn't know what to believe, Sir. A woman that had made the charge, and taken it back, both, lay before me, and I didn't know what to believe.

Q. She was ill, was she not? A. She was ill.

Q. Didn't she tell you the circumstances attending the signing of that paper which she had given to her husband, implicating you? A. She said she had given it as the result of persistent persuasion, and that she had given it, and that it was not true; and she then retracted it; and lay before me as a person capable of saying first the one thing and then the other.

Q. And you did not regard, then, the importunity to which she had been subjected as an excuse for writing this paper, although untrue? A. No; if Mr. Tilton had reason to suppose that there was something wrong, I might object to the mode of the importunity; but he had the right to question his wife until he ascertained what the facts were.

Q. Then you still thought that, probably, he believed in the charge, did you? A. I do not think that Mr. Tilton's state of mind, and his special belief on this and that and the other suggestion, came into my mind at all.

Q. And you had no desire to vindicate yourself, so far as he was concerned? A. Not then.

Q. Nor the next day? A. Well, I can't say what thoughts passed through my mind the next day.

Q. You did not act upon any such desire, did you? A. No, Sir; I did not have any interview with him, nor seek any.

Q. I understand you to say that you expressed a desire to Mrs. Tilton that she should give you a retraction in writing, inasmuch as the charge was made in writing? A. Yes, I understood so; I will not be perfectly certain on that point; I understood that the charge had been made in writing, but I was—I was un——

Q. I am asking what you said to Mrs. Tilton? A. Yes; I think that I said that, but I will not be positive that gave her that as the reason of making it in writing.

Q. Did you not say, a moment ago, that you said to Mrs. Tilton that you wanted that retraction in writing, inasmuch as the charge was in writing? A. Yes, Sir; I said that I made that general statement, or that statement in substance. I now correct it so far as to say that while it is my impression that I did, I am not positive.

Q. Before the writing of this letter by Mrs. Tilton, on the night of December 30, the retraction, I understand you to say that she had explicitly denied the charges which Mr. Tilton had made against you? A. Yes, Sir—at least, I charged her that she knew that they were not true, and she admitted it.

Q. Well, you regarded that as a full denial on her part didn't you? A. Well, I regarded it as a denial that she had made those charges—I mean that she considered that those charges which she had made were true.

WHAT MR. BEECHER THOUGHT OF THE CHARGES.

Q. Yes, and she afterward put the denial in writing, as appears by this letter? A. She did.

Mr. Evarts—That appears by the letter. The letter speaks for itself.

Mr. Fullerton—Yes. [To the Witness.] Now, Mr. Beecher, up to that time—up to the time of the interview with Mr. Tilton at Mr. Moulton's house—had you been made aware in any way that Mrs. Tilton had an undue affection for you? A. No, Sir.

Q. Had you, from any cause whatever, ever suspected such a thing? A. I had not.

Q. What Mr. Tilton said to you, then, on the night of the

30th, upon that subject, was the first intimation you had ever received from any quarter whatever, that such was the fact? A. I think it was. I do not recall any other hint or intimation.

Q. Mr. Theodore Tilton was the only—the first man, and, up to the time when this retraction was made, the only person, who had ever declared that such a thing was a fact? A. The only person that I recall—that is, undue affection.

Q. And Mrs. Tilton had denied it orally and in writing to you? A. She had.

Q. Did you believe it after that? A. I have stated to you already that I was more in a state of perplexity than of belief.

Q. No, no; don't get us all into a state of perplexity by a wrong answer. [Laughter.] Will you be kind enough to state whether, after the denial of Mrs. Tilton of the allegation that her affections had been transferred to you, you then believed it? A. That I believed that she had made the charges? I don't take your point, quite, Sir.

Q. No. Did you believe that her affections had been transferred to you? A. I say again, Sir, that I was not in a condition——

Mr. Fullerton—One moment.

The Witness [continuing]——to believe one way or the other.

Q. Did you believe it? A. I state again, Sir, that I was in a state of perplexity and not of belief.

Q. Will you state whether, or not, you did believe that her affection had been transferred to you?

Mr. Evarts—He has answered it.

Mr. Fullerton—He has not answered it.

Mr. Evarts—Why not?

Mr. Fullerton—Why not? Don't ask me, or I shall give an answer that you won't relish. He has not answered.

Mr. Evarts—You draw the witness's attention distinctly to a psychological proposition whether he had a belief, and he has answered very distinctly that he was then in a state of perplexity and not of belief. I don't know any better answer that can be made, if it is true.

Judge Neilson—It is an answer so far as it goes, but he can state whether he believed it or not.

Mr. Evarts—It is a very perfect answer, because the pressure is upon the formed belief.

Judge Neilson—Upon the existence of the belief.

Mr. Evarts—Yes, the existence of a formed belief.

Mr. Fullerton—And whether that belief did or did not exist, I propose, Sir, to find out by having a direct answer to my question.

Judge Neilson—The witness can answer, Sir, according to his best recollection, whether he believed it or not.

Mr. Fullerton—Yes, Sir. [To the witness.] Now, Mr. Beecher, I put the question to you again. After Mrs. Tilton had denied orally to you, and in writing, that these charges—denied the truth of these charges, revoked them all, did you believe that she had transferred her affections to you? A. I state again to you, Sir, that my mind was not in a state of conviction.

Q. Well, will you state whether you believed it or not? A. I will state that I had both the belief and the unbelief, and that I fluctuated from the one to the other.

Q. Did you regard the fact that she had charged you with making improper advances as an evidence of her affection? A. I do not think that entered into my consideration, Sir.

Q. Did it not enter into your consideration whether her conduct in charging you with immoral practices, a charge which, if true, would work your ruin, was an evidence or not that her affection had been transferred to you? A. It certainly was an evidence; and yet I was not yet apprised of all the facts; I felt there was more to come out than I knew that night.

Q. You had not enough, then, to form a judgment up to that time? A. If these were all the facts I had; if they were not all the facts I had not.

Q. Then you suspended your judgment, did you? A. I suspended my judgment so far as a final judgment. At times I thought that here was the evidence that she had done it; at other times I revolted against it, and found myself moved from that conviction.

Q. Well, you hadn't the highest regard for Theodore Tilton up to that time, had you? A. I cannot say that I had *the highest* regard for him.

Q. And as between him and his wife, which did you think would be the most likely to tell a falsehood? A. [Emphatically] He.

Q. You had a high regard for Mrs. Tilton, did you not? A. I did.

Q. You had admired her Christian character up to that time? A. I had.

Q. You had regarded her as a woman of truthfulness in every respect? A. I had.

Q. Of exalted piety? A. I had.

Q. And purity? A. I had.

Q. And yet you tell me that when she told you verbally, and put it in writing, that these charges were false, and that she was importuned to make them when she was sick, it did not convince you that they were untrue? A. She had made charges, Mr. Fullerton, distinctly, and admitted it——

Q. One moment, Mr. Beecher.

The Witness [continuing]—And she now took them back.

Q. One moment. Don't review the ground; tell me whether all these circumstances did not induce the belief in your mind that the charge which Mr. Tilton had made against you, that you had won his wife's affection, was untrue? A. No—and yes.

Mr. Fullerton—Let it stand that way.

Q. When did you expect to get further evidence upon that subject? A. I had no definite expectation as to time, Sir.

Q. Did you expect to get any further evidence upon the subject? A. I did not believe things would rest there.

Q. How did you expect to use the retraction and not use it against the husband who had made the false charge? A. I had no plan whatever except in a possible contingency which I stated to her.

Q. Didn't you think Theodore Tilton had some object in making that charge? A. I presumed he had, but he disclosed none to me.

Q. What object did you think he had in view in making that charge? A. I waited to see.

Q. Had you no opinion on it? A. I had not.

Q. Didn't you, on the theory that the charge was untrue, believe that he had an improper and a wicked object in making the charge? A. I cannot assert that, Sir. I waited to see what was to be the end of these things. He certainly had not disclosed a line of procedure to me.

Q. Well, after you went away that night with the retraction in your pocket, did you go home? A. I went first to Mr. Moulton's.

Q. And from there did you go home? A. I went home.

Q. You considered this subject, didn't you? A. I did.

Q. Well, didn't you consider it in the light of a false charge, known to be so by Theodore Tilton? A. I did not.

Q. Did you consider it as a charge which Mr. Tilton believed in? A. Sometimes I did, and sometimes I did not.

Q. Then you had formed no opinion about it at that time? A. I had come to no final decision.

MR. BEECHER RETURNS TO MR. MOULTON'S.

Q. Now, after you obtained this paper you went to Mr. Moulton's, as I understand you? A. I did.

Q. What did you go to Mr. Moulton's for? A. At his request.

Q. When was that request made? A. When he left me at Mr. Tilton's door.

Q. In what form did he make the request? A. As near as I can recollect, he said, "Will you step in when you come back?"

Q. And what did you reply? A. I don't remember; I presume I said Yes.

Q. And you went back? A. I went back.

Q. Now, I ask you again, Mr. Beecher, when you returned to the house of Mr. Moulton with that retraction in your pocket, did you not suppose that Mr. Moulton knew of the nature of the charge which Theodore Tilton had made against you? A. I don't think I thought anything about it, Sir.

Q. You didn't give the subject any consideration? A. I don't think I knew anything about it; I was not thinking about Mr. Moulton.

Q. Were you not thinking of the only man who probably believed in these charges? A. No, Sir, I was not.

Q. You had no desire, then, on the theory that Mr. Moulton had been made aware of these gross charges against you, to vindicate yourself in his mind? A. I was not aware that he had been made a participant of any such knowledge.

Q. Didn't you have reason to believe, as you then looked upon it? A. I might have had reason to believe, but I didn't believe.

Q. You didn't argue it in your own mind, that Theodore Tilton had probably told Mr. Moulton in regard to it? A. No, Sir, I did not.

Q. That Mr. Tilton told Mr. Moulton of all this, and that Mr. Moulton believed you were an immoral man, and you proceeded to vindicate yourself by showing him Elizabeth's retraction? A. No, Sir.

Q. You were willing, then, if Mr. Moulton did believe that you had been guilty of this gross charge, that he should remain in that belief, so far as you were concerned, were you? A. So far as Mr. Moulton was concerned in his relations to it, he was as if he had never been created. I neither troubled myself to think what he thought of it or what he knew of it.

Q. You didn't care what he thought of it? A. That is another question.

Q. Answer another question? A. If I had supposed he had known it, I should have been anxious to have learned something about his thoughts, but I neither knew what he knew, nor suspected what he knew, or thought about his knowing it.

Q. If you thought of his knowing it, you would have showed him the retraction? A. I cannot say. That is a hypothetical case, and I might have done one thing or another.

Q. What do you think you would have done if you thought he knew of it? A. I cannot say. As I feel now I might have done one thing; as I felt then I might have done another.

Mr. Fullerton—That is what I think.

The Witness—I am sure of that. [Laughter.]

Judge Neilson—Officer Rogers, you will have to see to this audience somewhat. This is very unusual just at present.

Mr. Fullerton—Did you not promise Mrs. Tilton when you obtained that retraction that you would not show it to her husband. A. I did not.

Q. What was the exact form of the promise that you did make when you obtained it? A. I cannot give you the exact form.

Q. Give us the substance of the form? A. The substance of the form was a response to her objection to giving any paper of that kind clearing me, lest it might be used against her husband, and I said "I shall not use it to the injury of your husband." I got it entirely for my own self-defense, in case at any future time this matter of these charges should come up, and it should be inquired into by my church.

Q. Did she explain that that paper might be used to the injury of her husband? A. No, Sir, she did not go into it; but there was something about it that I did not understand, and did not inquire about.

Q. Why didn't you ask her why that paper could be used to the injury of her husband? A. Because I didn't think it meet, under the circumstances, to go into a prolonged investigation with that woman in her present state of feebleness.

Q. Did you have, at the time, in your own mind, any way in which that paper could be used to the injury of her husband? A. I do not recollect that I had.

Q. And you told her, as I understand you, that you wanted it for your own self-defense? A. In a contingency.

Q. What contingency? A. Should it ever become a matter of rumor and inquiry among my people.

Q. Did you anticipate that it might become a rumor? A. I didn't know what might happen.

Q. Or a subject of inquiry among your people? A. I did not; I hoped it might not, but if it should——

Q. But you got it to be used for that purpose, if the contingency should ever happen? A. Yes, Sir.

Q. And for no other purpose? A. For no other purpose.

Q. And you thought it would be necessary to have it for that purpose? A. I thought it certainly would.

Q. I show you now Exhibit No. 6, known as the "Midnight Letter," and I ask you when you first became acquainted with the existence of that letter? A. I cannot tell you, Sir.

Q. Have you no recollection upon the subject? A. I have none, Sir, of seeing the letter.

Mr. Fullerton—I didn't ask you that, Mr. Beecher.

The Witness—I beg your pardon. What was the question?

Q. My question is, when you first became acquainted that such a document was in existence? A. Well, Sir, that a document was in existence I knew on the next night, but that it was this document I did not know until I had seen it. I could not know unless I had seen it.

Q. How did you learn of its existence the next night; that is, the night of the 31st? A. I cannot say that I knew of the existence of this document. I knew from Mr. Moulton of the existence of a document of substantially like contents.

THE INTERVIEW OF DECEMBER 31.

Q. And where were you and Mr. Moulton when you learned that fact? A. At my house.

Q. That was on the evening of the 31st? A. Yes, Sir.

Q. Now, will you be kind enough to state what occurred on the evening of the 31st between you and Mr. Moulton? A. Mr. Moulton came to my house about 7 o'clock again, I should think, or a little after, perhaps. We went to my bed-room—the second story back room. He stood with his overcoat on by the bureau, on one side, and I stood by the bureau on the other. He said that he was the bearer of a letter from Mr. Tilton, which he would read to me. He then read a letter purporting to be from Mr. Tilton, reciting——

Mr. Fullerton—Just one moment. Well, go on with the narrative.

The Witness—Reciting an alleged—or stating he found, on returning home the evening before, from his wife the nature of my interview, and its results, with her; and I think that in that letter, also, were some of the statements that are in this; I will not be positive of that; I will not be certain that some part of this was not read; I took neither of the papers into my hand.

Q. You mean the letter in your hand? A. Yes, Sir; I took neither—no paper that he had with him then was in my hand, and upon the reading of that Mr. Moulton said that he thought my conduct last night was not either discreet or very honorable, in substance; that I had no right to go down and obtain the paper or retraction that I had. I think he asked me beforehand, however, whether I had obtained a retraction, and I said I had, and he said he didn't think I had acted discreetly or wisely in that matter, not, at any rate, if my office was pacification and reconciliation; that he thought it had a tendency, on the contrary, to make the misunderstandings wider and the feeling severer, in substance that. I argued the point with him on the ground that I thought that I had a perfect right to defend myself by obtaining such a retraction as that. He said that he thought that it was taking an unfair advantage, and I said I thought an unfair advantage had been taken of me, and there was a considerable interchange between us on those points; I affirmed, and he dissented in the matter. I asked him—I think it was then, after this preliminary talk, that he drew a letter from his pocket purporting to be one from Elizabeth, and read it to me, in which she requested that the retraction should be sent back, and I think it was in that connection that he said a retraction obtained under such circumstances, if it was retained it would be an act of menace, especially upon the call for it of this woman. We proceeded with some further remarks; I cannot give them in detail at this present moment, but I said to him, I know, in the course of the conversation: "What shall I do? Suppose those charges are renewed, or brought up." He says: "You let me have the retraction and I will take the charges and the retraction; I will either burn them in your presence, or I will defend them. They shall go together."

Q. Well? A. I do not give his language, only the substance of what was said. We talked some few moments more, going over the ground again and again, and I concluded to let him have the retraction. He represented that he was friendly to us both; that he desired that these matters should be settled amicably, and that I might rely upon it, if I was amenable to rea

son, that I should have his friendship and his best offices in preventing any mischief from coming from affairs as they had progressed thus far; I went to the drawer where I kept my private papers, and took the retraction and brought it back and gave it to him; we then had some further conversation, and soon after that he withdrew.

Q. I understand you to say you think this letter, or a part of it, was read to you? A. I am under that impression; I cannot affirm it.

Mr. Fullerton—I read it:

DECEMBER 30, 1870—Midnight.

MY DEAR HUSBAND: I desire to leave with you, before going to sleep, a statement that Mr. Henry Ward Beecher called upon me this evening, asked me if I would defend him against any accusation in a *council of ministers.*

Did you ask her such a question as that? A. No, Sir.

Q. I read on:

I replied solemnly that I would, in case the accuser was any other than my husband.

Did she so reply to you? A. No, Sir.

Q. I read further:

He (H. W. B.) dictated a letter, which I copied as my own, to be used by him as against any other accuser except my husband.

Did you promise that you would only use that against any accuser other than her husband? A. No, Sir; I didn't promise to use it as against anything but an inquiry among my own friends of the church.

Q. [Reading:]

This letter was designed to vindicate Mr. Beecher against all other persons save only yourself.

Was that expressed by her, or by you, in that conversation? A. I think not, Sir.

Q. [Reading.]

I was ready to give him this letter, because he said, with pain, that my letter in your hands, addressed to him, dated December 29, "had struck him dead and ended his usefulness."

Did you say that to her? A. I did not.

Q. [Reading.]

You and I both are pledged to do our best to avoid publicity. God grant a speedy end to all further anxieties. Affectionately, ELIZABETH.

I ask you again, Mr. Beecher, whether that letter was read to you that night, or its contents made known to you? A. I cannot say that it was; I have an impression that some part of it was, but I cannot affirm it more than to a degree.

Q. Did you expect the call from Mr. Moulton that night? A. I do not remember whether I did or did not.

Q. I understand you to say that you went up stairs into your bed-room? A. We did.

Q. And I believe you closed the door? A. We did.

Q. Why did you go to your bed-room? A. It was the most convenient room to go to.

Q. Did you usually take visitors there? A. Often.

Q. Did you usually do it? A. Usually took them in the parlor.

Q. Why didn't you hold this interview with Mr. Moulton in the parlor? A. Because it would be more convenient to hold it in the bed-room, and I wished it to be private.

Q. You didn't wish, then, any one to know what that interview was to be? A. No, Sir.

Q. You did not know what it was to be? A. No, Sir; I supposed it to be on this general subject.

Q. Had you any intimation before you came away that he was coming at all? A. I don't remember that I had.

Q. Well, I understand you to say that he told you it was not honorable for you to get a retraction as you got that? A. In some part of the conversation I remember that he made that allegation.

Q. Was your only reply that you thought it was honorable? A. I discussed with him the right of my having a shield against such a charge.

Q. Well, upon the theory that the charge was false and that you were innocent, did you think it was a subject for discussion? A. Innocence had nothing to do with it; if the charge was made public, and was believed by the public, innocence would not be any defense to me.

Q. Did you think the retraction would be a defense to you? A. I thought it certainly laid the foundation for a proper defense.

Q. Well, he said, also, that to give it up would promote the object which you had in view, namely, a reconciliation between you and Mr. Tilton. A. Yes, Sir.

Mr. Evarts—He didn't say that.

Mr. Fullerton—Yes; Mr. Beecher says it.

Mr. Beach—He says so now.

Q. Was not your object to get a reconciliation? A. My object was to have peace.

Q. And you would get that through reconciliation, would you not? A. Oh! I would naturally expect it. I don't undertake to say I then thought I could get peace through reconciliation. That is a modern question, and it didn't come up in that shape in my mind at that time.

Q. Did you then think you were to be reconciled to Theodore Tilton? A. If he was reconciled to me; if there was a reconciliation it would have to be on both sides.

Q. And, in order to get a reconciliation, you gave up the retraction? A. In order to get a reconciliation through the kind offices—a better understanding and a settlement of all misunderstandings through Mr. Moulton, I expected to have a reconciliation.

MR. BEECHER INTRUSTS HIMSELF TO MR. MOULTON.

Q. Did you think that Theodore Tilton had any just cause for anger because you had obtained this retraction? A. I didn't think that he had a just cause of anger from my obtaining that retraction.

Q. Well, then, in what way were you to be reconciled, you two gentlemen? A. Through the kindly offices of

Mr. Moulton bringing us together and having explanations.

Q. And so you gave up the retraction in order that you might be brought together and have explanations, did you? A. No; I gave up the retraction upon persuasions to that effect, namely, that that would be better accomplished—a mutual understanding and reconciliation—than it would for me to keep the retraction and leave Mr. Tilton in a repugnant and excited state of mind.

Q. In what sense did you expect to have a reconciliation, or desire a reconciliation, on the theory that the charge was false, and that Theodore Tilton knew it to be false? A. Ah! I knew it to be false.

Q. Well? A. I didn't say that Theodore Tilton knew it to be false.

Q. Before giving up your defense, why didn't you ascertain something about that and investigate it? A. There were various interviews in which it could be come at.

Q. I ask you why you didn't come at it in one of those various interviews? A. Because I thought I could do better.

Q. To give up your defense to Theodore Tilton? A. To give up the whole difficulty, so that there should be no need of a defense.

Q. Would you get rid of the difficulty if it were a false charge, and if he knew it to be false? A. If he thought it were a true charge, and should renew it, there might be difficulty.

Q. Did you not contemplate that condition of things as possible? A. No, I don't think I did; I certainly didn't think the whole case through.

Q. Didn't you think it probable that he would renew the charges? A. I don't recollect that I thought that; I have no distinct recollection of that. I did think that Mr. Moulton was in possession of the ground, and with the knowledge that I had, and on his assurance that the matter could be amicably adjusted through his kind offices, I did nothing to continue the irritation of Mr. Tilton.

Q. Now, Mr. Beecher, Mr. Moulton, you say, was a friend of Mr. Tilton's? A. I understood so.

Q. And an intimate friend of his? A. I understood so.

Q. You knew he represented Mr. Tilton in this difficulty? A. I understood it so.

Q. And came to you for the purpose of getting you to go to Mr. Moulton's house? A. I understood so.

Q. And that he afterward came to you and got that retraction? A. I understood that, Sir.

Q. And yet you were willing to trust your defense into the hands of that probable enemy, the man who had brought the charges against you? A. He was not my probable enemy.

Q. Theodore Tilton was not your probable enemy? A. Mr. Moulton was not my probable enemy.

Q. I say you were willing to trust this defense of yours into the hands of your probable enemy, Theodore Tilton? A. Mr. Moulton pledged himself on his honor that that should remain in his care and keeping; the one with the other.

Q. Or destroyed? A. Or destroyed, if I preferred.

Q. You were willing to give it up to the friend of Theodore Tilton? A. I was willing to give it up to Mr. Moulton under the persuasions that he offered to me.

Q. Were you induced to give up this retraction in consequence of what Elizabeth said in this note that you refer to? A. I deferred to her wish in that matter to a considerable extent.

Q. Very well, now, when you deferred to the wish of the woman who had made this charge against you in writing, did you suppose that she had made it under coercion, or did you suppose that she had made it voluntarily? A. I don't recollect that that train of thought passed through my mind.

Q. Well, wouldn't you probably have determined that question in your own mind before you—— A. I hardly think——

Q. One moment—before you gratified her desire in that respect, namely, to give up your defense? A. Will you be kind enough to state the question again? I interrupted it, so that the connection is lost in my mind.

Q. I understand you to say that the request of Mrs. Tilton, in this letter which was read to you, that you should give up this retraction, had something to do with your conclusion to give it up? A. Yes, Sir.

Q. Very well; now when you gave it up, I want to know whether you regarded Mrs. Tilton as having made this charge against you under coercion, or whether you came to the conclusion that she made it voluntarily? A. Well, there was a case again, Sir, of very divided judgment.

Q. Then I ask you this question; in that divided judgment, why didn't you ascertain something in regard to the good faith of Mrs. Tilton—learn whether she had acted voluntarily or under coercion and duress, before you gratified her wish in giving up that which was to defend you against the world? A. A woman who had made a charge against——

Q. No, I ask why you did not? A. I don't know.

Q. You don't know; well, that is satisfactory. Mr. Moulton, I understand you, was to stand between you and harm? A. Yes, Sir.

Q. What harm did you anticipate, that he might ward off? A. The harm of being charged by an indignant husband with offering improper advances to his wife, with her written charge at his back.

Q. You thought it would be just as well to give this retraction to Mr. Moulton, for him to keep, as to keep it yourself? A. I thought that he would keep it with the charge, and that, as a gentleman of honor pledged to me, and I supposed him to be a gentleman of honor, and of high honor, I considered it just as safe in

his hands as it would be in mine, and he swore that they should stand together, the one and the other.

Q. That was done before you gave it to him, I believe? A. That was done, I think, before I gave it to him, Sir.

Q. And you gave it to him although you thought this charge might be renewed? A. I did.

Q. You anticipated then, as I understand you, that at some future day Theodore Tilton might renew these charges against you when you gave up the retraction? A. I don't think that it took on that definite form; I thought that trouble might come from the knowledge of such a charge having been made; but I do not know that I definitely thought it would come through that or any other channel.

Q. Let me read to you. Do you remember this [reading]:

Moreover, from the anger and fury of Mr. Tilton, I apprehended that this charge was made by him—"as made by him," it should be, of course—and supported by the accusation of his wife, was to be publicly pressed against me; and if it was, I had nothing but my simple word of denial to interpose against it.

Do you remember that? A. I do not.

Q. Will you look at it, and see if—[handing a book to witness]—did you not say that when accounting for the condition in which you were on the 31st December, 1870, and the 1st of January, 1871? A. Very likely; but I do not recall it now, Sir; till I refresh my memory.

Q. Well, refresh. A. [After looking at the book.] I presume that this is so, Sir.

Q. Is it true, then, that anticipating that your enemy might renew his attack you gave up your shield of defense? A. This is——

Q. And gave it up for that reason? A. This is an account, Sir—purports to be an account of my feeling the next day.

Q. On the 1st of January? A. On the 1st of January.

Q. The next day? A. The next day; yes.

Q. Well, so I understand it. A. Yes; I thought you were speaking still of the 31st.

WHY MR. BEECHER TRUSTED MR. MOULTON.

Q. Well, I ask you again, Mr. Beecher, whether, regarding it as probable—I will say, even anticipating on your part that the charge might be renewed, did you consent to give up your defense? A. I consented to change my mode of defense, and to have that document kept by a faithful friend, on his word of honor, to be used if ever it should be necessary, so that I should have the document and the friend also.

Q. And you chose the intimate personal friend of Mr. Tilton, one with whom you had a very slight acquaintance, to be the custodian of those papers? A. I chose a gentleman of—a member of one of the best firms in the City of New-York, whom I had seen on several occasions, and believed to be a very cultivated literary man, as well as business man, whose wife was a member of my church, and whom I thought to be a good man, true and honorable.

Q. You did not then suppose, did you, that he knew of the nature of the charge against you? A. I don't suppose that I had any thought about that.

Q. Didn't you regard it as important to ascertain whether Mr. Moulton at that time did understand the nature of the charge? A. Whether I thought it important or not, we did not go into that subject.

Q. Mr. Moulton was not a member of your church? A. He was not.

Q. Well, why didn't you select some other person, some more intimate friend, some member of your church, to be the custodian of that paper? A. I did not select anybody—I did not select anybody.

Q. Why didn't you deposit it in the hands, then, of some other person with whom you were more acquainted? A. He was the person that presented himself to me and seemed to me as fit as any person that I could have selected.

Q. Now, Mr. Beecher, had you at that time come to any conclusion as to how much Mr. Moulton knew in regard to the nature of the charges which Mr. Tilton had preferred against you? A. I did not know how much he knew; the very correspondence that he brought showed that he must have had some knowledge of it, but I did not ask him what his—the degree of his knowledge or the history of it were.

Q. Did you rest under the impression that Mr. Moulton believed the charge which Mr. Tilton had made against you? A. I don't recall that matter.

Q. Well, Mr. Moulton, you say, was a very worthy and respectable gentleman and a member of one of the largest firms in Brooklyn? A. Yes, Sir; in New-York.

Q. Did you not think it of some consequence that you should vindicate yourself in his mind if he were acquainted with those gross charges against you? A. I did not.

Q. Well, why didn't you ask him—why didn't you say, "Mr. Moulton, do you know about this business, and what do you believe in regard to myself," so that you might vindicate yourself? A. I did not do it; what were the special reasons acting at that time which led me not to do it I cannot recall.

Q. Well, you were anxious, of course, to secure and enjoy his good opinion, were you not? A. I had the same anxiety that I have as toward you. I prefer your good opinion to your bad, and I would his, but in this matter he presented himself to me——

Q. Well, I understand that, I know he presented himself.

Mr. Evarts—It is a question of general reasoning in the witness's mind why he did not do a certain thing. Now, if he cannot be allowed to answer——

Judge Neilson—The witness has a right to assign the reason called for, undoubtedly.

Mr. Fullerton—The simple question was whether he was not anxious to have Mr. Moulton's good opinion.

Mr. Evarts—They are not inquiring as to any external fact at all, but are trying to get at the operations of his mind.

Judge Neilson—Yes.

Mr. Evarts—And then where the witness tries to give them the operations, or the non-operations, or whatever there was in the matter in his mind, why, they say that it is not an answer to the question. His mind does not operate as the cross-examiner's mind operates. Every man's mind operates its own way, and you must determine, before you undertake to fathom a man's mental operations, whether you will take his answer or not.

Mr. Fullerton—Well, I have determined that, and I have got his answer, and don't want anything more. I have got everything that is an answer to the question.

Mr. Beach—Mr. Evarts is not reasoning from the question put to the witness.

Mr. Fullerton—That is his difficulty with that discussion.

Mr. Evarts—I will take care of my difficulty. Your difficulty is the precise inquiry put to the witness—one I say the witness has a right to answer.

Mr. Fullerton—Well, I say I do not interrupt a proper answer.

Mr. Evarts—It is a question of fact.

Mr. Fullerton—And my word goes as far upon that question of fact as anybody else's.

Judge Neilson—The witness has a right to state anything that is in any degree responsive to the question.

Mr. Fullerton—Certainly he has, but he has no right to go into a long discourse on that subject.

Mr. Evarts—The question of length has nothing to do with it. You have asked him the operations of his mind; if it takes half an hour to give them you must take them.

Mr. Fullerton—I asked him whether he was not anxious to secure and enjoy the good opinion of Mr. Moulton; that is a simple question, and neither the eloquence of the witness nor of his counsel can change the nature of the question, nor of a proper answer.

Judge Neilson—It is a very pointed question.

Mr. Fullerton—Yes, Sir, and it admits of yes or no; there is no doubt about that.

Judge Neilson—Well, you say it has been answered sufficiently.

Mr. Fullerton—It has been answered sufficiently.

Mr. Evarts—Well, but you stopped him.

Mr. Fullerton—I did stop him, certainly; I stopped him when he got through.

Mr. Evarts—Oh, no.

Mr. Fullerton—And I hope to have even success with you.

Mr. Evarts—People stop themselves when they get through. [Laughter.]

Mr. Fullerton—No, there are some people who don't stop when they get through.

The Witness—Mr. Fullerton, will you be kind enough to call for the reading of my answer?

Mr. Fullerton—Yes, Sir; Mr. Reporter, the witness desires you to read the answer.

Mr. Beach—Read the question and answer.

[Last question and answer read by the Tribune stenographer.]

Judge Neilson—It is hardly worth while to commence a new topic, Mr. Fullerton. [It being near the hour of recess.]

Mr. Fullerton—No, Sir, inasmuch as we haven't got through with the old one.

The Court here took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment. Mr. Beecher was recalled, and his cross-examination resumed.

Mr. Fullerton—Mr. Beecher, after you got this retraction from Mrs. Tilton, did you show it to any one before you delivered it up to Mr. Moulton? A. I did not.

Q. Did you talk with any person upon the subject of the charge, and what had subsequently occurred in reference to it, before the visit of Mr. Moulton on the night of the 31st? A. I did not.

THE FAMOUS PISTOL SCENE.

Q. I call your attention now to an incident that occurred at the interview when this retraction was given up, and I read your direct cross-examination, with a view to asking you further upon the subject.

[Reading:]

After some little further parley I went to the drawer where the letter was, brought it out, and handed it to him. He had been sweating, and had his overcoat on, and about this point, perhaps, as I came back with the letter, he took off his overcoat, and in doing so I saw the hilt of a pistol in the pocket which he took out and laid on the bureau, without words, as I remember, and put his overcoat on the foot of the bed.

Is that a correct representation of that part of the interview? A. I will not affirm it to be absolutely; that is my present recollection, although not a positive one.

Q. It is as you recollect it now? A. As I now recall the scene that is about the order of it.

Q. Did you see the pistol yourself? A. I saw the hilt of it first, and then afterward he drew it out and laid it upon the bureau.

Q. You still do not answer the question, Mr. Beecher. A. I did not understand it, then.

Q. Did you see the pistol? A. I saw the pistol.

Q. Did you see the whole of it? A. When he laid it on the bureau I saw the whole of it.

Q. He was in a profuse perspiration, was he not? A. I could not say that; he seemed to be very warm, and I

saw perspiration upon his brow, but I cannot say whether it was profuse or sparse.

Q. Did you think he removed his overcoat on account of his condition as to heat? A. I don't know whether I did or not.

Q. Well, what do you think now? A. Well, I presume he did.

Q. He laid it on the foot of the bed, did he? A. He laid it on the bed.

Q. Then he sat down and talked with you some considerable time, did he not? A. No, Sir.

Q. Well, how long did he talk? A. He stood up and continued talking; I don't know, it might have been five minutes, possibly ten; not, I should think, more than than that.

Q. Did you think it extraordinary or noticeable at all, that he took his overcoat off, under the circumstances? A. I did not think it extraordinary nor noticeable, in the ordinary sense of that term; I noticed it or I should not have remembered it.

Q. Well, did you think it at all extraordinary that he should remove a pistol from his pocket before taking the overcoat off? A. No, Sir, I cannot say that I did.

Q. He did not say a word about the pistol when he took it out? A. No, Sir.

Q. He made no threat? A. No threat.

Q. Nor did he make any gesture which indicated that he was going to use it in a hostile manner? A. No, Sir.

Q. Nor did you think that he used it for the purpose of intimidation or coercion? A. No, Sir, I did not think so.

Q. Did not think so? A. No, Sir.

Q. You did not think so at the time, and you do not think so now, do you? A. I do not think now that I thought so at the time.

Q. Well, you do not think now that you think so now, do you? A. Excuse me.

Q. What do you think about it now? A. That he meant to intimidate me?

Q. Yes, Sir. A. I presume—I think he did not.

Q. You did not regard, then, the presentation of a pistol to your view in any hostile light upon his part? A. No, Sir.

Q. You recollect heretofore of making a statement in regard to that part of the interview, I suppose, Mr. Beecher. A. I recollect of making a statement before the Committee.

Q. See if this recalls to your recollection what that statement was. [Reading.]

He made no verbal threats, but he opened his overcoat, and, with some emphatic remark, showed a pistol, which afterward he took out and laid on the bureau near which he stood. I gave the paper to him, and after a few moments' talk he left.

Do you recollect making that statement? A. I don't recollect making it; I presume I did.

Q. Well, when you did make it, didn't you intend to have it inferred that that pistol was used for some purposes of intimidation? A. I intended to express in that paper precisely what at that time—what remembrance I had at that time of that scene, and that part of it.

Q. That is no answer to my question, Mr. Beecher. I am speaking now of a question of interest. Didn't you intend when making the statement which I have just read to you, to have it inferred, at least, that that pistol was taken out by Mr. Moulton for the purpose of influencing your action with reference to the retraction? A. I do not recall that I did.

Q. Do you remember of making this statement, referring to that scene, preceding what I have just read, namely:

He was under great excitement. He made no verbal threats, but he opened his overcoat and with some emphatic remarks showed a pistol, which afterward he took out and laid on the bureau, near which he stood.

A. I do not remember making it; I presume, if it is printed there as a part of my statement, that it is substantially as I made it.

Q. And I understand you to say that you did not make it, then, with a view of having the inference drawn that the pistol had anything to do with the return of the paper? A. So far as I can recollect, I did not.

Q. You did not intend at that time, or suppose, that such an inference would be drawn? A. I don't remember that I did.

Q. Why did you deem it necessary, then, to introduce that pistol scene into the narrative? A. In order that I might give, as near as I could, the picture that rose to my memory.

Q. I understand you now to say that the pistol was not exhibited at all, even the butt of it, until after you had agreed to give up the paper—had got it from your private drawer or desk, or whatever it was, and was returning to hand it to him? A. That is my impression now, although I am not, as I stated before, positive that I have got the order just right.

Q. This was on Saturday night, if I recollect right, Mr. Beecher? A. Saturday night.

Q. Was there any arrangement that you should see Mr. Moulton the following day? A. I think there was, Sir.

Q. Who suggested it? A. I don't know.

Q. Well, what object had you in meeting him the next day? A. I say I don't recollect. I only know that the next day I was in a state of expectancy, so that I reason that there must have been the arrangement the night before, but I do not remember any arrangement making the night before.

Q. Well, you would not expect him unless the arrangement had been made? A. No, that is the reason I say that I think an arrangement had been.

Q. And you don't know what object was to be accomplished by the meeting the next day? A. I do not recall

Q. You don't recall what was to be said or what was to be done? A. No, Sir.

Q. Or what was to be discussed? A. No programme was laid out, and no plan suggested that I recall, at all.

Q. Well, was the hour fixed for the meeting the next day? A. I recollect expecting him in the afternoon; that is the nearest that I can come to it.

Q. Well, don't you think, then, that an hour had been appointed in the afternoon? A. I presume that there had been a period, perhaps not a particular hour, but to be after dinner and afternoon.

Q. Well, it was on Sunday, was it not? A. It was on Sunday.

Q. But it was not connected with any religious exercise that he came there? A. Oh, no, Sir; we had no prayer, or any singing of any kind; it was entirely a conference —a friendly conference.

THE INTERVIEW OF JAN. 1.

Q. Well, do you usually hold friendly conferences on Sunday of that character? A. No, Sir; oh, no, Sir; I very seldom hold *such* friendly conferences on any day.

Q. The reason why I ask you the question is to know whether the object of that meeting then would not be impressed upon your memory so that you could tell us what it was? A. No; I do not think that it did. Sunday afternoons, you know, are my leisure afternoons for resting. I preach only morning and night, and seldom I am occupied in the afternoon, which would make it very natural that if there was to be an appointment the next day, it should follow in the afternoon.

Q. Was it not agreed between you and Mr. Moulton on the night of the 31st, when you separated, that he should call upon you the following Sunday afternoon and report to you how Tilton received the return of that retraction? A. Very likely, but I have no remembrance of it whatever.

Q. Have you no impression upon the subject? A. None, except that it springs from reasoning.

Q. Well, do you recollect what time he arrived there on the 1st? A. Yes; about 3 o'clock.

Q. And where did your interview take place? A. In the study, third story back room.

Q. In the presence of any one? A. No, Sir.

Q. What was said and done during that interview, Mr. Beecher? A. Well, Mr. Fullerton, I shall be obliged to say again as I said before, that, in many respects, the order and altogether the language is gone from me; I have a general sense of the order of the topics, but I will give you as well as I can the substance of the conversation that took place, if you wish, continuously; or shall I follow your questions?

Q. Well, tell us how the conversation opened. A. As nearly as I can recollect, after the usual courtesies, and some few words, Mr. Moulton spoke to me of. the wisdom of my—that the wisdom of his suggestions the night before had been shown by the way in which Mr. Tilton received the account from him, and also the retraction—or an account of the retraction; I think that opened it, and it passed on, but by what stages, I cannot recall now, to the discussion of Mr. Tilton's position, the very great reasons that he had for excitement, and severity even, and that he was suffering unjustly all round; that was the impression that I have of the opening, and that naturally led us to talk of Mr. Bowen, and of his relations to Mr. Bowen, and then of my relations to Mr. Bowen in regard to the business matter; and that led me to give a description to him of the interview with Mr. Bowen on the 26th, if that was the date, of which he was very particular, and wanted the interview in detail, and I undertook to give it to him, and he then said that Bowen had played traitor to both sides, that he was my enemy and that he was his enemy, and that I had been misled, and I had done very great wrong to Mr. Tilton, and especially in receiving from Mr. Bowen any tales or stories respecting Mr. Tilton's moral character. He told me that he had been his schoolmate, that he had known him from childhood therefore; he spoke with very great positiveness and effectiveness about that. He mentioned, I think, that there had been a discontinuance for a short time because of their changed business relations, but it had been an intimacy resumed, and he said that he was—he assured me with the strongest asseverations that neither in regard to intemperance, nor in regard to immaculate chastity, was Mr. Tilton subject to the criticisms or the stories that had been told upon him, that they were base slanders and outrages upon him; and he spoke with a good deal of feeling on the subject, and I spoke with a good deal of feeling on the subject. He referred to the stories that had been circulated about me by Mr. Bowen, as I knew, and my feeling, when conscious of being innocent, at having such tales reported about me, and how much more in the case of a man like Mr Tilton, and in his present circumstances, when he had been stricken off from his profession, and in a manner that left a stain on his reputation, and was now without occupation, and without means of subsistence, and who also found great distress in his household—not that relief which a man might in times of distress expect in his own family. He went into some special statements in regard to some of the persons whose names had been mentioned. He told me that he had personal knowledge of the falsity of some of those stories, and—I will not say personal knowledge, but that he of his own self knew that they were false. Well, this occupation ran through, I should think, in various phases and forms—ran through an hour, and I became convinced, if I had not been already, that I had joined hands in——

Q. That is not a part of the question. A. I beg pardon. Well, I told him substantially that—not in those words—that I was satisfied on his testimony that I had been

greatly misled; that I had believed those stories of Mr. Bowen I admitted, and that I had some reason for believing them, because I had received such an account from Miss Bessie Turner, and certain stories from Mrs. Morse in regard to them. He assured me that the stories were false.

Q. Well, were you accounting for the advice that you gave as to a separation then? A. I was accounting—I cannot say about that, because I am not giving now anything more than the substance of the narrative; but when he spoke to me in respect to my ready credence of Mr. Bowen's tales regarding Mr. Tilton, I recollect that I partly defended myself, or rather excused myself somewhat feebly by saying that I had been prepared to hear from him such things by the relations of Bessie Turner; and I told him what Bessie had said, and also many statements that at times had been made under great excitement by Mrs. Morse.

Q. Well, you felt grieved that day, I understand you, at something that you had done towards Mr. Tilton? A. I think I did.

Q. Well, did you explain that to him? A. Well, I did; I do not know that I explained it; I poured it over him; I gave expression, not so much of an analysis and a bill of items, of statements; as the conversation went on and I became more and more free to speak and let my feelings out, I did pour out——

Q. Well, now, Mr. Beecher, the information that you got from Mr. Bowen—had you used that in any way, to the prejudice of Mr. Tilton? A. I had lent my ear to it, and had advised Mr. Bowen that I thought that he was a tainted man, and that it would not be practicable to keep him on *The Independent*.

Q. Yes? A. And, probably, not on *The Brooklyn Union*.

Q. Well, didn't you advise in regard to *The Independent*, in reference to the articles which he had written, and which you yourself had seen, or which you knew of? A. I do not recall, now; I may have made some allusion to those.

Q. Didn't you advise him with reference to *The Brooklyn Union* in the light of your own observation for a series of years prior to that interview? A. Didn't I advise Mr. Bowen?

Q. Yes? A. You ask me whether I stated to Mr. Moulton that I had?

Q. Didn't you advise Mr. Bowen in reference to the continuation of Mr. Tilton's services upon *The Brooklyn Union* in view of the idiosyncrasies and peculiarities of Mr. Tilton which you had made personal observation of, for several years prior to that interview? A. Pardon me; do I understand you to ask me this question now, independent of this interview of Jan. 1; or, do you go back to that interview of Mr. Bowen's, and ask me as a part of that interview?

Q. Why, you didn't advise Mr. Bowen on any occasion except Dec. 26?

Mr. Evarts—He asks a proper question.

Judge Neilson—He goes back to the interview with Mr. Bowen.

Mr. Fullerton—I am speaking of your advice to Mr. Bowen, which took place on the 26th. I ask you whether you did give the advice with reference to the continuation of the services of Mr. Tilton on *The Brooklyn Union*, in the light of your own experience and observation of Mr. Tilton's peculiarities? A. Yes; in the light of his peculiarities, not of doctrinal statement, and not of socialistic statement, but in the light of my experience of him as a manager, and especially as a coöperative worker in a party, or in a cause.

MR. MOULTON EXCUSES MR. TILTON'S FREAKS.

Q. Well, Sir, that is an answer now? A. Yes, I am thankful.

Q. How? A. I am glad that at last I understand you.

Q. Well, I am glad that you are glad. That advice, then, was not given upon the strength of anything that Mr. Bowen told you? A. It followed in the conversation.

Q. It was not given on the strength of anything that Mr. Bowen told you, was it? A. In regard to *The Brooklyn Union*?

Q. Yes. A. It was given on the——

Q. Now I ask you a simple question. A. I am going to give you the answer.

Q. Not an answer to my question. The question admits of an answer "yes" or "no."

Mr. Evarts—It does not require an answer "yes" or "no."

Mr. Fullerton—Well, I require it.

Mr. Evarts—Well, you have no right to.

Mr. Fullerton—Well, I think I have.

The Witness—Will you repeat the question, then, that I may see?

Q. Was the advice that you gave to Mr. Bowen on that occasion in reference to the continuation of the services of Mr. Tilton in *The Brooklyn Union* predicated of anything that Mr. Bowen told you? A. Partly.

Q. Partly? A. Partly.

Q. Did he tell you anything that induced you to believe that he would breed discord in the party? A. No.

Q. Did he tell you anything that induced you to believe that he could not follow but must lead? A. No.

Q. Nothing of that kind? A. Oh! that is another question; there was something of that kind, but that was not it.

Q. Well, that is what you told Mr. Bowen, wasn't it? A. I told Mr. Bowen my own telling, but the grounds on which I told it you are asking after.

Q. Yes. A. And I say in part it was what Mr. Bowen told me—in part it was what I knew.

Q. Yes, Sir; now, then, did Mr. Tilton convince you

notwithstanding your own observation and experience with Mr. Tilton, that he was a fit editor? A. Mr. Tilton?

Q. Mr. Moulton, I should say. A. I beg pardon. Will you repeat the question?

Q. Did Mr. Moulton convince you on the 1st of January that Mr. Tilton was a fit person to be at the head of *The Brooklyn Union*, notwithstanding your own observation and experience in that regard? A. He convinced me in so far as the reasons were moral.

Q. Well, what moral reasons were there which induced you to advise Mr. Bowen that he should not or ought not to remain in *The Brooklyn Union*? A. That he was a tainted man in his moral habits.

Q. You gave that as a reason why he should not remain in *The Brooklyn Union*, did you? A. That was a part of the whole conversation, and the whole conversation related to both papers, and it was not divided up, chapter and verse, so much for *The Independent* and so much for *The Union*.

Q. Did Mr. Moulton convince you on the first of January that the story of Bessie Turner was untrue? A. He told me that it was absolutely untrue.

Q. He convinced you of it, did he? A. I was satisfied that I had made a mistake.

Q. Were you satisfied that it was untrue? A. I didn't believe it to be true.

Q. You believed that Bessie Turner had told you a falsehood, then? A. I believed just what Mr. Moulton said.

Q. Did you believe that Bessie Turner had told you a falsehood? A. No; I believed that she had told me a self-deception.

Q. Deceived? A. That she was deceived.

Q. You thought that she might have been deceived in saying that she was taken up out of her bed and—— A. Precisely what——

Q. One moment. We can't talk two at a time. You thought she was deceived in saying that she was taken in his arms and carried from her room into his, did you? A. In the construction that she put upon it.

Q. You thought she was deceived in saying that he said to her that the expression of his love, as he desired to express it, was as natural as kissing or caressing, did you? A. I was satisfied that she had misapprehended it.

Q. Altogether? A. Altogether.

Q. Were you satisfied that no such thing occurred? A. No; I don't know that I went into it to that extent.

Q. You thought it might have occurred, and that Bessie Turner was under a wrong impression about it, did you? A. If there was some foundation, and then it was denied by Mr. Moulton to me——

Q. Did Mr. Moulton tell you that he was present when that occurred, and knew about it personally? A. No; I don't recollect that he did.

Q. How did he tell you that he knew anything about it? A. He spoke as of his own knowledge.

Q. Then you thought he must have been present, didn't you? A. No, Sir.

Q. Well, tell me what argument Mr. Moulton made use of on that day to convince you that the story of that young girl was false? A. That is precisely what I want to do.

Q. Well, then, you are gratified? A. I shall be if I do it successfully; he said that there was something that happened of that kind, and that Bessie Turner never—it would not have entered her head that it was an impropriety if it had not been for Mrs. Morse, and that she had pointed out—given a motive to it that led Bessie Turner to think worse of it than she would if she had been left to her natural inclination.

Q. He told you that? A. That is what he told me.

Q. And that you believed? A. That I took for the truth.

Q. Did he tell you how he knew that? A. He did not.

Q. Didn't you ask him? A. I don't recollect that I did.

Q. Were not you anxious to find out the basis of his judgment? A. I was anxious to have him excuse Mr. Tilton.

Q. Were not you anxious to find out the basis of his judgment? A. No, Sir.

A. And therefore you asked no question? A. I did not ask any question.

Q. Well, did he convince you that Mr. Tilton had not abused his wife, as was represented by Mrs. Morse and Mrs. Tilton on the 14th of December, if that was the date when you were there? A. As it regards that, I have only an indistinct recollection that he said to me something like this—that "as it respects Mr. Tilton he is a man of moods, a man of genius." I don't know that he used that word, but he alluded to his peculiar mental constitution, that he was a hasty man, and that in moods he may have done rude things, or improper things, but there never was a tender-hearted man, he told me, in this world; that his wife could lead him with a thread, if she would only take the right way, and that he said he had been a kind husband and a kind father to his family, and a good provider for them—not in those words, but that was the asseveration, in the most unmistakable form, that Mr. Tilton, while he might at home have the infelicities that husbands sometimes have, who are, nevertheless, accounted very good men—that still he was at home an excellent, kind husband and father.

Q. And you believed it? A. I did.

Q. Did he say that he knew that from personal observation? A. No, Sir.

Q. Then you disbelieved what Mrs. Morse said, and Mrs. Tilton? A. I did not bring them into comparison.

Q. Why didn't you consider what you had heard from Mrs. Tilton and Mrs. Morse? A. I did not enter into a comparison of what I had heard before with what I then heard.

Q. Didn't you say to Mr. Moulton, in vindication of yourself, "Why, I was sent for; I went to the house and heard this story from the lips of the wife herself and her mother?" A. I don't recollect using any such words.

Q. Then you did not give him any information at all upon the subject as to what led you to give the advice that you had given as to separation? A. I merely recollect giving him a general statement of the advice that I had given, but not in an argumentative nor in a rhetorical form.

Q. You relied upon what he told you as a matter of hearsay rather than upon what Mrs. Morse and Mrs. Tilton told you as a matter of observation and experience? A. I certainly took his word at that time against all comers.

Q. Yes, very well. Now, Mr. Beecher, you have given us what Mr. Moulton said in vindication of Mr. Tilton upon that occasion. Did you say anything at that time in regard to your grievance—namely, the accusation—the false accusation, as you say it was, that was brought against you, of improper advances to his wife? A. I stated, as near as I can recollect, that the charge of alienating Mrs.——

Q. Now, just drop that, if you please; that is not the point of my question. I am talking about the improper advances that had been charged. Did you say one word to Francis D. Moulton on that day about that subject? A. I denied it.

Q. Why didn't you so state it in your direct examination? A. I don't know why I did not. There are a good many things in my direct examination that I did not state.

Q. Well, I don't know how they got there. A. I mean there are a great many things in this history that I did not state.

Q. In what connection did you deny the charge on the first day of January? A. I don't know, Sir, what connection; I don't know the connection; it came up in the course of the conversations.

Q. Can you tell us in what language you framed that denial? A. No, Sir.

Q. Can you tell us in what connection in that conversation you made the denial? A. No. Sir.

Q. Can you tell what brought forth the denial from you? A. The general conversation took that drift.

Q. You told him then that the charge was false, did you? A. I did.

Q. Did you say what the charge was? A. I do not remember that I repeated the charge.

Mr. Beach [to Mr. Fullerton]—Was the term used—"improper advances?"

Mr. Fullerton—Was the term "improper advances" used? A. I don't recollect that that phrase was used.

Q. Was the term "improper solicitation," or any kindred term, used? A. The term of impropriety of conduct toward Mrs. Tilton—in what phrase I cannot say; but that subject was conversed about.

Q. Between you and him? A. Between me and him, mostly by me.

THE LETTER OF APOLOGY.

Q. Now, under what circumstances was there anything put in writing on that day? A. At the close of our interview, or toward the close, perhaps twenty minutes to half an hour, somewhere along there; I cannot state distinctly how long.

Q. How did it occur that anything was put in writing? A. It occurred in consequence of the strength of my feelings of sorrow and of regret. He said, on hearing it, that, if Mr. Tilton could see what he saw, or could know how I felt, as he believed I did feel, it would remove from his mind the conviction that I was his sinister but his real enemy, and that gave rise to some conversation further. I on that suggestion made manifold directions to the contrary, and at last, on the result of that, he said: "Why won't you write this to Mr. Tilton? It will bring all this mischief to an end. He thinks you are his enemy, and that you are determined—that you are injuring him." I said—I hesitated a moment, and then I declined. He urged me again that it would be a very useful thing if I would make a representation to Mr. Tilton of my real dispositions and of the things that I had said in that conversation to him; and finally I said to him, "Well, make a memorandum yourself of them," and he took the pen and sat down at the table and commenced making a memorandum.

I was walking to and fro, and he occasionally would ask me, when I was speaking rapidly and with some emphasis—he would say, "Did you say" so and so? or "Do you say?" or something to that effect, and I would check myself for a moment to make some reply—"Yes," or "substantially that," or something like that, and then would repeat—repeated one thought and another thought, attempting to go over in my mind, somewhat, the points of the conversation that had immediately preceded this, and which concerned my feelings toward Mr. Tilton and his family; that was the last part of the interview before the reading of the memorandum.

Q. Didn't you say in the commencement that you would give it to him in confidence? A. No, Sir.

Q. Or in trust? A. No, Sir.

Q. Did Mr. Moulton write these words of his own volition, at the head of this letter, "In trust with F. D. Moulton?" A. I know nothing about it.

Q. It was not suggested by you? A. No, Sir.

Q. That it should be in trust? A. No, Sir.

Q. Nor did you think he was going to take it in trust, did you? A. I don't know that I thought anything about that at that time.

Q. Was there anything said upon that subject? A. Not that I recall.

Q. Well, did you repeat to him what you expected he would take down? A. I repeated to him my sentiments on the topics that I thought he would take down.

Q. Your sentiments? A. I repeated to him my feelings and sentiments.

Q. Did you not expect that he would use the words that you employed? A. I knew he could not. I am a hard man for a reporter to follow, and he certainly could not follow me in writing.

Q. Well, under the circumstances in which this letter was written, you might wait for him to put it down, probably, if you wanted him to record it. Did you not want him to record your sentiments in your language? A. No, I did not; that is, I should have had no objection if he could have recorded it in my language, but I did not expect that he would attempt to do it, more than to catch a figure here and there, or some phrase.

Q. Were you not very anxious that the exact state of your feelings should be conveyed to Mr. Tilton? A. I relied upon Mr. Moulton to convey them.

Q. Answer my question. A. I was not anxious that any phrase or any figure should be conveyed.

Q. Answer my question. A. But that my *feeling* should be conveyed, I was glad.

Q. You were very anxious that that should be done? A. Yes, Sir.

Q. And done properly? A. Yes, Sir.

Q. And with a view to that end you said what you did say to Mr. Moulton? A. That was the whole object of the conversation.

Q. Why didn't you examine the paper to see whether he had done well what he had undertaken to do? A. I relied upon him.

Q. Entirely? A. Entirely.

Q. Did you not fear that he might have said something there that you would not be willing to father? A. Well, *I* hadn't said it.

Q. Well, he was to repeat it to Mr. Tilton as a thing that you had said? A. He was to make a representation to Mr. Tilton of the substance of this interview. He might have made a mistake in the whole interview, but I took it that he was a man of discretion, and would make a fair report of my feelings, with such specifications as seemed proper to him.

Q. Were you aware of the form in which he clothed it? A. I was not.

Q. Were you aware of the fact that it was put in the form of a letter, and that its salutation was, "My Dear Friend Moulton?" A. I was not.

Q. You were ignorant, then, of the form in which he clothed this matter? A. I was.

Q. Did you say anything like this? [Reading.]

I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God.

A. I did not use that expression, Sir.

Q. Any expression of that character? A. I used, generally, a statement of this kind—that I had, for my error and wrong in the matter, humbled myself before God, and I should not be ashamed to humble myself before Theodore Tilton.

Q. You had discovered your wrong, then, before Mr. Moulton came there on that day, had you? A. There had been, in——

Q. Had you? Had you? A. Not in its full extent.

Q. Had you discovered it? A. I had suspected a part.

Q. Well, you say you *had* humbled yourself before God, in consequence of the wrong you had done? A. Yes, Sir, I had. I had seen enough of it to be very humble about it.

Q. When had you made the discovery? A. In the conversation with Mr. Moulton, on the night on which I went to Moulton's house, and in the subsequent—in the conversation, in some parts of it, on the night of the 31st, and in those——

Q. What had been said on that subject on the night when you went to Mr. Moulton's house? A. He had talked to me about Mr. Bowen, and the wrong that he had done to Mr. Tilton.

Q. You were not humbling yourself before God in behalf of Mr. Bowen, were you? A. My connection with it—yes.

Q. What connection had you with that? A. I had advised it.

Q. And then you discovered that *that* was wrong? A. He told me that the whole thing was false.

Q. And you believed that? A. I did.

Q. Did he give you any reason for saying that? A. Oh, no, not that I recall; that is, he gave me his asseverations—as I supposed, an impartial person.

Q. And you came to that conclusion on that night? A. I came to more or less of a conclusion that night that I had got wrong, and that I had been the injurer of Mr. Tilton.

Q. You did not think of the injury inflicted upon you in charging you with this immoral conduct, did you? A. I don't recollect that I specially brought that into connection with the injury done by me to Mr. Tilton, through Mr. Bowen.

Q. I am speaking of the injury inflicted upon you by Mr. Tilton in making this charge against you.

Mr. Evarts—He has answered.

A. If the charge was a correct one, he had not injured me.

Q. Was it correct to charge you with making improper solicitations with his wife? A. If he had the evidence of it, or thought he had, there was no impropriety in charging it upon me.

Q. Well, when this letter was written on the 1st of January, had you made up your mind then whether that charge was made in good faith or in bad faith? A. I supposed that——

Q. Had you made up your mind? A. I was proceeding to tell you, Sir.

Q. Answer my question. You can tell me whether you had made up your mind, by simply answering yes or no. A. But it is not true of the first part of the interview, and it is true of the last.

Q. I don't understand your answer. A. That shows that I could not answer it by yes or no. [Laughter.]

Q. Well, it shows also that you have not answered it yet. A. In the opening of the conversation my mind was inclined to think that I had got myself in a very bad place, and that I had done great injustice to Mr. Tilton; and as the conversation went on and I received from Mr. Moulton light on one and another topic, I became entirely satisfied that I had done wrong to Mr. Tilton, a——

Q. Now, Mr. Beecher, that is as foreign from my question as anything can possibly be. A. I was coming to it.

Q. Coming to it? A. Yes, Sir.

Q. Well, you start too far off. [Laughter.] I ask you whether on the 1st of January, at the time of this interview, you had made up your mind whether the charge against you was made in good or in bad faith?

Mr. Evarts—That is the precise point of the answer that has been given, that at one part of the interview he had not, and at another he had.

Mr. Fullerton—Well, did he stop there?

Mr. Shearman—He has answered it, and then you ask him to explain, and when he explains, you are not satisfied.

Mr. Fullerton—I didn't know that you had arrived, Brother Shearman. [Laughter.] [To the witness.] Now, will you answer my question, whether, on the 1st of January, at the time of this interview, you had made up your mind whether the charge against you of improper solicitations (if that were it) was made in good or in bad faith? A. At one period of the day of the 1st of January I had.

Q. Had what—made up your mind? A. Made up my mind.

Q. What was your conclusion? A. My conclusion was that Mr. Tilton had reason for making that charge, that he had evidence of it from his wife that justified him in making inquisition and accusing me.

Q. Well, at what period of the day did you come to that conclusion? A. I was proceeding to tell you, and now I shall finish what I would have finished in a word——

Q. Tell me the period of the day. A. I think it must have been about half-past 3—or half-past 4, I should say; it was near the close of the interview.

Q. Did you maintain that opinion throughout the whole day? A. No, Sir; in the morning I did not think about it so much, nor the afternoon, but I, from that time forth, thought that Mr. Tilton had had reason to believe that I had acted wrongly toward his household.

Q. In improper advances? A In improper advances.

Q. Improper solicitations? A. Improper solicitations.

Q. How did you think he had come to that conclusion—upon the strength of what evidence? A. Upon his wife's written statement to him.

Q. You did not believe, then, that that statement was coerced from her, did you? A. I don't know what you would include in the word "coerced."

Q. What do you include in it? Answer my question in the light of the meaning which you give to it. A. Coercion I should consider a degree of violence that never was pretended upon her.

Q. Very well; we will adopt her own language, then. Did you believe that it was obtained through importunity—when she was "wearied with importunity, and weakened by sickness?" A. I had no doubt that it had been procured from her when she was weak and sick, and by persistent inquiry.

Q. And you thought that she had told a falsehood about it to Mr. Tilton, did you? A. I certainly did.

Q. And you remained of that opinion during all the New Year's Day while this paper was being prepared, did you? A. Yes, Sir; during the time that that was in preparation.

Q. Then you supposed that Mr. Tilton was acting in good faith in making this charge against you? A. I supposed that he had reason to think that I had been a wronger of his family.

Q. Then I will ask you again, when you came to that conclusion that Mrs. Tilton had told a falsehood about it, and that Mr. Tilton was acting in good faith in making the charge against you, why didn't you hasten to vindicate yourself to him by telling him that it was untrue?

Mr. Evarts—Telling whom?

Mr. Fullerton—Mr. Tilton.

The Witness—Will you be good enough to state the question again, Sir?

Mr. Fullerton—I will let the stenographer read it.

The Tribune stenographer read the last question, as requested.

A. I thought I was doing it, Sir.

Q. By this letter of January 1? A. By Mr. Moulton.

Q. By Mr. Moulton? A. By Mr. Moulton.

Q. In what way? A. This whole interview was a vindication and explanation, and was to be carried by him to a man that was excited, and whose interview with me would not be likely to be pacificatory in all respects.

Q. Well, let me read this to you, and I want you, if you please, to point out as I go along where there is any explanation to Mr. Tilton to convince him that his charge against you was wrong: [Reading.]

I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man, in my circumstances, than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself. I even wish I were dead; but others must live and suffer. I will die before any one but myself shall be inculpated. All my thoughts are running

toward my friends, toward the poor child lying there and praying with her folded hands. She is guiltless, sinned against, bearing the transgression of another. Her forgiveness I have. I humbly pray to God that he may put it in the heart of her husband to forgive her.

I have trusted this to Moulton in confidence.

Where do you find there any explanation or any asseveration upon your part that you were not guilty of the offense with which you stood charged? A. That is not my document.

Q. I understood you to say, however, that you had a conversation with Mr. Moulton in which you expressed to a very considerable extent the sentiments in this letter? A. I said that the sentiments in that letter were a part of my conversation, but I did not select the sentiments that he was to report.

MR. BEECHER'S DENIALS WHEN THE APOLOGY LETTER WAS WRITTEN.

Q. Now, then, will you tell us, if you please, what it was that you said to Mr. Moulton, at the time that this letter was written, exculpatory of yourself, and vindicating yourself against the charge that had been made against you? A. Nothing at the time the letter was writing, that I remember.

Q. Before the letter was written what did you say? A. In the course of the conversation I denied the truth of Mr. Tilton's impression that I had done wrong to his household intentionally.

Q. Did you deny the improper solicitations? A. I denied the whole charge that had been brought against me.

Q. Did you ask him to convey any message to Mr. Tilton upon that subject? A. I did not, that I recall.

Q. In dictating the points, or the heads of what you wanted him to say to Mr. Tilton, did you dictate anything exculpatory of yourself? A. I never dictated a point, nor a word, nor indicated what I wanted him to write.

Q. You wanted him to write something, didn't you? A. No, I did not.

Q. You knew that he was writing something? A. It was his own volition, his own choice.

Q. You knew that he was writing something to use with Mr. Tilton, didn't you? A. I knew that he was making a memorandum for his own use.

Q. With Mr. Tilton? A. With Mr. Tilton.

Q. For the purpose of conveying to Mr. Tilton your sentiments? A. For the purpose of conveying to Mr. Tilton his impression of the interview with me.

Q. Then, why didn't you convey to Mr. Tilton, through that same channel, some vindication of yourself? A. How did I know but it was there?

Q. Where? A. In that channel.

Q. I have asked you to tell me what you said in the conversation with Mr. Moulton vindicatory of yourself. A. And I have told you that I expressed to him my conviction that I had not intentionally wronged Mr. Tilton nor his household.

Q. Did you charge him with anything to say to Mr. Tilton on that subject? A. I did not.

Q. Why not? A. Because it didn't come in my way to do it.

Q. You were not anxious, then, to vindicate yourself with Mr. Tilton? A. That does not follow.

Q. Well, why didn't you send some message to Mr. Tilton that this charge, although you thought he believed it to be true, was untrue? A. The whole interview would obliterate that if it were faithfully represented. I and Mr. Tilton were not in controversy personally, then, directly. Mr. Moulton, as the common friend of the two, was a peacemaker between us, and I expressed myself to him that he might go and express himself as he thought wisest to Mr. Tilton.

Q. You expressed your sorrow for what you had done? A. I did.

Q. But you didn't send any special message to him to vindicate yourself? A. I don't recollect that I did.

Q. Did you not regard that as important? A. It seems not.

Q. Well, don't you remember whether you did or did not at that time? A. I have no recollection of it, Sir.

Q. Then the gravest charge that was brought against you was lost sight of in your grief for what you had done against him, was it? A. I cannot say that it was.

Q. Now, in that conversation with Mr. Moulton on that day, was the term "improper relations," or "improper advances," or "improper solicitations" used? A. I cannot recall that the words—those phrases—were used upon that occasion.

Q. Well, you regarded that as the most serious charge against you, did you not? A. The substance of the charge was recognized; but whether it was done by——

Q. Did you not regard that as the most serious charge against you? A. Whether the substance of the charge——

Q. Did you not regard that as the most serious charge against you? A. The——

Q. Improper solicitations? A. Certainly, that was the most serious part——

Q. And yet you did not single it out and vindicate yourself against it by sending any message to Mr. Tilton? A. I did not send *any* message to Mr. Tilton. I understood that Mr. Moulton was my message.

Q. But what message did you give him to Mr. Tilton in regard to the charge against you? A. No message whatever.

THE EXPRESSIONS IN THE LETTER OF APOLOGY.

Q. Very well; then he was not the messenger for that purpose? A. He was himself a message in his peaceful feelings toward both parties, his sympathy

with both, and his determination to so explain matters as that both should be reconciled.

Q. I call your attention now, Mr. Beecher, still further to this document: [Reading.] "He would have been a better man in my circumstances than I have been." Did you say anything to that effect? A. I did not say that sentence that I recollect, Sir, but I said something which I can well understand might have been put down, for short, in that sentence.

Q. Did you say anything that conveyed that sentiment? A. I did.

Q. I read another sentence: "I can ask nothing except that he will remember all the other hearts that would ache." Did you say anything that conveyed that idea? A. Not in that bold way.

Q. How did you say it? Did you say that in substance? A. Not in its apothegmatic form, as it stands there.

Mr. Beach—That answer refers merely to the form of the expression.

Mr. Fullerton—Did you express that sentiment, whether you clothed it in that language or not? A. I discussed with him——

Q. Did you express that sentiment? A. No; not in that close way in which you press me for an answer.

Q. Very well. Something akin to it? A. I can give you almost the very thing.

Q. Something akin to it? A. Something in that neighborhood, Sir.

Q. I read again: [Reading.] "I will not plead for myself. I even wish that I were dead." Did you express any such sentiment as that? A. That does not represent any sentiment that I expressed.

Q. Did you say anything in substance like this: "But others must live and suffer?" A. I spoke of others living and suffering.

Q. Then, again, did you say this in substance: "I will die before anyone but myself shall be inculpated?" A. No.

Q. Did you say anything of that nature? A. I said something in that neighborhood.

Q. Did you say this: "All my thoughts are running toward my friends, toward the poor child lying there and praying with her folded hands?" A. That reminds me of some things that I said in respect of Mrs. Tilton.

Q. Something of that character? A. Under the impression produced upon me by that interview that night.

Q. Again, did you say this: [Reading.] "She is guiltless, sinned against, bearing the transgression of another?" A. No, not as it stands there, I did not.

Q. Did you say anything of the same meaning? A. No, not the meaning that that has there.

Q. Didn't you intend to convey that idea? A. I did not, in any such sense as it stands there.

Q. But in some other sense? A. I intended to convey another sense which that fails to express.

Q. Again: [Reading.] "Her forgiveness I have. I humbly pray to God that He may put it into the heart of her husband to forgive me?" A. No, Sir.

Q. Did you say nothing of that kind? A. Nothing of that kind in the fore part of that sentence at all. I may have expressed a desire for Theodore's forgiveness for any injury I had done him in his household.

Q. What part of it do you say was not said by you? A. "Her forgiveness"—I never said that I had her forgiveness.

Q. That was an invention of Moulton, was it? A. I cannot say about that, Sir. That is his document, which he can answer for better than I.

Q. Now, Mr. Beecher, when that paper was finished, do you say that you did not read it? A. I say that I did not read it.

Q. And do you say that it was not read to you? A. I say it was not read to me.

Q. Well, why didn't you read or have it read to you? A. I didn't care about it, Sir.

Q. Didn't you care what was in it? A. It was—I cared about what he should represent to Mr. Tilton, but there were notes for his direction.

Q. But you put your name to it? A. Well, Sir, I put my name, not to the truth of that statement, but to the fact that I had given this in trust after a conversation with him.

Q. And you gave something in trust to Moulton without knowing what you gave him? A. I gave him that paper in trust, to signify that he had had a conversation with me, and that he would represent to Mr. Tilton what were the results of that conversation.

Q. You gave it to him in trust? A. Yes, Sir.

Q. Well, did you regard it as his composition or yours? A. I regarded it as his.

Q. Then you gave his property to him in trust? A. He wanted me to make it my property.

Q. One moment. You gave Moulton's property to Moulton in trust, did you? A. I did not regard it as property, Sir.

Mr. Beach—Well, production, then.

Mr. Fullerton—Production? A. I did not regard it in that light of a production.

Q. Well, you gave this paper, whatever it was, regarding it as Moulton's, to Moulton, in trust, did you? A. To Mr. Moulton?

Q. Yes. A. No.

Q. You know what the meaning of the words "in trust" is of course, Mr. Beecher, don't you? A. I did.

Q. You know that you cannot give another man's property to that man in trust, don't you? A. I know that I can give a statement of an interview, a memorandum of which he has made—I can authenticate the errand on which he goes with that memorandum in his hand.

Q. Without knowing or caring what is in it? A. On the trust that I had, that he had made only a memoran-

dum that would bring back to his mind the points, the salient points, of the conversation, that he wanted to use.

Q. Bring back to his mind the salient points of the conversation that he wanted to use, and which were to be used for your benefit? A. For both of our benefits.

Q. For yours as well as his? A. For both.

Q. Well, for yours? A. For both; and therefore for mine.

Q. "And therefore for yours;" I am glad you added that. And therefore what you intrusted to him to be used in part for your benefit, you did not know or care what was in it? A. I cannot say that I didn't care what was in it.

Q. I understood you to say so a moment ago? A. You understood me, then, when I was speaking less heedfully than I am now.

Q. That is not my fault. A. I know it is not, Sir; it is mine.

Mr. Evarts—This discussion is unnecessary.

Mr. Fullerton—You get it up and then say it is not necessary. [To the witness.] Didn't you put your name to the paper for the purpose of authenticating it? A. I put my name——

Mr. Beach [To Mr. Fullerton]—Oh, make him answer.

Mr. Fullerton—I ask you that question, and I want you to answer. A. I did not put my name to that paper for the sake of authenticating the form of its contents.

Q. You say, "I have trusted this to Moulton in confidence." A. Yes, Sir.

Q That is your handwriting, I believe? [Showing paper to witness.] A. I think it is, Sir.

Q. Well, have you any doubt about it? A. No, Sir, I have no doubt about it; I think it is.

Q. I will ask you again, Mr. Beecher, and give you the opportunity to explain it, if you desire to, or can, why, upon that occasion, in an interview so full of interest to yourself and in which you were expressing your regret for what you had done, you didn't take some step through the agency of your mutual friend, as he has been called, to convey to Mr. Tilton your denial of having made any improper solicitations of or advances to his wife? A. It was a part of the interview.

Q. I now ask you again to give to this jury any message that you sent by Mr. Moulton, any word that you spoke upon that subject coupled with a request that it should be communicated to Mr. Tilton, or any other thing that you did for the purpose of accomplishing that end—namely, your own vindication in the mind of Mr. Tilton? A. I sent not one line, or one word, that I remember, to Mr. Tilton; I—if you will allow me to go on——

Q. That is an answer to my question. A. That is sufficient.

MR. MOULTON'S SHORT STATEMENT.

Q. Mr. Beecher, I understand you to say that the first statement of Mr. Moulton was read over to you on the 13th of July, 1873—'74?

Mr. Evarts—That is what you call the short statement?

Mr. Morris—Yes, the short statement.

Q. Am I correct? A. I thought you expressed a judgment to me, Sir; I beg your pardon——

Q. Well, I, after some delay, put it in the shape of an interrogatory. Am I correct in supposing that you said on your direct examination that you read over the first statement of Mr. Moulton? A. No, Sir; I did not read it over.

Q. Or that it was read to you? A. It was read in my presence.

Q. And what did you say when your judgment was asked in regard to it? A. I said very little, Sir—very little? my judgment was not asked in detail about it.

Q. Well, you gave it in bulk, did you? A. I gave an answer to his inquiry.

Q. Well, what was the inquiry? A. I cannot put it exactly, but it was whether I thought that that was an honorable and fair statement to make (that is, if I have my mind upon the same statement that you have); and I replied that I—that that was what he could judge of as well as I, or that he must determine by his own sense of honor and good judgment.

Q. Well, didn't you say something besides that? A. Not that I recall, Sir.

Q. Didn't you say something approbatory of it? A. I do not think that I did, Sir.

Q. Didn't you say so down stairs in the presence of Mrs. Moulton? A. I did not, Sir.

Q. Well, it was read over to you? A. It was read to me.

Q. You made no objection to it? A. I made no objection to it.

Q. I will read it, and then ask you some questions in regard to it: [Reading]

GENTLEMEN OF THE COMMITTEE: I appear before you, at your invitation, to make a statement, which I have read to Mr. Tilton and Mr. Beecher, which both deem honorable, and in the fairness and propriety of which, so far as I am concerned, they both concur. The parties in this case are personal friends of mine, in whose behalf I have endeavored to act as the umpire and peacemaker for the last four years, with a conscientious regard for all the interests involved.

I regret, for your sakes, the responsibility imposed on me of appearing here to-night. If I say anything, I must speak the truth. I do not believe that the simple curiosity of the world at large, or even of this Committee, ought to be gratified through any recitation by me of the facts which are in my possession, necessarily in confidence, through my relations to the parties, the personal differences of which I am aware, as the chosen arbitrator, have once been settled honorably between the parties, and would never have been revived except on account of recent attacks, both in and out of Plymouth Church, made upon the character

of Theodore Tilton, to which he thought a reply necessary. If the present issue is to be settled, it must be, in my opinion, by the parties themselves, either together or separately, before your Committee, each taking the responsibility of his own utterances. As I am fully conversant with the facts and evidences, I shall, as between these parties, if necessary, deem it my duty to state the truth, in order to final settlement, and that the world may be well informed before pronouncing its judgment with reference to either. I therefore suggest to you that the parties first be heard; that if then you deem it necessary that I should appear before you, I will do so, to speak the truth, the whole truth, and nothing but the truth. I hold to-night, as I have held hitherto, the opinion that Mr. Beecher should frankly state that he had committed an offense against Mr. Tilton for which it was necessary to apologize, and for which he did apologize in the language of the letter, part of which has been quoted; that he should have stated frankly that he deemed it necessary for Mr. Tilton to have made the defense against Dr. Leonard Bacon which he did make, and that he (Mr. Beecher) should refuse to be a party to the reopening of this painful subject. If he had made this statement, he would have stated no more than the truth, and it would have saved him and you the responsibility of a further inquiry. It is better now that the Committee should not report; and, in place of a report, Mr. Beecher himself should make the statement which I have suggested; or that if the Committee does report, the report should be a recommendation to Mr. Beecher to make such a statement.

Q. This was read to you on the 13th of July, 1874; that has already been proved. Now, Mr. Beecher, when that paper was read to you, how long had the Bacon letter been published? A. I do not know that that paper was read to me, Sir.

Q. Well, what is your best judgment upon the subject? A. A paper was read to me——

Q. I did not ask you that. A. But whether it was that paper, or the whole of that paper, I cannot state.

Q. What is your best judgment upon the subject? A. My best judgment is that that paper was completed probably after the substance of it was read to me, but I—that is only a supposition.

Q. Well, I did not ask you to indulge in suppositions—now, pardon me. A. You asked my best opinion—judgment.

Q. I ask your best opinion whether that paper was read to you? A. Parts of that paper I recollect, but I cannot affirm that it was all read to me.

Q. Can you affirm that it was not all read to you? A. I cannot affirm that it was not all read.

Q. What is your best judgment whether that is the paper that was read to you on the 13th of July, 1874? A. I do not recall a good deal of it.

Q. What is your best judgment? A. My best judgment is that a part of that paper was read to me, possibly the whole, but I do not recall the whole.

Q. Well, when that paper, or whatever paper it was, was read to you, how long had the Bacon letter been published? A. I do not now remember, Sir.

Q. Do you recollect the date of the publication of the Bacon letter? A. No, Sir; I don't recall it.

Q. Well, it was long prior to this, wasn't it? A. Well, that I could not say.

Q. Well, it was prior to any statements before the Committee, wasn't it? A. Yes, Sir; of course it was prior to that, but I cannot give dates without refreshing my memory.

Mr. Shearman—It was June 21.

Q. You read the Bacon letter, didn't you? A. I did not.

Q. Anybody read it to you? A. I heard a statement of its contents.

Q. You knew that it quoted a part of this letter of January 1, did you not? A. I was told that it did.

Q. Were you told the form in which it was copied? A. I was told that there was an extract from that memorandum of Mr. Moulton's in it.

Q. Who told you of it? A. I have forgotten whether it was Mr. Cleveland or Mr. Shearman, or who it was; I was in conference with several gentlemen, and I don't recall which one informed me.

Q. Did you have a statement of the contents of the Bacon letter in writing? A. The drift or substance of it.

Q. Who made out that statement?

Mr. Evarts—In writing?

The Witness—I didn't have it in writing.

Mr. Fullerton—Oh, I thought you did. Well, did you learn in what form this letter of January 1 was quoted in the Bacon letter? A. Only that there was a portion of it.

Q. Yes; did you learn the form of the portion? A. Not by reading it, Sir.

Q. Did you learn the form of the portion of it? A. I did not, Sir.

Q. Very well; you knew what reference was made, did you not, in this first statement of Mr. Moulton in this expression:

I hold to-night, as I have held hitherto, the opinion that Mr. Beecher should frankly state that he had committed an offense against Mr. Tilton for which it was necessary to apologize, for which he did apologize in the language of the letter, part of which has been quoted.

A. I don't recollect to have heard that sentence, Sir.

Q. Don't recollect whether it was read to you or not? A. I don't recollect it, Sir.

Q. Now, Mr. Beecher, when did you first hear of this letter of January 1, 1871? A. This memorandum?

Q. Yes? A. I first—you mean after it left——

Q. Your hands? A. It never left my hands.

Q. Never left? Oh! Well, it is not worth while to play upon words. A. I know, but you cornered me so many times that I was afraid of you. [Laughter.]

Q. No, you ain't afraid—when it left your house? A. After that time I do not recall seeing it until 1874; I never saw the original document again until I saw it in this room.

Q. Well, upon this subject of its having left your hands. Did you never have it in your hands? A. I don't think that I did, Sir. I had my hands on it, if you will not think I am trifling.

Q. Well, you—— A. I signed it, of course, and had to touch it, but other than that I don't think that——

Q. What did you do with it when you signed it? A. Let it alone.

Q. Did not hand it to Mr. Moulton? A. No.

Q. Well, then, your hands left *it*? A. My hands left it; yes, Sir.

Q. When did you next see it after your hands left it? A. In the court-room, when it was presented in evidence.

Q. When did you next hear of it? A. I think it was in December of 1872.

Q. And from whom did you hear of it? A. From Mr. Tracy.

Q. Mr. B. F. Tracy? A. Yes, Sir.

Q. Had he then seen it, as you understood? A. I cannot say.

Q. Did he give you what purported to be its contents? A. No; he did not recite its contents.

Q. And no part of its contents? A. No; he did not recite any part of it.

Q. Did he recite the substance of it? A. He did not.

Q. Very well; pass from that then to the next occasion you heard of it from any other person. A. Well, then, I —I am confused about that; I don't know that I could tell you accurately after that when I next heard of it.

Q. Well, as near as you can tell. A. I heard it rumored that there was a paper in existence that was very damaging to me.

Q. But you did not learn its contents? A. No.

Q. Nor its form? A. No.

MR. BEECHER'S LATER KNOWLEDGE OF THE APOLOGY.

Q. Well, pass from that, then, now to any other person or occasion when you heard of it; please state A. The only time that I ever heard of it with any distinctness that I recollect was from Mr. Moulton himself.

Q. When was that? A. Immediately after Mr. Tracy's visit of which I have spoken.

Q. Did he show it to you? A. No, Sir; he said it was burned up.

Q. That is the next that you heard of it? A. That is the next I heard of it.

Q. When was that? A. It was a day or two after I had seen Mr. Tracy.

Q. In the Fall of 1873—December, 1872? A. It was in the Winter of 1872, maybe early in 1873—I cannot say.

Q. Now, of whom else did you hear anything of it? A. I don't recollect, Sir, anything of it again until I heard that there was to be an extract from it in a card proposed to be printed by Mr. Tilton about June of 1873.

Q. Did you see that extract? A. I did not, Sir.

Q. Did you know in what form it was, or shape? A. No, I did not, Sir; I only——

Q. That is an answer; pass then to the next occasion when you heard of it?

Mr. Evarts—He wishes to qualify it.

Mr. Fullerton—Oh, I don't object to his qualifying it!

The Witness—I heard it stated, what the substance of it was.

From whom? A. From Mr. Kinsella.

Q. When? A. When he came to see me on Monday morning, the 2d of June.

Q. 2d of June? A. Yes, Sir.

Q. Did he state the substance of it to you? A. He stated—I don't know that he stated the substance, but he stated the drift of it.

Q. The drift of it? A. Yes, Sir.

Q. Didn't he give you a copy of it? A. No, Sir.

Q. Did he have a copy of it? A. Not that I know of.

Q. Did he state to you in what form it was written? A. In what form originally?

Q. The memorandum was—in what form it existed? A. Oh, no; it did not enter into the conversation in that form.

Q. Well, that is the 2d of June, 1873? A. 1873.

Q. Now, have you narrated to me all that you ever learned in regard to that paper up to that time? A. I don't know that I have.

Q. Didn't Mr. Claflin tell you something about it? A. He inquired about it of me.

Q. But gave you no information in regard to it? A. He asked information of me rather than gave me any.

Q. Now, Mr. Beecher, tax your recollection, because it is important. If you have omitted to state any information that you derived in regard to this letter or memorandum, whatever it may be called, at any time within the limits inquired of, I want you now to state it. A. I don't recall it, Sir, except the statement made to me by Mr Tracy.

Q. That you had given us? A. Yes, Sir; that is the most distinct that I recollect; and then I should say the next was, perhaps, Mr. Claflin——

Q. Well, he inquired? A. He inquired; the next was my brother, Dr. Edward Beecher; he inquired.

Q. Well, you have omitted that? A. Yes, Sir.

Q. He only inquired? A. I saw him, and I remembered it; he inquired.

Q. He gave you no information, though? A. No; same as Mr. Claflin.

Q. Yes. A. Then, that which I have mentioned to you of 1873; these inquiries of Mr. Claflin, I think, came after '70—but I won't be certain about that; I think the next, after the publication of the Bacon letter, I learned from Mr. John Russell Young of *The New York Herald*.

Q. When was that? A. That was some time in the

Summer of 1874; probably July, but I won't be positive.

Q. Did you learn then its contents? A. I did not.

Q. Didn't you see a copy of it then? A. I did not.

Q. Well, had you never, up to that time, learned its contents? A. I had learned from Mr. Tracy what was the drift of it.

Q. The drift of it, but not its contents? A. Not its——

Q. Only the substance? A. Not in detail.

Q. Not in detail? A. No.

Q. What did Mr. Tracy say to you in regard to it? A. He spoke to me of that letter, and I told him that——

Mr. Beach—No, not what you told him.

Mr. Fullerton—What did Mr. Tracy say to you? A. I cannot recall the language.

Q. Did he profess to repeat it in the language in which it was written? A. I do not know that he did repeat it in so many words; I know that he made such a statement of it that I got quite an idea of what it was.

A LIVELY ENCOUNTER BETWEEN COUNSEL AND WITNESS.

Q. Did he tell you it purported to be a letter or a memorandum? A. I don't recall that, Sir.

Q. Now, Mr. Beecher, if up to that time, June 1, 1873, you had no information in regard to that letter other than what you have told us, then will you please to account for the language of the letter you wrote on that day to Mr. Moulton, which was as follows:

SUNDAY MORNING, June 1, 1873.

MY DEAR FRANK: The whole earth is tranquil and the heaven is serene, as befits one who has about finished his world-life. I could do nothing on Saturday—my head was confused; but a good sleep has made it like crystal. I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt charges, and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves. It is only fair that he should know that the publication of the card which he proposes would leave him far worse off than before. The *agreement* was made after my letter through you was written.

Then, did you know at that time that it was in the form of a letter, and written through Moulton? A. Why, it was very simple, Sir. The thing was called a letter. It might have been called paper—anything; but I had already had my interview with Mr. Tracy in the December of 1872, and that letter was written on Sunday, June 1, 1873.

Q. But you have told us that Mr. Tracy did not give you a copy of it, or state its form? A. He did not state its form, but he stated its substance and intent.

Q. Did he state to you that it was in the form of a letter, written through Mr. Moulton? A. I do not recall the designation which he gave to the paper, but the drift and contents of the paper he spoke of and somewhat analyzed.

Q. I am not talking about the drift or contents; I am asking you this question: In the light of the information which you say you had got of that letter up to June 1, 1873, how did you come to write as follows: "The *agreement* was made after my letter through you was written?" A. Very obviously I gave the first—I did not sit down and make an accurate title to it; I took the title that happened to come to my mind.

Q. You say to-day that it was not your letter. How did you come to think on the 1st of June, 1873, that it was your letter? A. It was spoken of to me as such by Mr. Tracy.

Q. I asked you but a moment ago whether Mr. Tracy informed you that it was in the form of a letter, and you told me he did not. A. I said Mr. Tracy informed me of it as a communication from me through Mr. Moulton to Mr. Tilton.

Q. When did you say that, pray? A. I say it now, if I didn't say it before.

Q. Didn't you say a moment ago that Mr. Tracy gave you such information? A. I said to you that Mr. Tracy spoke of the document, without quoting it, and that he gave me quite an analysis of it, and I added that he stated it as a document which did come from me to Mr Tilton.

Q. Didn't I put the direct question to you, in so many words, "Did Mr. Tracy tell you that it was in the form of a letter written through Mr. Moulton?" and did you not tell me, "No, he did not?" A. I still say——

Mr. Fullerton—No, no, not what you still say; it is what you did say. A. I don't know, Sir; I cannot tell about that.

Q. Well, do you now say that you remember that Mr. Tracy told you it was in the form of a letter written through Mr. Moulton? A. I cannot say that he used those words.

Q. Did he say anything that conveyed to you the idea that it was a letter written by you through Mr. Moulton? A. He conveyed to me——

Mr. Fullerton—Answer my question. Did he convey that to you?

The Witness—Excuse me.

Mr. Fullerton—I have.

The Witness—Will you repeat the question, or have it read?

Mr. Fullerton—I will have it read. [To the Tribune stenograper.] Please read the question.

The Tribune stenographer read the question as follows:

Did he say anything that conveyed to you the idea that it was a letter written by you through Mr. Moulton?

The Witness—You wish me to answer that?

Mr. Fullerton—You asked that to be read with a view of answering it?

The Witness—Yes, Mr. Tracy spoke of the document——

Mr. Fullerton [to the Tribune stenographer]—Read the question again, please.

The Tribune stenographer read the question as follows:

Did he say anything that conveyed to you the idea that it was a letter written by you through Mr. Moulton?

The Witness—He said to me——

Mr. Fullerton—No.

Mr. Evarts—You asked for what he said.

Mr. Beach—We don't ask for what he said; we ask if he said that.

Mr. Fullerton—If he conveyed that idea to him.

Mr. Evarts [to Judge Neilson]—They ask him not what he said, but ask him if he conveyed an idea to him; and when he undertakes to say what he said, they object to it as an answer.

Mr. Beach—Yes, exactly we do.

Mr. Fullerton—Is that a proper answer?

Mr. Evarts—They are not to judge if it didn't convey an idea.

Mr. Fullerton—I don't ask any one to judge but the witness; I ask for his judgment as to what it conveyed at the time of the communication, and no one else's.

Mr. Evarts—You asked whether Mr. Tracy conveyed to him an idea.

Mr. Fullerton—Yes.

Mr. Evarts—Not whether there was an idea conveyed.

Mr. Fullerton—I asked whether Mr. Tracy conveyed the idea that it was a letter written by him through Mr. Moulton.

Mr. Evarts—After you get through with what Mr. Tracy conveyed to him, then, you can ask him that question.

Mr. Fullerton—I thank you for the privilege, but I don't enjoy it until I get through with the question I have already put.

Mr. Evarts—I am talking of the question you asked him—that he has a right to answer—what Mr. Tracy told him.

Mr. Fullerton—He has no right to answer that. I don't want to know what Mr. Tracy told him, but I want to know the fruit of what Mr. Tracy told him.

Mr. Evarts—The fruit?

Mr. Fullerton—Yes, the fruit; did he get the idea from from what Mr. Tracy told him, whether it is in that form?

Judge Neilson—It is a very simple question.

Mr. Fullerton—It is.

Judge Neilson—I don't think it calls for a conversation.

Mr. Fullerton—No, Sir.

Judge Neilson—Although, after he answers your question, perhaps he may state in regard to that. [To The Tribune stenographer.] Read the question.

Mr. Beach—Wait.

Mr. Fullerton—Did you get the idea, from what Mr. Tracy told you, that this paper was in the form of a letter written by you through Mr. Moulton? A. I got the idea?

Q. Did you get that idea? A. No, Sir

Mr. Fullerton—Very well; that is an answer to my question.

Q. Then, Mr. Beecher, where did you get the information from that enabled you to say, as you did in the letter of June 1, 1873: "The *agreement* was made after my letter through you was written?" A. I don't hold that that was the accurate language.

Mr. Fullerton—One moment. I ask you a question.

Mr. Beach [to the witness]—You mean to disclaim that language? A. No, I don't mean to disclaim the language; I mean to disclaim an idea that I have not been allowed to tell.

Mr. Fullerton—I ask you where you got the information which enabled you to say that? A. I cannot say.

Q. I ask you this question, whether it was not from a recollection of the fact that you did write that letter through Mr. Moulton? A. No, Sir, it was not.

Q. Then, tell me where you got the information that enabled you to say that. A. I cannot tell you.

Mr. Fullerton—Very well.

Mr. Beach—Leave it there.

Mr. Fullerton—We have got that.

Q. Now, when was it you saw Mr. John Russell Young in regard to that paper? A. In the Summer of 1874.

Q. Do you recollect the month? A. I do not, positively, but I think it was in July.

Q. And where did you see him? A. At my house.

Q. In Brooklyn? A. Yes, Sir.

Q. Did he offer you a copy of the paper? A. He did not.

Q. Did he offer to read the paper to you? A. He did not.

Q. Did he offer in any way to make known the contents of that paper to you? A. He did not.

Q. Did he offer in any way whatever, through his own agency or through the agency of any other person or persons, to put you in the way of getting at the exact contents of that paper? A. He did not.

Q. Did you not tell Mr. John Russell Young, in substance, that you didn't wish a copy of that paper, or that you didn't wish to see it, or that you didn't wish to learn its contents—you wanted to have it said upon the trial of the case that you had never seen it until it was produced in court? A. I don't recollect saying any such words to him.

Q. Did you say that to him in substance? A. I do not think I did.

Q. Will you say you did not say it? A. I say, according to the best of my recollection, I did not.

Q. Did he not profess to have with him what purported to be a copy of that letter? A. He did not.

Q. Did he tell you that he had seen a copy of it, or the letter itself? A. He told me that he had seen an original document.

Q. Of yours? A. Of mine; that is, signed as an original document, represented to be mine.

Q. Did he tell you that he had examined your signature to that document to see whether it was genuine. A. He did.

Q. And did you understand him as referring to the letter of Jan. 1, 1871? A. I did.

Q. Did he tell you where he had seen it. A. He did.

Q. Did you then deny its authenticity? A. I did not.

Mr. Beach [to Mr. Fullerton]—Or disclaim it in any form.

Mr. Fullerton—In any of the conversations you had——

Mr. Beach—With Mr. Young?

Mr. Fullerton—Either with Mr. Young, or with your brother, or with Mr. Claflin——

Mr. Beach—With Mr. Young.

Mr. Fullerton—Did you disclaim the authenticity of that letter? A. I don't remember; I did not to Mr. Young.

Q. You are sure of that? A. Yes, Sir.

Q. Did you say that in substance to Mr. Young without reference to the trial? A. I had no conversation with him about the trial.

Q. Did you say that you didn't want to know the contents of the paper at all—wanted to be in a position to say you didn't see it? A. I don't think I did.

Q. Nothing of that kind? A. Nothing of that kind that I can recall.

Mr. Fullerton—Now, Mr. Beecher, I call your attention to this first statement of yours, dated July 15, 1874. [To Judge Neilson.] If your Honor please, that is a long document, and it will occupy more time than we have left.

Judge Neilson [to the jury]—Get ready to retire, gentlemen. Please be here to-morrow morning at 11 o'clock.

Mr. Mallison [the Clerk]—The court stands adjourned until to-morrow morning at 11 o'clock.

The court thereupon adjourned until 11 o'clock on Thursday.

SIXTY-SIXTH DAY'S PROCEEDINGS.

ADJOURNMENT UNTIL APRIL 19.

MR. FULLERTON ILL—AN ATTACK OF VERTIGO WITH FEVER.

THURSDAY, April 15, 1875.

The great crowd assembled to-day to hear the further cross-examination of Mr. Beecher was disappointed at an adjournment in consequence of the illness of Mr. Fullerton. He was attacked on the night of the 14th with vertigo, to which he is subject; and yesterday when a TRIBUNE reporter saw him was suffering from fever. In view of his condition it was suggested that the court should adjourn until April 19, and to this Judge Neilson consented.

THE PROCEEDINGS—VERBATIM.

THE COURT ADJOURNED TO MONDAY.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Beach—If your Honor please, I am very much pained to say that Mr. Fullerton does not feel well enough to proceed with the further examination of Mr. Beecher to-day. He is, as your Honor knows, subject to attacks of vertigo, and has suffered from one of them during the pendency of this trial. He has striven very hard to force himself to a continuation of his duty, and is now in the ante-room, but feels himself in such a condition that he would expose himself to a serious catastrophe if he should endeavor further to labor in the case during the day. I have consulted with our learned friends upon the other side and they are very cordial and emphatic in the expression of their wish that Mr. Fullerton should consult his own physical condition, and it has been suggested between us whether it would be proper to adjourn simply for the day, until to-morrow morning, or, as we are near the close of the week, to take a recess until Mondaynext. My own opinion is, that the condition of Mr. Fullerton is such that it would be very doubtful whether he would be fit to proceed with the trial to-morrow. I, however, submit that entirely to the wishes of my learned adversaries and to the discretion of your Honor, expressing, however, my strong conviction that it would be desirable on his account to take a recess until Monday next. I would very gladly, Sir, undertake the discharge of his duty, and to pursue myself the further examination and endeavor to close it without his presence, but there are two reasons which dissuade me from that course. The first is, that I have not prepared myself by examining the minutes of Mr. Fullerton's preparation for cross-examination, nor do I myself feel as if it would be safe for me to undertake that duty.

Mr. Evarts—If your Honor please, it is well understood in our profession and by the bench that a lawyer is under every motive to carry his exertions to the extreme of endurance and exposure, and I have no doubt that Mr. Fullerton has had that disposition. But we cannot on our side be at all insensible to the utter impropriety of a lawyer who finds himself, in the progress of a case, exposed to be reduced in strength and health, going on under any extraneous considerations. It does not advance the cause; it does not improve the prospects of getting through to go on when the result may be a serious impairment of health. And under those circumstances we think on our side that Mr. Fullerton and his associates should regard really, entirely, the condition of his health, and in respect to the length of adjournment should consult that consideration also.

Judge Neilson—Then we will adjourn until Monday morning at 11 o'clock, gentlemen.

The Court then adjourned to Monday.

SIXTY-SEVENTH DAY'S PROCEEDINGS.

MR. BEECHER AND EX-JUDGE FULLERTON AGAIN FACE TO FACE.

RESUMPTION OF THE CROSS-EXAMINATION—EXPLANATIONS OF THE ALLEGED CLANDESTINE CORRESPONDENCE.

MONDAY, April 19, 1875.

The knowledge that the crisis of the great trial had been reached, brought together a crowd that packed the Brooklyn City court-room. The corridors leading to it were thronged with a noisy crowd that fought for admission almost desperately whenever the door was opened for those who were entitled to enter. During the recess, a dozen men taking advantage of a temporary opening of the outer door, rushed in, and attempted to push their way into the court-room. The doorkeeper rallied his assistants, and a lively scuffle ensued before the intruders could be expelled. On the bench, with Judge Neilson, sat an unusual number of spectators, among whom were the Hon. Thomas H. Nelson, of Indiana, formerly United States Minister to Mexico; the Hon. William C. Williams of Syracuse, N. Y.; the Hon. E. A. Farrington of New-York, Judge John L. Thompson of Chicago, Judge David A. Depue of Newark, N. J.; Judge D. S. Wilson of Iowa, the Hon. Hendrick B. Wright of Pennsylvania, the Hon. R. S. Armstrong of Cuba, N. Y.; J. W. Griffith of Newark, N. J.; A. C. Davis of New-York, and Jushie Yoshida Kiyonari of Washington, D. C., Envoy Extraordinary and Minister Plenipotentiary of Japan to the United States. In the audience-room sat the Rev. Edward Eggleston, the Rev. Thomas Armitage, D. D.; the Rev. Henry M. Storrs, D. D.; Col. Henry Beecher and Mrs. Henry Beecher, and many others. Mrs. Tilton was not present.

Mr. Beecher, before the court opened, stood for several minutes in earnest consultation with some of his counsel, while Mr. Tilton sat near ex-Judge Morris, busily making notes. Upon taking the stand Mr. Beecher bowed low to the Judge. He held in his hand a small bouquet of delicate flowers.

In resuming the cross-examination Mr. Fullerton who exhibited at first his wonted courtesy of manner and softness of voice, but perceiving what he considered to be evasion in the witness's replies, he assumed a sterner demeanor, and put his questions rapidly and in a harsh tone. These tactics were not without their effect on the witness, who stumbled and hesitated in his speech more than he is accustomed to do. Whenever the witness appeared to hesitate in answering, Mr. Tilton, who sat facing him, would look sternly into his face. There were several passages at arms between the witness and Mr. Fullerton, the former desiring to extend his answers beyond the simple words "Yes," or "No," while the skillful cross-examiner insisted on having short replies. Once Mr. Beecher, who seemed to feel hampered by this mode of answering, said half-reproachfully, "Mr. Fullerton, I want to get at just what you want, and if I seem sometimes to evade you it is because I am either dull or am anxious to tell the truth."

The cross-examination was intended in the first place to draw from the witness what he considered the charges against him to have been at the time of the interview between himself, Mr. Tilton, and Mr. Moulton at the latter's residence in January, 1871, and at what time he became aware that adultery was charged. The details of that interview, of the statement prepared soon after for Mr. Tilton at Mr. Moulton's suggestion, of the circumstances under which the letters of Feb. 7, 1871, were written, and of the interviews between himself and Mr. and Mrs. Tilton in 1871, were exhaustively gone over; but the witness, without repeating the same words, gave substantially the same account of these circumstances that he had on the direct examination. He understood that he was charged with improper or wicked proposals to Mrs. Tilton, not by Mr. Tilton personally, but by Mrs. Tilton in a letter which her husband showed him. Personally he had never denied the charge to Mr. Tilton. Just before the close of the afternoon session Mr. Fullerton read from the direct examination of Mr. Beecher the passage describing the interview with Mr. Tilton in January, 1871, in which after stating the substance of Mr. Tilton's charges against him, he used these words: "Then he went on to say that I had not only done all this but that I had made overtures to his wife of an improper character." A similar passage from Mr. Beecher's statement before the Examining Committee last Fall was also read. Mr. Beecher admitted the inconsistency of these statements with the declaration he had just made that Mr. Tilton had not charged him with wicked proposals to his wife except through her confession, and said that if his testimony on the direct examination contravened what he now said, it was not what he intended to say, and needed correction. Several of the alleged clandestine letters of Mr. Beecher and Mrs. Tilton were again considered. Mr. Fullerton in reading

these letters exerted his elocutionary powers, and the auditors listened with undiminished attention. Mr. Beecher in explaining the equivocal passages had the air of a man who was wearied with having to tell over and over again what was intended to be expressed by words which to him seemed clear as daylight. He steadily asserted that he had no recollection of what meaning he had attached to some of these passages at the time when he received the letters.

In describing the interview between himself and Mr. and Mrs. Tilton, in which they kissed one another "all round," Mr. Beecher said that Mrs. Tilton kissed him after kissing her husband. "Did you make no objection?" asked Mr. Fullerton. "No, I did not," replied the witness, stammering and smiling in a way that caused the audience to break out laughing.

At another time Mr. Evarts had said that he thought counsel might get along without scuffling. A tilt occurring soon afterward, he continued, "that is some of the scuffling I referred to." "Well, Sir," replied Mr. Fullerton quickly, "you are one of the scufflers."

THE PROCEEDINGS—VERBATIM.

The Court met at 11 o'clock, a. m., pursuant to adjournment.

Judge Neilson—Will the gentlemen please keep quiet? Are you ready to proceed, gentlemen?

Mr. Beecher was recalled, and his cross-examination resumed.

INTERVIEW AT MR. MOULTON'S HOUSE.

Mr. Fullerton—Mr. Beecher, I now come to the 3d of January, 1871, and call your attention to an interview had with Mr. Moulton and Mr. Tilton at Mr Moulton's house. How did it happen that you went to Mr. Moulton's house on that day? A. I have no distinct recollection of the reasons; I presume it was simply to make a call upon him.

Q. Don't you remember whether or not it was in pursuance of an appointment? A. I don't remember that it was in pursuance of an appointment.

Q. Had Mr. Moulton reported to you, before you went to his house on the 3d of January, the effect which the return of the retraction had upon Mr. Tilton? A. I do not now recall anything of the kind, Sir.

Q. Now, whom did you first see on the 3d of January, when you entered Mr. Moulton's house, aside from the servant? A. Mr. Moulton.

Q. In his room? A. In his room.

Q. What conversation occurred between you and Mr. Moulton before Mr. Tilton came in? A. It was a general conversation, and one in which he spoke—but I cannot recall the particulars of what he said—in respect to Mr. Tilton and his state of feeling; and I spoke to him also in confirmation of what——

Q. Please tell us what you said, as well as you can, Mr. Beecher? A. Well, I expressed my great sympathy for Mr. Tilton and my great regrets for the circumstances which had been developed, in which I had been an actor, and for the injury that I had done to him, and for, especially, the distress and trouble that he had in his own house and family, and expressed myself very strongly as being an unwilling injurer of Mr. Tilton.

Q. Did you express in substance the apologies which you had made on the 1st of January in Mr. Moulton's presence? A. Well, I went over the same topics—some of them, Sir—but I did not formulate them.

Q. In substance were your apologies or explanations the same as on the 1st? A. They were substantially the expression of the feelings that I had, only modified by the reflection of a day or two.

Q. Did you regard the apology which you made on the 1st of January, and those which you made afterward on the 3d of January, as meeting the charge which had been preferred against you by Mr. Tilton on the night of the 30th of December previous? A. As meeting the charge of the alienation of his wife's affections, of bringing discord and distress into his house.

Q. You did not regard the apology then as meeting the other charge of undue solicitations? A. The other charge of undue solicitations——

Q. Did you regard the apology as meeting that? A. My apology that I sent to him, having denied the other, was for that which I believed to be true.

Q. Your apology, then, was not designed to meet the charge of undue solicitations, was it? A. My apology had no concern—it neither was nor was not designed to meet that; that was not in our conversation.

Q. Was anything said about that on the 3d. A. I don't recall that there was a word said specifically about that on the 3d.

Q. You had not denied it then to Theodore Tilton? A. Personally I never denied it to Theodore Tilton, except on the 1st.

Q. You had never sent any denial by any third person to him as I understand you to say? A. I had——

Q. Had you? A. I had explicitly——

Q. Had you sent any denial by any third person to Mr. Tilton? A. I had sent by Mr. Moulton an explicit denial of that charge on the 1st of January.

Q. Tell me when you sent it? A. On the 1st of January.

Q. In what words did you frame it? A. I cannot tell you.

Q. Did you not tell me the other day that you did not send any such explicit denial at all? A. I told you——

Q. Did you not tell me that? A. I did not, in that sense.

Q. Very well. Now, was the subject referred to on the 3d when Mr. Tilton appeared at Mr. Moulton's house? A. It was not according to my memory, Sir.

Q. When Mr. Tilton appeared in the room, please state what occurred? A. I only have a recollection that the conversation was interrupted; that he turned as if he would leave. My impression is that he hesitated as if he would not come in—that Mr. Moulton called him in; that he stated to him that I had been making some very —that I had been making remarks about him that he ought to hear, that he wished he might hear; and Mr. Tilton came to Mr. Moulton's side of the bed, I was sitting on the other, and I repeated to Mr. Tilton in substance this, that I had never supposed that I was doing any injury to his household, nor to him in his business relations; that it was the furthest from my thought of anything in the world; that in so far as I had unconsciously and unintentionally done injury to his wife, and through her to him, I very heartily was sorry for it, and I asked his forgiveness for it. That was the substance of it.

Q. Which of the two charges did you regard as the more serious, the undue solicitations or winning of his wife's affections? A. It depends upon what "serious" refers to.

Q. Well, refer it to whatever you please, and give me an answer. A. In so far as my own private feelings were concerned, the charge of alienation of a man's wife's affections from him would be about as poignant a suffering as I could have in one direction; but the charge of making improper advances, in so far as it affected my relation to the church and to the community, would be about as bad as it could be.

Q. How did it happen, then, that that subject was not mentioned in terms on the 3d of January? A. That is for them to answer.

Q. Well, it is for you to answer now, inasmuch as I put the question to you. A. I can not say.

Q. Why didn't you say something in regard to that charge, which affected your moral character and your standing in the community? A. I spoke of that of which I felt consciously at fault.

Q. Why didn't you vindicate yourself against the charge if you knew yourself to be innocent? A. The charge was not urged again.

Q. It had been urged, had it not? A. And it had been explained and denied.

Q. Had it been explained and denied at the time? A. Yes, Sir; if Mr. Moulton did what he promised.

Q. If Mr. Moulton did what he promised? A. On Jan. 1.

Q. What did he promise to do with reference—one moment, Sir—what did he promise to do on Jan. 1 with reference to the charge of improper solicitation? A. Specifically in regard to no one topic of conversation did he undertake—but he did undertake to represent to Mr. Tilton the whole state of my mind in regard to all that which had taken place on the evening of the 30th at his house.

Q. Well, you had made apologies on the 1st of January, had you not, as to the winning of his wife's affection? A. I had made——

Q. You had, had you not? A. Not in the strict sense, apologies.

Q. Well, whatever they were, whatever you have detailed here as the conversation on that day took place, did it not, with reference to the supposed charges? A. All the conversation had reference to the supposed state of affairs in his family.

Q. Well, why did you renew your apologies so far as the winning of his wife's affections was concerned on the 3d, without renewing your denial of the charge of improper solicitations? A. One was a charge that was false, and the other a charge that I supposed true.

Q. And the false charge you paid little attention to? A. As it was not urged again, I paid no attention to it.

Q. You waited for it to be urged again? A. Yes, Sir.

Q. Before you denied it? A. No, Sir; I do not deny things that are not urged, nor always those that are.

Q. Why didn't you say to Mr. Tilton on that day, when you met him face to face, "Sir, as to the improper advances, this charge is entirely untrue?" Why did you wait to have him repeat the charge before you said anything? A. I had come to that interview——

Q. Why did you? A. You are asking me and I am answering.

Q. I ask you why you didn't do that, in the light that you had then and there? A. In the light that I had then and there, I followed the circumstances of the interview; I took that just as I found it, as it was broken off with Mr. Moulton; we were talking together in respect to his business relations, and in respect to the difficulty between him and his wife, and the family, and my agency in it, and not about the charge of improper advances; and when Mr Tilton came in I said to him just what I had been saying to Mr. Moulton in substance.

Q. Did not Mr. Tilton say to you on the 3d, in substance, when Mr. Moulton asked him to accost you: "How can I speak to a man who has thus conducted himself?" In substance didn't he say that? A. He may have said something like that; I cannot give his words.

Q. Don't you remember that he did? A. No.

Q. Did you not state upon your direct examination that Mr. Tilton on that occasion said, "How can I speak to this man?" A. Well, I say now something of that kind.

Q. Yes, Sir. Well, didn't you suppose that this language of Mr. Tilton was based upon the idea that you had been guilty of improper advances, as well as winning his wife's affections? A. It did not cover improper advances and it did cover——

Q. Did you not suppose, at that time? A. I did not

think anything about it; I was thinking of that which rested most on my mind.

Q. Not the defense of your moral character? A. Yes, Sir; I considered my moral character involved in winning his wife's affection.

Q. Ah, but you did it unconsciously, didn't you? A. I did it unconsciously when I should have been conscious.

MR. BEECHER DENIES WINNING MRS. TILTON'S AFFECTIONS.

Q. Had you ever seen anything or heard of anything from Mrs. Tilton, either in word or gesture, that intimated to you that she was placing her affections upon you? A. Not during the time of our acquaintance.

Q. How did you think then that you then discovered what was not visible? A. I ought to have been more sensitive to things that I did not see, which very likely existed.

Q. Can you now in looking back upon your life with Mrs. Tilton for some years prior to the 30th of December, 1870, see anything which should have put you upon your guard? A. I can now recollect many conversations that I should not have had if I had supposed that they would have wrought as they have worked—as I suppose they have worked.

Q. Now can you tell us what they were? A. I cannot tell you what they were.

Q. Can you give us the substance of them? A. I can tell you of the expressions which I made of great pleasure in the way of her household, and what a place of peace it was, and how I was glad to resort to it, and that it was where people could not find me; I was not run down by people that were at my door all the time; I spoke to her also in regard to many of my books and my works; I spoke to her in great admiration of some of her letters which she showed me, of her own, which she had written, one in particular; and a variety of such things; it was entering into her life, and in some sense giving her an insight into mine,

Q. How long did that interview last on the 3d? A Well, I cannot say; I should say half an hour—half or three-quarters; might have been a little more or a little less.

Q. Well, in looking back, now, upon those interviews with Mrs. Tilton, are you enabled now to discover anything in her conduct that communicated to you that she was transferring her affections—you have told us what you said and what you did? A. Well, I do not understand now the question.

Q. In looking back to those various interviews—of which you have given us a summary—with Mrs. Tilton, what are you enabled now to see in her conduct that indicates to you that you ought to have been more circumspect? A. I do not recall anything in Mrs. Tilton's conduct prior to—anything—I discover now no act, and I recollect no word, of Mrs. Tilton's that would indicate an overweening affection.

MR. BEECHER'S LETTER TO MR. BOWEN.

Q. At whose suggestion did you write the letter to Henry C. Bowen on the 2d of January, 1871? A. Well, it was, I suppose, both mine and Mr. Moulton's suggestion; it grew out of the conversation.

Q. Did it grow out of the conversation on the 1st? A. Yes—No, Sir—yes; the conversation on the 1st.

Q. And what did you say to Mr. Moulton with reference to a contemplated letter to Mr. Bowen? A. I do not recall it; all my recollection is that in discussing these stories, that he pronounced utterly false, that Mr. Bowen had told, and in commenting upon the addition to them that I had made, when he had stated his word of honor that they were false, and in regard to some that he knew, personally, that they were false.

Q. Now, will you state if you please what was your object in writing Mr. Bowen on the 2d of January? A. My object was to disabuse his mind of the impressions that I had left upon it, I supposed, by my statements.

Q. Was that all? A. That was all that I recollect now.

Q. You did not expect to effect any other object? A. I do not recollect; I do not now recall any other motive that I had than that, to right a wrong.

Q. You did not expect to do anything else than to remove any impression that you had made upon the mind of Mr. Bowen? A. So far as I recollect now that was my only idea.

Q. Was it not for the purpose of reinstating him in his lost position? A. I do not recall any such motive on my part.

Q. Well, how did it happen, if you were so overwhelmed with grief on the 1st, when you dictated or made suggestions to Mr. Moulton which caused him to write the letter called "The Letter of Apology," or "Contrition," when you were walking up and down the room in such mental agony and distress, weeping profusely, thinking that you were about to lose your intellect because of what you had done toward Mr. Tilton—how did it happen that on the next day when you wrote the letter to Mr. Bowen, you did not manifest some of that feeling; can you explain that? A. I was writing to Henry C. Bowen in one case, and I was talking to Mr. Tilton's representative in the other.

Q. Yes; let me read this letter:

BROOKLYN, Jan. 2, 1871.

MY DEAR MR. BOWEN: Since I saw you last Tuesday I have reason to think that the only cases of which I spoke to you in regard to Mr. Tilton were exaggerated in being reported to me; and I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare. I am informed by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us, that he knows of the whole matter about Mrs. B., and that the stories are not true, and that

the same is the case with other stories. To this I do not wish any reply. I thought it only due to justice that I should say so much.

You did not even want a reply from Mr. Bowen, it seems? A. I did not, it seems.

Q. Well, didn't you want to learn whether you did remove from his mind any impression that you made by what you said to him? A. I do not recollect that I did.

Q. Well, didn't you care? A. I do not recollect that that came into my mind at all.

Q. Well, didn't you care whether your letter effected the object or not? A. I do not recollect that I had any consideration of that kind.

Q. What good did you expect that letter would do to Mr. Tilton? A. It would take away the strength—whatever force there was in my statements to Mr. Bowen.

Q. Which was but very little, you say? A. But little, but whatever there was of them.

Q. Did you go to see Mr. Bowen? A. I did not.

Q. Have any interview with him, or correspondence with him upon the subject? A. None.

Q. And that is all that you said, and all that you did, in regard to the injury which you supposed you had inflicted upon Mr. Tilton through Mr. Bowen? A. I took it all back.

Q. Is that all you said or did? A. That is all that I said or did, as far as I recollect now.

Q. You sought no interview with Mr. Bowen? A. None at all.

Q. Sent no message? A. Sent no message.

Q. And had no correspondence other than the letter I have read? A. And had no correspondence other than that, so far as my memory now serves me.

CONVERSATION WITH FRANCIS D. CARPENTER.

Q. Do you know a gentleman by the name of Mr. Carpenter; Frank Carpenter, I think, he is called? A. Yes, Sir; I know a Mr. Frank Carpenter.

Q. Did you have any conversation with him, about the 1st of June, 1873, in regard to this difficulty? A. About the 1st of June——

Q. I refer to a conversation in Plymouth Church. A. I have but an indistinct recollection that I saw him there.

Q. Did you not say to him in Plymouth Church, on or about the 1st of June, 1873, in substance as follows: "Have you seen Theodore? He is going to publish my letter?" A. I do not recall any such expression.

Q. Are you enabled to say that you did not make use of that language? A. I do not recall it at all, Sir: according to the best of my recollection I did not.

Q. And in reply to that expression of yours do you remember of Mr. Carpenter's saying: "What of it?" A. No, Sir.

Q. And of your saying: "It will ruin me, and him, too; for he cannot rise upon my ruin?" A. I do not recollect any such thing, Sir.

Q. Then, I must ask you whether in such a conversation you did not mean by the phrase "my letter," the letter of January 1, 1871? A. I do not admit the conversation, and I cannot give an explanation to a conversation I do not admit.

Q. I understand you, however, that you do not deny positively that such a conversation was had? A. According to the best of my recollection there was no such conversation.

Q. Is that all that you will say upon that subject? A. That is all I can say, Sir.

Q. Do you recollect after this conversation, or after a conversation, that Mr. Carpenter walked with you to Mr. Moulton's house? A. I remember walking either to Mr. Moulton's, or to my own, one evening with Mr. Carpenter.

Q. One Sunday evening? A. I think it was either a Friday night or a Sunday; it was after some meeting; my impression is——

THE PROPOSED STATEMENT FOR MR. TILTON.

Q. I now call your attention to Exhibit No. 49, and ask you whether it is in your handwriting? [Showing paper to witness.] A. This is in my handwriting, Sir.

Q. I will read it, because I wish to ask you some questions in regard to it. [Reading.] "The statement of Mr. B. being read, and if striking favorably, then a word sent substantially thus to the Committee." The "Mr. B." referred to there, or mentioned there, is yourself isn't it? A. I presume so, Sir; I don't know.

Q. Had you not therefore prepared a statement to be read before the Committee? A. I don't know anything—what date this is, Sir; there is no date given to it.

Q. I am not speaking of the date; I am speaking of the substance of the thing. Don't you remember that, before writing that, you had prepared a statement for the Committee? A. No, I don't, because I don't know when this was written.

Q. Can't you tell by the contents when it was written? A. No; I think very likely it was written after the statement was in hand; it might have been written after the statement was given; I cannot give the date.

Q. Wasn't it written with reference to your statement bearing date July 15, 1874? A. I presume it was.

Q. Very well; that is satisfactory. Then the "Mr. B." mentioned there was yourself, wasn't it? A. I presume it was, Sir.

Q. And the statement referred to—wasn't it the statement that you had prepared for the Committee, and which has been given in evidence here? A. That doesn't follow at all.

Q. Well, I ask you whether it doesn't follow? A. I

cannot tell, Sir, unless you will tell me what the date of the document is; I cannot tell whether it refers to the statement that I meant to make or to the statement that I did draw up and make.

Q. Don't you know whether that refers to a statement that had already been drawn out—drawn up by you? A. I do not, Sir, nor does the document show it.

Q. Well, don't reason it. A. It was only a reason in the way of statement.

Q. Well, I don't want a reason in the way of statement, because there might be two opinions as to whether the document stated it or not, and I cannot stop to reason with you now. [Reading.] "I have been through years acting under conviction that I had been wronged, but was under the imputation of being the injurer. I learn from a friend that Mr. B."—that is Mr. Beecher, isn't it? A. I have already stated, Sir, that——

Q. There is another Mr. B. there, if you please? A. I think it very likely to be.

Q. Don't you suppose it was? A. I presume that it was, Sir.

Q. [Reading.] "I learn from a friend that Mr. B., in his statement to you, has reversed this and has done me justice. I am willing, should he consent, to appear before you with him, and, dropping the further statements which I felt it to be my duty to make for my own clearance, to settle this painful domestic difficulty, which never ought to have been made publicly, finally and amicably"——

Mr. Evarts—That ought to be "made public."

Mr. Fullerton—Yes—"which never ought to have been made public, finally and amicably"—for whom did you prepare that statement? A. I cannot state certainly, Sir. I have only a vague recollection of circumstances which led to some such counsel as is embodied in this.

Q. For whom did you prepare the statement? A. I do not know.

Q. Did you not prepare it for Mr. Tilton to make? A. I cannot say with certainty, but I presume so.

Q. Very well, wasn't it to be submitted to the Committee after your statement was sent in? A. I cannot state that it was, Sir.

Q. "The statement of Mr. B. being read, and if striking favorably, then a word sent substantially thus to the Committee"—what Committee did you refer to there? A. Well, Sir, I think you are all on the wrong track about this.

Q. What Committee did you refer to? You shall not get me on any other track for the present. A. The Investigating Committee.

Q. What Committee did you refer to in that statement?

Judge Neilson—Don't make observations, Mr. Fullerton.

Mr. Fullerton—I will not if the witness does not. He will not tell me that I am on the wrong track unless I put him on the right one.

The Witness—I made it merely as a suggestion, Mr. Fullerton.

Mr. Fullerton—I made the answer merely as a suggestion. Can you tell me what Committee you referred to when you penned that document? A. I presume that the Committee is what is called the Investigating Committee of Plymouth Church.

Q. Of Plymouth Church? A. Yes, Sir.

Q. Very well [reading]: "The statement of Mr. B. being read, and, if striking favorably, then a word sent substantially thus to the Committee"—you designed, did you not, that your statement should be read to the Committee before the statement referred to here was made, did you not? A. Will you be kind enough to say that again, Sir?

Q. Let me read it again [reading]: "The statement of Mr. B. being read, and if striking favorably, then a word sent substantially thus to the Committee"—you designed before the word was sent to the Committee there referred to, that this statement of yours should be read, did you not? A. This statement designed it.

Q. The statement designed it—very well; and that was a statement you designed for Theodore Tilton to make? A. I did not.

Q. Where were you when you drew that? A. If I recollect aright I was with Mr. Moulton.

Q. For what purpose did you draw it? A. Suggested by him—drawn up to see how it would look and how it would act.

Q. Well, have you made up your mind how it looks by this time? A. Well, it looks very suspicious, Sir, as you handle it. [Laughter.]

Q. Yes, I think it does. Was the statement sent to the Committee? A. My statement was sent to the Committee.

Q. I show you the statement of July 15, 1874, and ask you whether that note was not written prior to the writing of that statement? A. I cannot say, Mr. Fullerton.

Q. Now, on your direct examination, did you not say that you read this statement, "Exhibit No. 49," to Mr. Moulton? A. I don't recollect what I said; whether I said I read it to him—I unquestionably did read it to him.

Q. You did read it to him? A. Yes, Sir.

Q. Where? A. I cannot recall; I say I unquestionably did.

Q. Was it drawn, then, at your suggestion, or at his? A. His.

Q. Well, were you willing such a statement should be made by Mr. Tilton? A. I was willing to consider it, but I never perfected it.

Q. Were you willing that that statement should be made by Mr. Tilton? A. I do not recall whether I was or not.

Q. Well, what earthly object had you in drawing it up? A. To see how it was, as a basis for consideration.

Q. Very well; after you drew it up, and formed a basis for consideration, did you consider it? A. I considered it, but nothing ever came of it.

Q. Were you willing that it should be made by Mr. Til

ton to the Committee? A. I cannot say whether I was or not, from any recollection that I have.

Q. Have you no impression upon this subject? A. A vague impression.

Q. When you drew that paper, did you know that the charge against you was adultery? A. I do not know it.

Q. Had you never heard of it up to that time? A. I think that the first that I heard——

Q. No, no, no; I don't ask to know the first you heard. A. I don't know what time that was.

Q. With reference to the date, and judging from the contents of the paper, did you know, when that paper was drawn, that the charge against you was adultery? A. I cannot form any such judgment as that from an undated document which was merely a tentative document, never perfected.

Q. When you drew the paper of July 15, did you know then what the charge was? A. Of July 15?

Q. It is before you A. Yes, I know it is, Sir; there was—I can't say unless I can refresh my memory as to dates.

Q. Well, I don't prevent you from doing that in any way you can. A. Well, I can only do it by ascertaining what was the time in which Mr. Redpath came to see me at Peekskill.

Q. That is the 13th? A. The 13th?

Q. Yes, according to his testimony. A. And this was on the 15th?

Q. Yes. A. Of course, then, I had heard that they proposed to add that to the former charges.

Q. Why didn't you allude to it then in that statement? A. I considered the statement of the 15th as sufficient, Sir.

Q. How, Sir? A. I considered the statement of the 15th as not an argument at all.

Q. A statement of facts? A. It was a statement that should put in possession of the Committee what were the original grounds of the difficulty.

Q. Why didn't you state to that Committee, when you undertook to give them information as to this difficulty, what the charge was against you? A. The charge had not been made then against me.

THE CHARGE OF ADULTERY.

Q. Hadn't you heard from Mr. Redpath that you were to be charged with adultery? A. From Redpath I heard—I heard from Mr. Redpath that when Mr. Tilton said he should bring adultery, Mr. Moulton did not knock him down, but declared that he should do no such thing.

Q. You heard that from Mr. Redpath? A. I did.

Q. Well, you haven't stated it yet in your examination. A. But Mr. Redpath did.

Q. No, I beg your pardon, he did not. A. Substantially that.

Q. He said he would smite the one who crucified the other; that is what he said. A. Yes.

Q. Now, did you write any statement prior to this one of the 15th of July, 1874, for the Committee? A. No, Sir, I think not.

Q. Did you prepare any one, or part of one, before this? A. Not that I recollect, Sir.

Q. Is this the only one that you wrote out at that time? A. The only one that I have any recollection about now.

Q. Then, pray tell me to what statement this "Exhibit No. 49" could refer save to this one? A. I presume it referred to that one; I have had the honor of saying that three or four times.

Q. Well, then, in this statement, why was not reference made to the charges which then existed against you? A. The statement itself tells you what I proposed to do.

THE STATEMENT PREPARED ONLY FOR CONSIDERATION.

Q. The statement you prepared here for Mr. Tilton? A. This one I did not prepare for Mr. Tilton; I prepared it for consideration.

Q. Well, when you prepared it for consideration, why didn't you state in it what the charge was against you? A. Well, it was a sketch, or a note, made up in consultation with Mr. Moulton, and for me to consider whether it was best for me to make such a statement.

Q. I understand all that, and there is no necessity for repeating it. You must come back to the question, Why, when you prepared that for consideration, you did not state the charge that then existed against you? A. I prepared it on his suggestion, and I put into it what he suggested in order that I might form a judgment of it.

Q. What Moulton suggested? A. Yes, Sir.

Q. And it was no suggestion of yours? A. No, Sir.

Q. It did not represent your feelings? A. It did not that I recollect now; I do not remember what I thought about it at the time.

Q. Did you make any objection to it? A. I made no objection so far, because it was a thing to be considered.

Q. Did you make any objection to it? A. It was a document for consideration——

Q. Did you make any objection then? A. And any objection——

Q. Did you make any objection to it, Mr. Beecher? A. I made no objection to the drawing up of the document.

Q. Did you make any objection to the sentiments or statements contained in it? A. Not on that occasion that I recollect.

Q. Now, what did you do with this card after you wrote it? A. This?

Q. Yes. A. I don't recollect what I did with it.

Q. Didn't you give it to Mr. Moulton? A. I don't recollect.

Q. Will you swear that you did not give it to Mr. Moulton? A. I will not.

Q. Did you not give it to Mr. Moulton with the request that he should consult Theodore Tilton, and learn from him whether he would consent to make such a statement? A. I don't think I did.

Q. Will you say that you did not? A. I will say that my impression is that Mr. Moulton says: "Now, let me take that; you think about it, and I will show it to Mr. Tilton."

Q. And then did you separate? A. I do not recollect, Sir.

Q. How? A. I do not recollect.

Q. Well, did he take it under those circumstances do you think? A. I don't know, Sir.

Q. Well, what is your best impression upon the subject? A. I have no impression.

Q. Have you any doubt but that Mr. Moulton took it at that time to show it to Mr. Tilton? A. I have no evidence of any kind whatever; I don't recollect ever having spoken of it again, nor of having him speak to me.

Q. Well, you think that Mr. Moulton made use of that language—"Let me take it and show it to Mr. Tilton," do you? A. I think very likely; I have an impression, but I won't swear even to that.

Q. Well, you didn't object, did you? A. I don't recollect that I did.

Q. Was no further attention paid to that card after that? A. Nothing.

Q. Now, don't you recollect that you sent for Mr. Moulton to consider this card? A. I do not.

A LETTER TO MR. MOULTON.

Q. Look at the paper I now show you, and say whether you did not write that to Mr. Moulton for the purpose of getting his consideration of this card [showing paper to witness]? A. I don't think it is, Sir—don't think it does at all.

Q. Do you remember what that note was written for? A. No, Sir.

Mr. Fullerton—offer that in evidence. [Note shown to defendant's counsel.]

[Reading]:

JULY 16, '74, Thursday, 12—.

MY DEAR FRANK: I need to see you. Don't fail me—say 4 to 5 this p. m. Yours, ever, H. W. BEECHER.

[Marked Exhibit 118.]

Q. Now, what was that note written in relation to? A. Heaven may know, but I do not.

Q. Well, I am not examining any one else but yourself at present. A. I absolutely know nothing about it.

Q. Wasn't it in relation to this difficulty? A. I don't think it was, Sir.

Q. What other business had you with Mr. Moulton at that time? A. It might have been any of twenty things.

Q. Well, will you tell me what other business you had with him at the time that should call for such a note? A. I don't know, Sir; I cannot recollect anything.

Q. Well, had you, in fact, any other business with Mr. Moulton except this domestic difficulty? A. Why, we had—this was the predominant topic, but this topic was large enough for me to have wanted to see him on twenty points.

Q. Was this one of the points? A. I don't know.

Q. Can you say it was not? A. I cannot say anything about it.

Q. Cannot you recall anything now, Mr. Beecher, in regard to which you wanted to see Mr. Moulton, except it was this difficulty between yourself and Mr. Tilton at that time? A. I cannot sufficiently recall what time to say that I remember nothing—that there was nothing—but I do not remember——

Q. That is not an answer to my question. Can you now recall anything that existed at that time that made it necessary that you should write this note to Mr. Moulton except it was the difficulty that was then in hand? A. I do not recall anything that specially was in hand but this domestic trouble.

Q. I do not ask you to recall specifically anything; can you recall anything generally that was on hand at that time except the domestic difficulty that occasioned the writing of that? A. The difficulty—I presume that that note to Mr. Moulton had regard to some one or other of the developments concerning this difficulty.

Q. Well, that is enough. A. Somewhere——

Q. That's all I wanted. A. Well, I am very anxious to know just what you want, and if I seem sometimes to wander, it is not because I want to evade you or to get rid of the truth, but because I am either dull or because I am anxious to tell the truth.

THE PROPOSED SETTLEMENT OF THE DIFFICULTY.

Q. Now, I read from this Exhibit No. 45. [Reading]:

I have been through years acting under the conviction that I had been wronged, but was under the imputation of being the injurer.

Did you learn that from Theodore Tilton? A. Learn what?

Q. What I have read. A. Do you mean that I got that sentence and put it into that card from him?

Q. Did you learn the fact from him that he had been for years acting under the conviction that he had been wronged, but was under the imputation of being the injurer? A. I do not recall that I learned that specially from him.

Q. [Reading]:

I learn from you that Mr. B. in his statement to you has reversed this, and has done me justice.

From whom did you get that statement or idea? A. Well, I got pretty much the whole of it from Mr. Moulton.

Q. And recorded it just as he told you? A. No; I

threw it into shape, according to his suggestion, to express this idea and that idea.

Q. [Reading]:

I am willing, should he consent, to appear before you with him, and, dropping the further statements which I felt it to be my duty to make for my own clearance, to settle this painful domestic difficulty, which never ought to have been made public, finally and amicably.

Were you willing that Theodore Tilton should make such a statement as that, and were you willing that the difficulty should be settled in that way? A. After the Committee was appointed, I was——

Q. Now, Mr. Beecher, if you please, answer my question. I am talking about the time when this was written. A. I cannot tell you what my trains of thought operated on; I cannot fix the date.

Q. Were you willing when you wrote this, without regard to the date, that the difficulty should be thus settled? A. I was willing that the difficulty should be kept still before the Committee.

Q. Now, Mr. Beecher, if you please, were you willing that the difficulty should be settled as herein expressed? A. I was not willing that the difficulty should be settled in any other way than by an investigation that should satisfy that Committee.

Q. Were you willing that it should be settled as herein expressed? A. That—I cannot answer that question, because it is not part and parcel of any of my record of remembrance.

Q. If you were unwilling, why didn't you so state to Mr. Moulton, if he dictated this to you? A. This was not a matter of discussion between us, but of suggestion and reflection.

Q. Well, if he was to take it to Mr. Tilton to see if he was willing, and if you were unwilling to settle the difficulty in that way, why didn't you make it a matter of discussion? A. Because at that time I had ceased to have confidence in the generalship of Frank Moulton, and I knew that there was coming a tribunal where this thing would be sifted.

Q. Then you were willing to draw up this paper, under his suggestion that it should be settled in this way, after you had lost confidence in his generalship? A. Many and many a suggestion I considered——

Q. Were you, after you had lost confidence in his generalship, willing to draw up in writing what he dictated, embracing the terms of settlement? A. I was perfectly willing to put in writing what he suggested.

Q. And were you not willing, when you put that in writing, to have this difficulty settled in that way? A. I was not.

Q. And yet you put it in writing? A. I put it in writing, evidently.

Q. And you think you gave it to him to show to Mr. Tilton for him to consider? A. I think I gave it back to him for consulting with Mr. Tilton, or with anybody else.

Q. And at the same time when he was going to consult Mr. Tilton to see whether he was willing to agree to it, you were unwilling to agree to it? A. I did not believe it would come to anything.

Q. Were you willing to drop the whole thing and agree to the settlement in this paper, which you gave him and which you put in writing at his suggestion? A. He gave me a suggestion that it should be settled in that way, and I wrote it off to see how it would look, and gave it back to him.

Q. At the same time in your heart you did not mean to settle it in that way? A. At the same time I didn't believe it would be worth that. [Snapping his finger and thumb.]

Q. Tell me, were you willing to accept these terms of settlement at the time these papers were drawn? A. I was not if they implied a lack of investigation.

Q. If they implied a lack of investigation? Answer my question; don't try to evade it.

DIFFICULTIES BETWEEN LAWYERS.

Judge Neilson—The word "evade" was used to a witness early in the case by one of the learned counsel, and the counsel then was requested not to use it.

Mr. Fullerton—How, Sir!

Judge Neilson—The word "evade," I say, was used by some of the counsel early in the case to a witness——

Mr. Beach—That is me, Sir.

Judge Neilson—And the counsel was requested not to use it. The counsel probably forgot that request.

Mr. Fullerton—I did not forget it, Sir. I hope I never will forget a word from the Court when it is necessary.

Judge Neilson—It was not addressed to you at that time; but you are requested to accept it as addressed to you now.

Mr. Fullerton—I will, Sir; but at the same time I must confess I think the word was properly used. I asked Mr. Beecher three times in succession a distinct and emphatic question, and three times I did not get an answer.

Mr. Evarts—You got an answer.

Judge Neilson—You should remember that you are examining a layman, and that he is in a new atmosphere here.

Mr. Fullerton—Well, Sir, he talks more than half the time.

Judge Neilson—Well, it is his profession to talk.

Mr. Evarts—This is not a trial of wits. We are engaged in a solemn proceeding. The counsel has very great privileges and the witness has very solemn duties, and certainly we ought to be able to proceed without this scuffling.

Judge Neilson—That is understood.

Mr. Fullerton—Well, Sir, if those observations of the counsel were addressed to the witness, they are all well enough, and I hope they will have their fruits. [To the

witness.] Now, be kind enough to tell me, Mr. Beecher, whether, when you delivered that paper——

The Witness—I wish to ask his Honor whether I am under rebuke from the Court.

Judge Neilson—No, Sir. The observation that I made was addressed to the counsel. The observation which the counsel has just made was a suggestion that Mr. Evarts's remark might be beneficial to you. I don't know about that, however.

Mr. Evarts—That is a part of what I call scuffling.

Mr. Fullerton—Well, you were one of the scufflers.

Mr. Evarts—Oh, no.

MR. BEECHER'S UNDERSTANDING OF THE PROPOSED SETTLEMENT.

Mr. Fullerton—Q. When you gave that statement [Exhibit 49] to Mr. Moulton to show to Mr. Tilton, were you willing that the difficulty should be settled as indicated in the paper itself? A. An answer yes or no cannot make the truth appear. I cannot answer that question yes or no, without explaining.

Judge Neilson [To the witness]—Answer in that way, Sir. A. The paper was a suggestion of a settlement, which implied, as I understood it, that Mr. Tilton should clear me before the Examining Committee in some manner; and I was quite willing to have any clearance from him before the Examining Committee that should satisfy them.

Q. Well, were you willing, then, that the whole thing should be dropped if he cleared you before the Examining Committee? A. I was willing to have it dropped whenever the Examining Committee——

Q. Answer my question; were you willing to have the whole investigation dropped if he cleared you before the Committee? A. If he satisfied the Committee.

Q. If he satisfied the Committee? A. Yes.

Q. Very well. Did you expect him to satisfy the Committee by making this statement: [Exhibit 49.]

"I am willing, should he consent, to appear before you with him, and, dropping the further statement which I felt it my duty to make for my own clearance, to settle this painful domestic difficulty, which never ought to have been made public, finally and amicably."

A. Mr. Fullerton, that would depend entirely—this was not any proposition of mine; it was not a determined document——

Q. That is not an answer to my question. A. I am coming to it. I was perfectly willing if he would go before the Committee and make such a statement as exonerated me, in their judgment, to stop all further proceedings and statements.

Q. And was that paper drawn with a view to have it disposed of in that way? A. That was Mr. Moulton's plan, as I understood it.

Q. Wasn't it your plan? A. No, Sir.

Q. Were you willing that that plan should be effectuated when you handed that paper to Mr. Moulton? A. I was willing——

Q. Were you willing that that plan should be effectuated when you handed that paper to Mr. Moulton? A. As I have explained it, I was.

Q. Look at the paper I now show you and say in whose handwriting it is, if you know. A. I don't know, Sir. I don't think I ever saw it whatever.

Q. Wasn't that written at your house, in your presence? A. Not that I recall, Sir.

Q. Is it not written on paper such as you use at your house? A. Well, yes, I use some such, or have used it, at various times; it is what we call common French note paper.

Q. Do you recognize it as having been written in your presence? A. No, Sir.

Q. There is one question that I omitted to ask in reference to the interview of January 3. When Mr. Tilton manifested an indisposition to address you, and Mr. Moulton addressed him, didn't Mr. Moulton say to him, in substance, "You ought to be satisfied with the letter which Mr. Beecher wrote to you through me?" A. No, Sir, nothing like it; he repeated to him—the language was—the language had reference to the statements that I then and there made—that I had made an apology such as one gentleman could make to another, and that one gentleman could honorably accept from another.

Q. And the former letter was not referred to? A. No, Sir.

THE AGREEMENT TO WRITE THE LETTERS OF FEB. 7, 1871.

Q. I call your attention now to the letters of Feb. 7, 1871. [Exhibits 9, 10 and 11.] I wish you to state what preceded the writing of those letters which caused them to be written? A. Well, Sir, the question of the establishment of Mr. Tilton in business was a question uppermost in our minds, largely, and the restoration of harmony and peace and comfort in his family as an indispensable condition of doing good work. I had learned from Mr. Moulton that Mr. Tilton's wife was not doing her part, and that he was subject, aside from all other harassments and anxieties, to be received with sullen looks and distressful complaints at home, and that Mrs. Tilton had said that Mr. Tilton and Mr. Moulton and I were consulting together for the interests of Mr. Tilton, and leaving her quite out; and that it was indispensably necessary, she thought, that there should be some influence brought to bear upon her, that she might do her share in the rebuilding of the family and of affairs; and my influence with her was invoked in order to lead her to feel that Mr. Moulton, who counseled me, was a good counselor for her likewise; and on that suggestion and in that spirit those letters were written.

Q. At that time you were laboring under the impres-

sion that you had won this lady's affections, were you? A. I was.

Q. Was anything said as to the feeling which Mr. Tilton entertained toward you at that time? A. Was anything said—where do you mean, Sir?

Q. I am talking about this same interview that you have given a part of? A. You were asking me about the letters of February 7?

Q. Yes.

Mr. Evarts—In what the witness has said he has not referred particularly to any interview.

Mr. Beach—What he asked him was about the preliminary state of affairs which led to the writing of these letters.

The Witness—I beg pardon then. This was not a single interview; it was a conversation.

Mr. Fullerton—Well, in any of those conversations anterior to the writing of these letters of Feb. 7, was there nothing said about Mr. Tilton's feelings toward you? A. I don't recall anything of that kind.

Q. Was it not agreed that there should be three letters written? A. It was.

Q. By whom were they to be written? A. I was to write one to Mr. Moulton to be shown to Mr. Tilton, and Mr. Tilton, I understood from Mr. Moulton, should write one also.

Q. To be shown to whom? A. I don't recall to whom.

Q. Was it not to be shown to you? A. I presume so, Sir; but I don't distinctly recall about that; naturally I know what my own letter meant better than I know his; I don't recall about his.

Q. I am not talking about what the letters meant; I am talking about the agreement to write the letters. A. Well, the agreement——

Q. You were to write one, were you not? A. I was to write two.

Q. One to Mrs. Tilton? A. One to go to Mrs. Tilton.

Q. And one to go? A. And one to go to Mr. Moulton.

Q. Mr. Tilton was to write one that was to go to you, was he not? A. He was to write one that was to go to Mr. Moulton.

Q. Very well. Now were those three letters written? A. I understood so; my two were.

Q. Didn't you see the third one? A. I cannot say whether I saw it at that time, or heard it at that time; I have seen it.

Q. How soon after that did you see it? A. I cannot say.

Q. Did you not see it very soon after that? A. I cannot say about that.

Q. Didn't you see it at the time it was written? A. I don't think I did; I cannot say; I don't recollect it.

Q. Will you swear that you didn't see it at that time? A. I will not

Q. Was it not shown to you on the 7th of February, 1871, by Mr. Moulton? A. I don't recollect that it was, Sir.

THE LETTERS READ.

Q. Well, I will read it, and see if that will recall it to your recollection. [Reading]:

BROOKLYN, Feb. 7, 1871.

MY VERY DEAR FRIEND: In several conversations with me you have asked me about my feelings toward Mr. Beecher, and yesterday you said the time had come when you would like to receive from me an expression of them in writing. I say, therefore, very cheerfully, that, notwithstanding the great suffering which he has caused to Elizabeth and myself, I bear him no malice, shall do him no wrong, shall discountenance every project (by whomsoever proposed) for any exposure of his secret to the public, and (if I know myself at all) shall endeavor to act toward Mr. Beecher as I would have him under similar circumstances act toward me.

I ought to add that your own good offices in this case have led me to a higher moral feeling than I might otherwise have reached. Ever yours affectionately,

(Signed) THEODORE TILTON.

To Frank Moulton.

Q. Now, do you remember that that letter was shown to you by Mr. Moulton at or about the time that it was written? A. I do not; I hardly think it was.

Q. I call your attention to the one that you wrote to Mr. Moulton on that day. [Reading]:

February 7, 1871.

MY DEAR MR. MOULTON: I am glad to send you a book which you will relish, or which a man on a sick bed *ought* to relish. I wish I had more like it, and that I could send you one every day, not as a repayment of your great kindness to me—for that can never be repaid, not even by love, which I give you freely.

Many, many friends has God raised up to me; but to no one of them has he ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit. You have also proved yourself Theodore's friend and Elizabeth's. Does God look down from Heaven on three unhappy creatures that more need a friend than these?

Is it not an intimation of God's intent of mercy to all that each one of these has in you a tried and proved friend? But only in you are we three united. Would to God, who orders all hearts, that, by your kind mediation, Theodore, Elizabeth, and I could be made friends again. Theodore will have the hardest task in such a case; but has he not proved himself capable of the noblest things?

Now, Mr. Beecher, at that time this charge of improper solicitations was still resting upon you, was it not? A. No, Sir; I don't think it was; it certainly was not urged.

Q. I didn't ask that. Had Mr. Theodore Tilton taken it back? A. I don't know that he had, by any formal act, taken it back.

Q. Answer my question. Had he taken that charge back?

Mr. Evarts—That is an answer.

Mr. Fullerton—No. it is not an answer.

The Witness—His wife had taken it back.

Q. Had *he* taken it back? I am not talking about his wife? A. *He* had not made it.

Q. Didn't he make it on the night of the 30th? A. He made it as a statement from his wife.

Q. Oh, he didn't make it on his own account, then? A. He made it on her authority.

Q. Did you regard it simply as a charge made by Mrs. Tilton? A. I certainly did.

Q. And not a charge of Theodore Tilton? A. As a charge that he repeated to me, from her.

Q. Didn't you understand him as making that charge on his own behalf against you? A. I have no doubt that he supposed the charge to be as she had written it to him, at that time.

Q. On the 7th of February did you suppose that he then believed in the charge? A. I cannot tell about that. It certainly did not, by word nor conduct——

Q. One moment; I am not asking you about that. Did you believe, on the 7th of February, when you wrote that letter, that he still believed in that charge? Now it is either yes or no, Mr. Beecher. Either you believed it, or you did not believe it. A. Well, I don't think that it is yes or no.

Q. Well, it does not seem to be yet, but I hope it will be. A. Will you be kind enough to state the question again, that I may see precisely the limits of it?

Q. I will, Sir. On the 7th of February, 1871, when you wrote to Mr. Moulton that Theodore Tilton would have the hardest task in such case, and alleged that he had proved himself capable of the noblest things, did you not then suppose that he rested under the belief that you had made improper advances toward his wife? A. I doubted whether he believed any such thing as that.

Q. It was a mere matter of doubt, was it? A. All that was a matter of doubt and fluctuation.

Q. No, Mr. Beecher, I don't want all that. Did you believe at that time that he supposed that you had made improper advances to his wife?

Mr. Evarts—He has answered that.

Mr. Morris—Not exactly.

The Witness—I don't think that I did believe so.

Q. At that time? A. At that time.

Q. How did you suppose at that time that the impression or belief had been removed from his mind? A. That I did not reason upon; by the good offices probably of Mr. Moulton——

Q. *He* had not told you that he did not believe it? A. No; we had no——

Q. One moment, please. He had not told you this? A. No, Sir.

Q. Mr. Moulton had not told you that he did not believe it? A. I don't recall that he ever made a specific denial of that.

Q. Upon what, then, did you base your judgment at that time that he did not believe it? A. Because he and Mr. Moulton were willing to go into coöperation with me in a manner that would imply infamy if they believed it.

Q. That is the reason? A. That is the reason.

Q. That is the only reason, is it? A. That is enough. [Suppressed applause.]

Q. And hence you said nothing about it? A. Of course, I didn't.

Q. And you didn't ask Mr. Tilton whether he believed it or not? A. Of course, I didn't.

Q. And without knowing really whether the impression was removed from Mr. Tilton's mind or not, you wrote that letter? A. I wrote that letter.

Q. And without knowing whether the impression had been removed from Mr. Tilton's mind, did you? A. Without knowing in any such sense as we know a philosophical or a mathematical proposition.

Q. Did you come to a conclusion at that time whether he made the original charge in good faith or not? A. I had reason to suppose earlier that he had——

Q. No, no, I am asking about that time. Had you made up your mind at that time whether he had made the original charge in good faith or not? A. Well, Mr. Fullerton, the difficulty in answering your question is not that I am unwilling, but it is that you frame the question so that you ask me to give an affirmative or a negative to considerations that had no existence.

Q. That had no existence? A. Yes; trains of thought that would perhaps arise, but that did or did not, or which, if they did, arose only as speculations, and passed away.

Q. Then can't you say so? A. I have tried to once or twice.

Q. Well, whatever you try to say, Mr. Beecher, you generally say pretty well. Now, I put the question to you again. On the 7th of February, 1871, when you wrote this letter, did you then suppose that the original charge of Theodore Tilton—improper advances—made against you, had been made in good faith? A. I don't know that that came into my mind at all in the making of the letter.

Q. And you were in doubt at that time whether he still believed the charges true? A. I don't think it was the subject matter of consideration.

Q. You did not think of it then? A. I made the letters with an entirely different intent.

Q. One moment; did you think of it at that time? A. I can't say that I did at that time.

Q. Well, did you care at that time whether they were made in good faith or not? A. Oh, of course I should, if the subject had been broached to me.

Q. Didn't you take interest enough in the subject to broach it yourself? A. I took interest in it, but of a different sort.

Q. But not an interest that led you to broach the subject? A. Not an interest that led me every time that I sat down to write a letter to go through all the questions that you now put to me.

Q. I am not talking about writing letters now; I am asking *about the time* of writing the letters when these

interviews were had. A. I can't tell you what I thought of Mr. Tilton at that period—you are asking me what I thought while I was writing that letter.

Q. I am asking no such thing. A. Then I misapprehended you.

Q. I don't mean the particular moment when you were inditing it on paper; but at that period did you believe that Mr. Tilton had made those charges against you in good faith? A. Mr. Tilton had repeated his wife's charges against me.

Q. That won't do, Mr. Beecher. I don't want any such thing. I am asking for the operation of your mind at that time. A. Yes, Sir, and I am trying to give it to you.

Q. Yes. Well, tell me whether at that time it was a matter of belief with you that the original charge of Theodore Tilton against you was made in good faith?

Mr. Evarts—Of improper advances.

The Witness—Improper advances! That charge had sunk, apparently, out of sight.

Mr. Beach [to Mr. Fullerton]—Move to strike that out.

Mr. Fullerton—I will. I do move to strike it out, and I say again that he is evading my questions.

Judge Neilson—I don't think he is.

Mr. Fullerton—Well, I can't help that. If your Honor does not I do, and I will act upon that view.

Mr. Evarts—Keep that until you sum up.

Mr. Fullerton—No.

Judge Neilson [to the Witness]—The question involves whether you remember and can state what your belief was upon that subject at that time.

The Witness—My general recollection is, Sir, that at that time I thought the charges had gone under—gone down.

Mr. Fullerton—I move to strike that out.

Judge Neilson [to the Witness]—The inquiry is, whether at that time you believed that the charge had been made by Mr. Tilton in good faith—the charge of improper advances?

The Witness—Originally; I believed that he originally made it in good faith.

Judge Neilson—At the time of the writing of this letter, or about that time?

The Witness—At the time of writing this letter I supposed that he was of the impression——

Mr. Fullerton—Did you believe at the time when you wrote the letter that he had made the original charge in good faith? A. When he originally made it I did.

Q. That is not my question.

Mr. Evarts—Yes.

A. At the time of the writing of this letter I believed that he had made it in good faith when he made it originally.

Mr. Fullerton—That is an answer.

Mr. Evarts—That is the same answer.

Mr. Tracy—It is the same answer.

Mr. Fullerton—No, Sir, he has never given that answer before.

Mr. Tracy—I submit that he has.

Mr. Fullerton—You need not submit anything about it.

Mr. Tracy—I choose to; and I shall do it without asking your permission.

Judge Neilson—Well, it is given now.

Mr. Fullerton—Yes, Sir; it is given now.

Mr. Evarts—You had better keep that until you sum up.

Mr. Fullerton—Do you propose to sum up now?

Mr. Evarts—No; but I suppose this is summing up.

Mr. Beach [to Mr. Evarts]—If you want to sum up, begin; it is your turn.

Q. Now, will you state to this jury what Mr. Tilton had done up to that time which caused you to say that he proved himself capable of the noblest things? A. It was the representations made to me by Mr. Moulton of his state of mind toward Mr. Bowen, toward his own prospects—his pluck and determination to work—toward me, and toward his own house.

Q. Yes. A. I did think Mr. Tilton was acting, or endeavoring to act, a heroic part.

Q. And you thought that he would have the hardest task, did you, if you three people were made friends again? A. I certainly did.

Q. And without ascertaining directly from him whether, or what evidences he had that you had made improper advances to his wife? A. That is predicated on the ground that we were to be made friends again.

Q. Yes. A. To be made friends again implies a state of facts that is totally incompatible with his continuing belief in the charges.

Q. Didn't he say he wanted to save his wife and family from exposure? A. Didn't he say so when?

Q. In conversation with you, just prior to the 7th of February, 1871? A. He certainly said he wanted to prevent the scandal from becoming public.

Q. What did you understand him to mean to say in his letter of February 7, 1871, when he speaks of discountenancing every project for any exposure of your secret to the public? A. That is his letter, and not mine; I am not conscious of having read it.

Q. The contents of it were not made known to you? A. I am not conscious of having seen it, or read it, or heard it read, or having known of it until a later period.

Q. You go on to say in that letter:

"Of course I can never speak with her again except with his permission: and I don't know that even then it would be best."

Was there any arrangement made as to any communication between you and her? A. At that period?

Q. Yes; or prior to that? A. From some source or other, I cannot determine now what, I had understood that Mr. Tilton didn't wish me to visit in his family.

Q. Can you not tell us from whom you heard it? A. I cannot, Sir; I have searched in vain for the source of that impression.

MR. TILTON'S GENEROSITY.

Q. I call your attention to another sentence in that letter.

I wonder if Elizabeth knows how generously he has carried himself toward me.

How generously had he carried himself toward you? Did you refer to the original charge of improper advances? A. No, Sir; I did not.

Q. You didn't refer to any retraction of any charge, did you, that he had made? A. I referred to his carriage toward me, in view of the alienation of his wife's affection from him, and the distress which he had found in his own household, and my complicity with Mr. Bowen in injuring him in his business prospects.

Q. But you did not consider the other charge of improper advances, did you? A. I do not recall that that entered into my mind at that time, Sir.

Q. Now, up to this time had you had any communication with Mrs. Tilton? A. Not that I recollect, Sir.

Q. Don't you think you would have recollected it if you had had communication with her? A. I certainly had not been to the house.

Q. Had you received any letter from her? A. Not that I recall.

Q. Had you written to her? A. No, Sir; I don't think I had.

Q. Had you received through any other person any message from her? A. I do not, except through Mr. Moulton, recollect that I had.

Q. How? A. I don't know that I had, except through Mr. Moulton.

Q. Well, how long prior to the writing of this letter of Feb. 7, 1871, had he forbidden you to visit his house? A. I don't know; I cannot say.

Q. Well, that had not been withdrawn at that time, had it? A. I don't recollect that it had, Sir.

Q. How had he acted so generously toward you? A. Through Mr. Moulton; the attitude of his mind and the expression of feeling (which I derived through Mr. Moulton), and his willingness to restore the old friendship and coöperation.

MR. BEECHER'S EXPECTATIONS OF DEATH.

Q. Then comes the letter about Mrs. Tilton of the same date:

MY DEAR MRS. TILTON: When I saw you last I did not expect ever to see you again or to be alive many days. God was kinder to me than were my own thoughts——

Q. What were your own thoughts to which you referred at that time? A. Those that I have just mentioned; a presentment of death as respected both her and myself. I didn't believe she would live long.

Q. With regard to yourself first—had you any idea that you were going to be overtaken suddenly by death? A. I did a good many times, Sir.

Q. How? A. I did, a good many times.

Q. How often? A. I could not count them, Sir; but it is not an uncommon thing.

Q. Well, in what way did you apprehend death? A. At this time evidently in the exceeding pressure and the exceeding anxiety that I felt.

Q. Well:

"God was kinder to me than were my own thoughts."

That implies that your own thoughts were unkind. Can you explain that term? A. Well, I don't think they seem to me to need explanation, but I will make it: God was kinder than I thought He would be.

Q. Well, if a man apprehends sudden death from apoplexy or from trouble, do you think his thoughts are unkind toward him? A. Well, Sir, that is an expression that I presume would be tolerated in literature, without being scrutinized very closely.

Q. It had not reference at all to taking your own life? A. Oh, no, Sir.

Q. How? A. No, Sir; no, Sir.

Q. Nothing of that kind? A. Nothing of that kind.

Q. But, inasmuch as you apprehended sudden death, you thought your own thoughts were unkind—you considered them so, did you?

Mr. Evarts—He has not said that.

Mr. Fullerton—I ask him whether he did so consider them. [To the Witness:]

"The friend whom God sent to me [Moulton] has proved, above all other friends I ever had, able and willing to help me in this terrible emergency of my life. His hand it was that tied up the storm that was ready to burst upon our heads."

By the word "our" you referred to your own and Mrs. Tilton's? A. Yes, Sir; to all our heads.

Q. Now, don't you refer to the lady whom you were addressing? A. I referred to all that were concerned in the trouble.

Q. What storm was about to burst upon the heads of yourself and Mrs. Tilton? A. Apparently the storm of a disclosure of a family difficulty which would be scandalous and dangerous and heart-piercing.

Q. Didn't Mr. Tilton on the night of the 30th tear up the paper and say that that was the end of it? A. Yes, Sir—no; he didn't say that was the end of it.

Q. Did you understand that that charge was to be renewed against you after that? A. I did not understand anything about what was in the future. There was no intimation of it. It was an interview with a beginning and without an ending; that is, the results to which we were going were in suspense.

Q. "He" [Moulton] "will be as true a friend to your honor and happiness as a brother could be to a sister's." Did you think that the honor of Mr. Tilton was in-

volved in this matter? A. I thought it was in very great danger of being dishonored in the public mind.

Q. How? A. By that way in which the tongue of scandal represents everything about a woman.

Q. It would dishonor her, would it, if it was charged that you had made improper advances and she had resisted them? A. Yes, Sir; I think it would.

Q. And that is the reason you used that expression, is it? A. Not that; no, Sir; you ask me a separate question, and you cannot carry that back through the whole document.

Q. Now, Sir, that is the first communication that you addressed to Mrs. Tilton after the night of the 30th, I understand you? A. I think it is, Sir; I remember no other.

Q. In what light, Mr. Beecher, did you then view the conduct of Mrs. Tilton in making this written charge against you, and which Mr. Tilton had on the night of the 30th? A. I viewed it in this light, if you ask me what was my explanation and judgment in regard to the matter——

Q. Yes. A. After much suspense and vacillation, I came to the conclusion that Mrs. Tilton had gradually come into a state of affection toward me, the concealment of which, then the outbreaking of which, and the anxiety that came from domestic discord, in consequence of which, together with the indignation of her husband, has shattered her both in body and in mind to a degree in which she was scarcely responsible.

Q. That was the conclusion that you had rested under on the 7th of February, 1871, was it? A. That was the conclusion—I will not say at that definite date, but when my mind at last subsided into a recognized theory.

Q. I am referring to the letter of Feb. 7, 1871. A. At that interview—I didn't recite the whole of that interview of which I now speak.

MR. BEECHER'S VIEWS OF MRS. TILTON'S CONDUCT.

Q. Very well; I ask you in what light you then held her conduct in making that charge against you? A. Oh, I held her, if you judged her as you would ordinary persons, a very guilty person.

Mr. Fullerton—Yes, Sir.

The Witness—And I looked upon it with great indignation.

Q. Why didn't you express something of that indignation or some remonstrance, or make some allusion to this false charge which she had made against you, in this letter of Feb. 7, 1871? A. On the simple ground that when two people want to make up a difficulty, they don't fire it into each other's faces out of pistols, or call up all the rank and harrowing parts of it; they let go all they can in order to settle the thing amicably.

Q. You didn't feel disposed, then, to say one word to the lady who had made the serious charge against you, in writing, and had given it to her husband? A. And took it back again, and renewed it again.

Q. And renewed it again? A. Yes, Sir.

Q. Very well; then it was left where it was before. Why didn't you then make some allusion to it in this letter of Feb. 7? A. Because my business was to win Mrs. Tilton to the confidence of Frank Moulton.

Q. And not to vindicate yourself? A. Not by any means to vindicate myself.

INTERVIEW WITH MR. TILTON IN FEBRUARY, 1871.

Q. You have stated, Mr. Beecher, that you had a memorable inverview with Mr. Tilton at his house in the first part of February, 1871? A. Yes, Sir.

Q. Can't you state how that interview was brought about? A. No, Sir; my impression is that it was at his solicitation.

Q. Made to you personally or by letter? A. I don't know.

Q. At what time of the day did you go to his house? A. My impressions are that it was early morning.

Q. In what room did you have the interview? A. In two rooms—a back bed-room on the second floor, and the front room; left-hand corner, I think it was; that is, the third story.

Q. Was Mrs. Tilton present? A. At the second interview.

Q. Was she not present at the first? A. No, Sir.

Q. Did you know the object of that interview before you went to the house? A. Not that I recollect.

Q. And from whom did you learn it? A. From Mr Tilton.

Q. And how did he convey it to you? A. He didn't state at all what the object was; he went into a conversation, and I inferred the object after he got through.

Q. Well, what did he say? A. I cannot tell you what he said; I can only tell you the substance and drift of the conversation.

Mr. Fullerton—That is what I mean by asking the question, for you to give me the substance of it. A. It was a conversation, whatever the introductory parts were, and my general impressions were that the introductory remarks sprang from the prospect and adjustment of more friendly relations, coöperation, or something of that kind; I cannot remember definitely, but it passed to a consideration of his relations to Mr. Bowen, and the great wrong Mr. Bowen had done to him, not excluding his business relations, of which he had spoken, although I do not now recall so much about that; I only know it entered in, and he especially felt the aspersion that had been made upon his reputation, both by what Mr. Bowen had said, and by the circumstances under which he was ejected from the two papers; and it seemed to me that the drift of his wish was to show me that he was not subject to those charges justly. He expatiated

upon the stories. He went into some explanations of the charges that had been made, not by Mr. Bowen, but by others—the charge of drunkenness, for instance, that had been made, he said, against him; Mr. Bowen's charge of the Winsted affair, and of his conduct in the North-West during his lecture season, and of the charge relating to the woman in the office, on the staff, and several other points which now escape me.

Q. Was there anything said about your personal difficulty with him? A. That was implied all along.

Q. No, was there anything said upon that subject? A. I don't recall it now, Sir.

Q. No conversation between you and him as to this charge of improper advances? A. Why, no; that had all passed.

Q. When had it passed? A. Well, all the time; it had gone down by non-user.

Q. And was not alluded to upon this occasion? A. Not that I now recall.

Q. But still you labored under the impression that Mrs. Tilton was in love with you? A. I certainly did until 1874, but then——

Mr. Fullerton—That is an answer.

The Witness—I was going on with the conversation that you asked from me.

Mr. Fullerton—Go on with it, then.

The Witness—I will pass it if you wish.

Mr. Fullerton—No.

The Witness—Or, if you desire, I will go on.

Mr. Fullerton—Go on.

The Witness—At that time he made the statement that the stories, many of the stories, or several, at any rate, which were circulated of him, were true of another Mr. Tilton who had nearly his initials, if not entirely, and who, as he understood, or as I understood from him, was a rakish fellow, and dissipated in his habits, and went about the country doing improper things, of which he [Theodore Tilton] got the credit, and he I think afterward—after he had vindicated himself in respect to all these stories, he then spoke of the difficulties, between him and me, in his family. It was, however, general and not specific; his trouble, his difficulty, or his misunderstandings, and his disposition to have everything healed, and to renew again the cordial relations which before had existed between us, or to that effect.

Q. Well, did you then take occasion, in that kind of conversation, to say to him anything like this: That Mr. Tilton's charge of improper advances against me was unfounded? A. I did not, Sir.

Q. No allusion to that? A. No allusion was made by him, and none by me.

Q. Did you then suppose that the impression had been entirely removed from his mind that any improper advances had been made? A. I really cannot recall what I did suppose on that point.

Q. If you were thus laboring under the impression that they had been removed, can you account for it that you didn't say something on that subject? A. I don't know that I was laboring under the impression, and I cannot account for a hypothetical state of facts.

Q. Very well. That seemed to be a healing of all the difficulties, did it? A. It looked so.

Q. This was early in February? A. This was somewhere toward the middle of February, I think; I cannot give the date precisely.

Q. You thought the difficulty then was all settled? A. On the way to being settled; I didn't think anything but time would entirely settle it.

Q. In your direct examination I think you said, "I thought the difficulty was all dissipated?" A. Oh, well, I said so; I presume you don't misunderstand that language.

Mr. Fullerton—Oh, I do not.

The Witness—I thought it was in the way of settling, just as a physician says a man is well: "I don't need to come and see you any more," but the man ain't well enough to go out for days, but then the dangerous symptoms had passed.

Q. You thought the patient was well enough to renew intercourse with the family? A. I did—no, I didn't.

Q. Well, which is it now? A. I didn't.

Q. You did not? A. So far as he was concerned, I did; so far as Mrs. Tilton was concerned, I didn't.

Q. Did you not renew intercourse immediately after that? A. No, not in any such way.

Q. Did you not on that day permit her to come into the room and kiss you? A. No, I went into the room where she was with him, and then the final scene of that interview down stairs was that we all three kissed each other, as a covenant of agreement.

Q. Let me call your attention to your testimony on the direct. You sat down on Mr. Tilton's knee, didn't you? A. No, you have got another story entirely.

Mr. Shearman—Another interview.

The Witness—An entirely different interview.

Mr. Fullerton—This is put down here so.

The Witness—It is put down wrong; they have misled you, your friends have.

Mr. Shearman—It was the May interview.

THE MAY INTERVIEW.

Mr. Fullerton—We will take it as the May interview, then. We will keep on this as it is recorded. What occurred at the May interview? A. That was a briefer interview. In regard to the date of that I am not any more positive, so far as exact dates are concerned, than I am in the preceding one, but the interview was one which I don't know whether it came to pass—it must have come by a call from Mr. Tilton, or, as it might perhaps be more properly stated, summons.

Mr. Beach—What interview?

The Witness—Somewhere in February.

Mr. Fullerton—Give us an account of the May interview.

The Witness—There was very little that I recollect, except that when I went there, Mr. Tilton was up, and rather something seemed to have disturbed him. I cannot recollect the subject of conversation very much; I only know that I talked for perhaps 15 minutes or 20, and then he became like his old self, and that in the cordial feelings that came up, or in some remarks I made to him, I came up to him and sat down on his knee, and was talking to him, and I think it was at that time that Mrs. Tilton came into the room and saw me sitting on his knee and burst out laughing.

Q. What else did she do? A. She came up and kissed me.

Q. You made no objection? A. I did not; no Sir. [Laughter.]

Q. You didn't say a word about the impropriety of it? A. I did not.

Q. And you believed then she had been very deeply in love with you? A. I did.

Q. And that that affection yet created the domestic difficulty? A. I did.

Q. Did you say anything upon the subject then? A. No, Sir; I never lecture on a kiss when it is given to me in the presence of the husband.

Mr. Fullerton—Never mind; I don't want you to lecture on a kiss here. This is not a thing for byplay, by any means. You made no observation either to the husband or to the wife as to the charge that had been made against you of improper solicitations, or of winning the wife's affections? A. No, Sir.

CONVERSATION OF MR. BEECHER, MR. TILTON AND MRS. TILTON.

Q. Now, we will go back to Feb. 7.

Mr. Evarts—Feb. 7?

The Witness—Feb. 7?

Mr. Fullerton—Yes; not Feb. 7, but soon after.

The Witness—Mid-February.

Mr. Fullerton—The middle of February.

The Witness—Some time from the 1st to the middle.

Q. You kissed all around then, did you? A. We all three kissed.

Q. And what was the object of that kiss? A. I understood it to be amnesty and amity.

Q. Kisses of inspiration, I suppose? A. Yes.

Q. Well, what was the covenant that you entered into there? A. No formal covenant, Sir.

Q. Well, informal? A. No informal covenant.

Q. Well, then, what kind of covenant was it? A. No covenant at all.

Q. Well, you spoke of a covenant that you entered into? A. Not in any technical sense of the term. I am afraid of you when I use any words, that you will give them a sharp meaning. I would use it in a literary sense, not in a strictly legal or scientific sense.

Q. Well, what took place between you three persons on that occasion which led you to kiss all around? A. Mr. Tilton came down, and his wife, and we went into that room together, and he sat down and entered into general conversation, in somewhat this way: that this great difficulty that had befallen him he feared might be the termination of his useful life, alluding to his business condition; and then, after setting that forth, he said that however he intended to recover himself, and he did not know but that it might, on the whole, prove best that his trouble in his household had threatened to separate him and his wife, but he did not know but there might grow out of this very trial a nobler affection, and by and by their love and their household state might be better for the trial—words to that effect; and then he said to his wife that he had had a conversation with me up-stairs that was satisfactory, and that he was bound to say that Mr. Beecher had taken on himself very honorably the blame of the trouble that had befallen his family, and exonerated his wife; and then he said to me: "I feel also bound to say that Elizabeth exonerates you and takes the blame to herself," and other remarks of that kind, intended to be cordial all around; and when the interview terminated, when we arose, I kissed him and he kissed me, and I kissed his wife and she kissed me, and I believe they kissed each other. [Laughter.]

Q. This exoneration that was spoken of, did you understand that as embracing the charge of improper advances? A. I don't think that that entered my mind at that time, but I don't know.

Q. Well, when Mr. Tilton told his wife that Mr. Beecher had been liberal and had taken all the blame upon himself—— A. Had been honorable.

Q. Had been honorable, and had taken all the blame upon himself, did you regard that as embracing blame for the improper advances? A. There had been no improper advances.

Q. The charge of improper advances? A. That was not my blame.

Q. Did you understand, when Mr. Tilton made this observation to his wife, that Mr. Beecher had acted honorably and taken all the blame upon himself, that he referred to blame for the charge of improper advances? A. No, I did not, Sir; the sense that I took, as near as I can recollect, was the general sense that by my presence I had alienated his wife and brought discord into the family, and that it had been an occasion of heartbreak to him, and great distress, but that I, instead of saying that Elizabeth had fallen in love with me, took the blame to myself by saying that I ought to have seen to it, from my age, and presence, and the relations of a spiritual pastor to her, that there should be no such thing as that.

Q. Well, did you think it strange that Mrs. Tilton did

not explain to you either in February or in May that this charge was false that she had given her affections to you? A. I should have thought it very strange if she had.

Q. You would? A. I should.

A. Although that gave rise to the difficulty between you? A. That had given rise to the difficulty, but the circumstances were an explanation.

Q. Now what next occurred after the interview of the 7th, or of the middle of February, between you and Mrs. Tilton? A. I don't recall.

Q. Do you recollect what time Mr. Moulton left the country? A. I do not recall the date.

Q. He has stated that it was the 2d of March; does your recollection conform to that? A. It was somewhere in that way. I only can judge of it, not because I saw him go, but because he met my family in Florida.

THE DEPARTURE TO THE SOUTH.

Q. And do you recollect what time your family left? A. I think my family left late in—I think they left in February, but I am not certain, Sir; they varied every year; they have never left at the same time, and I think that year it was perhaps in February.

Q. Do you recollect one occasion when you met the attending physician at Mr. Moulton's house, before he left for the South? A. I recollect meeting him often there, but I don't recollect meeting him at that particular time; I might have done it, but I do not recall it.

Q. Well, have you no way to fix the date of Mr. Moulton's departure from the North? A. I have none; no, Sir; but I could ascertain for you from data that are sure.

Q. Have you the data with you? A. I don't think I have, Sir; I have a memorandum.

Q. Please look and see if you can fix the date of his departure? A. [Producing a memorandum.] This is one that I derived not from my own personal knowledge; it is put down here March 2d, "Moulton goes to Florida."

Q. That corresponds with Mr. Moulton's testimony. Now, do you recollect when he returned? A. I have it, I think. [Referring to the memorandum.] April 15. "Moulton returns from Florida."

Q. Now, between his departure and his return you received this letter, which has been marked as an exhibit, from Mrs. Tilton, did you? A. I don't know what letter you refer to, Sir, unless you show it to me.

Q. Well, I will show it to you, Sir.

Mr. Beach—You may as well adjourn now.

Mr. Evarts—Well, we might as well.

The Witness—The book will do just as well, Judge Fullerton.

Judge Neilson—Will the jury get ready to retire? Gentlemen will keep their seats. Return at 2 o'clock, gentlemen.

The court then took a recess until 2 p. m.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Beecher recalled.

MRS. TILTON'S LETTERS.

Mr. Fullerton—I now place in your hands, Mr. Beecher, the letter which I alluded to before the adjournment. [Handing witness "Exhibit 12."] Do you recollect of receiving that letter? A. No, Sir.

Q. Don't you recollect the fact that you did receive it? A. Yes, Sir.

Q. And handed it to Mr. Moulton? A. Yes, Sir.

Q. The indorsement, I believe it was stated, is in your handwriting? A. I think it likely that it is, Sir, although it was evidently written not as freely as I usually write.

Mr. Fullerton [Reading]—"*Wednesday.* MY DEAR FRIEND: Does your heart bound *toward all* as it used? So does mine! I am myself again. I did not dare to tell you till I was sure; but the bird has sung in my heart these *four* weeks, and he has covenanted with me never again to leave. 'Spring has come.' Because I thought it would gladden you to know this and not to trouble or embarrass you in *any way*, I now write. Of course I should like to share with you my joy, but can wait for the Beyond!

"When dear Frank says I may once again go to old Plymouth, I will thank the dear Father."

I now show you "Exhibit 15," and I wish to consider them together. [Handing witness "Exhibit 15."] Do you recollect of receiving that letter? A. I don't recollect receiving it, Sir; I presume I received it, though.

Q. And gave it to Mr. Moulton? A. That I cannot say.

Q. You recollect the fact that you received such a letter. A. I cannot say that I recollect the act, although seeing the letter, or hearing it spoken of, I have the strong feeling that this was a letter written to me, and that I gave it to Mr. Moulton.

Mr. Fullerton—[Reading]:

"May 3, 1871.

"MR. BEECHER: My future either for life or death would be happier, could I but feel that you forgave me while you forget me. In all the sad complications of the past years, my endeavor was entirely to keep from you all suffering, to bear myself alone, leaving you forever ignorant of it. My weapons were love, a larger, untiring generosity, and *nest-hiding*.

"That I failed utterly, we both know, but I now ask forgiveness."

MR. BEECHER'S NOVEL.

Q. Before asking you any questions in regard to those letters, Mr. Beecher, I ask you when you commenced writing the novel "Norwood?" At what time did I?

Q. Yes, Sir. A. [Referring to memorandum.] I think it was published in *The New-York Ledger* in 1867—in the process of 1867, during the year—and in the book form in 1868.

Q. You misapprehend my question, Mr. Beecher.

When did you commence writing that book? A. That I could not tell you, Sir; it was some time in the year, I think, of 1867.

Q. You have stated that you read that book, or a part of it, to Mrs. Tilton? A. I read portions of it; yes, Sir.

Q. What part of it did you read to her? A. Well, I cannot say how much, but I recollect reading one chapter, and that was the chapter on the birth of Rose Wentworth.

Q. Don't you recollect of reading other chapters to her? A. Not distinctly; I have an impression that I did.

Q. Did you not read it all to her? A. No, Sir.

Q. What is your impression as to the parts that you did read? A. The opening chapters.

Q. Where did you read it to her? A. I think at her house.

Q. In the day or in the night time? A. In the day time, as far as I recollect.

Q. Was her husband present or absent? A. I don't recollect.

Q. Rose Wentworth was the heroine of that story, I believe? A. Yes, Sir; that is what I tried to make her.

Q. Do you remember, in writing that book, of borrowing from the habit of the bird in hiding its nest a figure to illustrate the way that love might be concealed, if it were necessary? A. I do not, Sir.

Q. Do you recollect of describing Mr. and Mrs. Wentworth, and especially the peculiarities of the lady, in that book? A. No, I had forgotten it.

Do you remember using this language: [Reading.]

"It would seem as if, while her whole life centered upon his love, she would hide the precious secret by flinging over it vines and flowers, by mirth and raillery, as a bird hides its nest under tufts of grass, and behind leaves and vines, as a fence against prying eyes."

Do you recollect of writing that? A. I do not, Sir; I have never read the book since the day it came out of the press.

Q. Well, look at it and see if that is so. [Handing witness the book.] A. Well, Sir; I know no more about it than you. I presume it is my pen. It is in my book, with my name, and I presume it is mine.

Q. That purports to be a copy of "Norwood," does it not—that novel? A. Yes, Sir; I think so.

Q. You don't think that has been interpolated in it? A. No, Sir; I don't believe it has; and I want you to understand that I think it probable that I wrote it; but before you, whom I have learned to dread, I don't want to say it with emphatical accuracy. [Laughter.]

MR. BEECHER GIVES MRS. TILTON A PICTURE.

Well, I don't think it is I that you should dread, Mr. Beecher. Did you, among other things, present Mrs. Tilton with a picture called "The Trailing Arbutus?" A. I did.

Q. Where did you get that picture? A. Boston.

Q. When did you buy it? A. I think I had had it in my house for some time; I cannot say when I bought it; but that is an impression that I had it for some time in my house; it was rather a favorite thing of mine.

Q. And when did you present it to Mrs. Tilton? A. That is more than I can say definitely; I have an impression it was somewhere about 1866, but I cannot say certainly; 1866 or '67, or along there.

Q. When did you commence writing that novel? A. 1867; it must be later that I gave it to her.

Q. I think so; after 1867 considerably, wasn't it? A. I cannot say as to that, Sir.

Q. Did you make her a present of that picture until after you had read the opening chapter of "Norwood" to her? A. No, Sir; it was subsequent to that.

Q. Subsequent to that? A. Yes, Sir.

Q. And do you remember of describing in the book the perfume of the flower called the "trailing arbutus" as "the breath of love?" A. No, I don't remember it, Sir; but if it is there I shall have to stand it.

Q. Let us see if it is there. Speaking of that flower: [Reading.]

"It is content, though lying upon the very ground. It braves the coldest Winters. All the Summers cannot elaborate a perfume so sweet as that which seems to have been born of the very Winter. It is like the breath of love. The pure white and pink blossoms, in sweet clusters, lie hidden under leaves or grass, and often under untimely snows. Blessings on thee! Thou art the fairest, most modest, and sweetest-breathed of all our flowers!"

Do you recollect that? A. No; I don't recollect it, but I am willing to own it.

Q. That, I believe, is in the opening chapter? A. I don't know how that is.

Q. Be kind enough to look and see. [Handing witness the book.] A. I know that this—if you will excuse my interpolating a word——

Q. I will hear what it is first. A. Well, I know that this chapter was one that I read to Mrs. Tilton, especially the chapter containing this trailing arbutus.

Q. That I understand? A. Yes.

Q. And that is the reason I called your attention to it. A. I know it was, and I wanted to inform you.

Q. Well, what I know you needn't tell me. A. Yes.

Q. It is what I don't know that I want to get from you. Is that in the opening chapter? A. No, Sir, I guess not; it is Chapter V.

Q. Well, did you read that chapter? A. I think I did; if that is the chapter that contains the birth of Rose, I read it.

Q. Well, is it not? You will see that Rose is born about five minutes after that. [Laughter.] A. Well, Sir, then that is the chapter.

Q. And after reading that part of it to her, describing the perfume of the arbutus as "the breath of love," you gave her the painting? A. Yes; not immediately.

Q. Well, did you in that book anywhere speak of the

impression which a flower makes upon a sensitive mind? A. I don't know but I did, Sir.

Q. Do you recollect whether you did or not? A. I do not; I shall enjoy the re-reading of the book more than I anticipated, Sir, having the pleasure of hearing you read it.

Q. Well, you force me to say that I doubt whether you will enjoy it a great deal in the end, Sir. If you won't make such observations I won't reply to them. Let me read it again: [Reading.]

"The image which a flower casts upon a sensitive plate is simply its own self-form; but cast upon a more sensitive human soul, it leaves there not mere form, but feeling, excitement, suggestion."

Do you recollect that? A. No, Sir; I think it is a very good idea. [Laughter.]

Q. Perhaps you will recollect it when I show it to you? [Handing witness the book.] A. No, I don't recollect it; but I find it in the book.

Q. Now, do you recollect in that book of associating the song of a bird with a "love-call," as it is termed? A. No, Sir, I do not.

Q. Let me read and see if you can remember it. Speaking of the characters in this book, it goes on to say:

"While they thus sat in the open door, talking of the loved and absent, and both of them thinking down deeply in the silence of the heart, of other things, which their lips would not reveal, a robin flew into one of the trees in the meadow, and began singing that plaintive call for its mate which one hears so often in Summer. It is the robin's sweetest and most spirited song, and few strains there are that surpass it in tenderness, clearness and brilliancy. Rose had always associated this evening robin song with the idea of a love-call to one absent. To-night it seemed more yearning and passionate than usual. She followed the bird with her eye. At first he sat patiently and sang. Then, as if surprised that no response followed, it gave new force to its call. Now, growing restless, it changed its place, singing in turns, from several trees, and checking itself nervously, as if really alarmed at last, lest it were forsaken. It seemed to Rose to say: 'The night is coming on. Where is my love? Oh! is he harmed? Am I forsaken?'" Do you recollect that? A. No, Sir; it is beautiful, I think, whoever wrote it. [Laughter.] I am willing to own it, Mr. Fullerton.

EXPLAINING THE LETTERS.

Q And don't you think that in these two letters which I have read to you from Mrs. Tilton, that she borrowed these figures of speech from that book in order that you should understand them? A. No, Sir, I don't think she did.

Q. Well, I will take up the first one: "Does your heart bound toward all, as it used?" Do you know what she meant by that? A. I suppose I do.

Q. Please tell me how you interpret it? A. Well, Sir, will you be kind enough to give me that date?

Q. It is indorsed, "March 8th." A. Yes, March 8th. I suppose it to refer to the interruption which had been happily terminated between all of us, of concord and friendliness, and that we were coming together again in kindly relations, and that there was to be no animosity left, no enmity.

Q. And it was reopening the broken associations, was it? A. No, Sir; it was cementing the broken chains.

Q. Very well; any way. You are familiar with the works of Hannah More, are you? A. I am ashamed to say I am not.

Q. Have you read them? A. Never.

Q. Any part of them? A. No, I don't think I ever did, anything, not even "Cœleb's in Search of a Wife."

Q. Well, I read from Exhibit 74, being a letter from Mrs. Tilton to her husband. [Reading:]

"MY BELOVED: I have been thinking of my love for Mr. B. considerably of late, and those thoughts you shall have."

The Witness—What date is that, Sir?

Mr. Fullerton—1866. [Reading:]

"I remember Hannah More says: 'My heart in its new sympathy for one abounds toward all.'"

Q. Don't you recollect that Hannah More expressed that sentiment at the time that she fell in love? A. Do I recollect Hannah More expressing that when she fell in love?

Q. Yes, in one of her works? A. I never read them, I informed you.

Q. Did you ever hear Mrs. Tilton make use of that expression? A. No, Sir, not that I recall.

Q. Have you no other interpretation, then, to give, than what you have given, of this first sentence: "Does your heart bound toward all as it used? So does mine." A. That is the only meaning that I suppose it had; that is the only meaning that I should derive from it, Sir, with the knowledge of the surrounding circumstances.

Q. [Reading:] "I am myself again." Did you interpret that in the same way? A. I interpreted that to be the recovery from that state of despondency, and, as it was called, sullenness in which she had been.

Q. Did any explanation of it pass between you and her in regard to the charge that she made of improper advances? A. No, Sir.

Q. Nothing of that kind? A. No, Sir.

Q. You had never sought any explanation? A. That which she explained, as I understand——

Q. Did you ever seek any explanation? A. No, Sir.

Q. [Reading:] "But the bird has sung in my heart these four weeks. I did not dare tell you till I was sure." How did you explain that? A. She did not dare tell me that she had gained a victory over herself, showing that she felt like a Christian woman, until she had put it to proof, and of the assurance that she was in a spirit of love toward her husband, and of concord.

Q. That is the way you thought it? A. That is how I interpreted it.

Q. "But the bird has sung in my heart these four weeks." Didn't you suppose that she borrowed that from the figure that you used in this book that you read to her? A. Bless your heart, no; it was about four weeks ago that we had had the interview.

Q. Exactly. Was not she rejoicing over the fact that you had made—as you say—up, the difficulty with Theodore Tilton, early in February, 1871? A. It was about four weeks since the difficulty was made up, and she was rejoicing in that she herself was in—by the making up of the difficulty, and by the victory over herself, she was in a state in which she dared to tell me now, her pastor, that she was happy, and it was permanent.

Q. But, Mr. Beecher, the difficulty was made up in the first half of February, was it not? A. The interview——

Q. Was it not made up then? A. Well, Sir.

Q. Is not that the time that you kissed all around? A. That is the time we kissed all around.

Q. Very well? A. And made up, externally.

Q. Very well. One moment. You remember that, don't you? A. I do, Sir.

Q. It was about the fourth week after that she wrote this letter, was it not? A. I suppose it was, Sir; I am not certain.

Q. How did it happen, do you think, that she did not make it known to you before the lapse of four weeks? A. She had to test herself.

Q. To see whether it was real or not? A. To see whether it was real or not.

Q. Well, it appeared to be all made up, so far as appearances were concerned? A. Many a man joins the church and falls from grace.

Q. Well, don't join the church now, Mr. Beecher; I don't want that brought in here at all. A. But I am answering, really, the spirit of your question.

Q. You needn't illustrate it. The kiss went around there, and tokens of amity all around? A. Yes, Sir.

Q. You supposed it was then all made up? A. I did, Sir.

Q. "The Spring has come." Do you say that that is an extract from "Norwood?" A. I will, if you will hand it to me, Sir; I don't remember it. [Taking the book.]

Q. And a star at the bottom? A. Yes, Sir.

Q. Do you know what it refers to? A. No, I do not, Sir.

Q. You cannot interpret that? A. I cannot, Sir.

Q. "Because I thought it would gladden you to know this, and not to trouble or embarrass you in any way, I now write." How did you understand that? A. Well, I understood it just as it is, if I understood it at all. I have no distinct recollection of running through an interpretative process of every line of that letter.

Q. I ask you now how you interpret it? A. How I now interpret it?

Q. Yes. A. Well, I interpret it in that way.

Q. In what way? A. That she did not wish to give me concern, and wanted to reassure me that everything was right with her.

Q. Did she think that you had any concern after leaving there in February, 1871, when the kiss went round? A. She might very well think that I would be concerned whether or not she and her husband would get along together.

Q. "Of course I should like to share with you my joy, but can wait for the Beyond." A. That is, Heaven.

Q. Or was it the future of this life? A. Oh, no, Sir; it is written with a big "B" there, and means Heaven. "Beyond, beyond this lower sky," Watts says.

Q. Well, let us not have a hymn given out now? [Laughter.] A. But you were asking me what it meant.

Q. Exactly, and you can give it to us without giving out a hymn, I take it? [Reading:]

"When Dear Frank says I may once again go to old Plymouth, I will thank the dear Father."

Q. What was the arrangement, if any, about going to old Plymouth? A. I don't know; that was something between her and Frank Moulton.

Q. Had you ever heard anything upon the subject? A. No, Sir, not that I recollect.

Q. Nothing in relation to that at all? A. Not that I recollect, Sir.

Q. Was there nothing said about it at the time that you had notice not to visit Mr. Tilton's house any longer? A. Not a word; no, Sir.

Q. Well, we will take up the other letter of May 3, 1871. [Reading:]

"My future, either for life or death, would be happier could I but feel that you forgave me while you forget me."

Q. How did you interpret that? A. Well, Sir, I cannot tell you. I don't remember receiving and reading the letter, and I don't remember the first impression upon it.

"In all the sad complications of the past year my endeavor was entirely to keep from you all suffering, to bear myself alone, leaving you forever ignorant of it."

A. Well, Sir?

Q. Did you interpret that at the time? A. I presume I did at the time.

Q. Do you remember what the interpretation was? A. I do not remember what the interpretation was that I made at the time.

Q. Well, can you give us the one that you make now? A. I will if you will be kind enough to let me see the letter.

Q. Certainly. [Handing witness the letter.] A. Well, I understand it that she felt that she had done me wrong, and in a very delicate way she intimates that consciousness, and asks forgiveness, and she says during the past year she tried—she knew that I had blamed her—under the representations made to me—for her not taking her share in the rebuilding of the family, and consulting private feelings, and she gives her general and delicate allusion to that in these words: "My weapons——"

Q. No, no, I have not got to that? A. Oh, I beg pardon. [Reading:]

"In all the sad complications of the past year my endeavor was to entirely keep from you all suffering, to bear myself alone, leaving you forever ignorant of it."

Well, the troubles that came up in her household during the year past, so far as possible I was not to be annoyed by.

Q. Well, you were sent for on the 14th of December to go to the house, were you not? A. No, Sir, I was sent for to go to Mrs. Morris's—I mean Mrs. Morse's.

Q. Well, I said to the house where she was? A. But then she is not referring to that period.

Q. One moment! Don't go too fast. Her difficulties were made known to you then, were they not? A. Some of her difficulties were made known, but you ask me the interpretation of that letter.

Q. Yes. A. And I interpret it by saying that I understand it to refer not to the period of 1870, but to the sequent period from 1870 to the date.

Q. Why, Sir, it is written on May 3, 1871, and speaks of the complications of the past year? A. Oh, then, it does include. I did not notice the date of it.

Q. It does include? A. It does include that.

Q. She does not, as you think, refer to the fact that you were there in the December previous and heard what domestic difficulties there existed, did you? A. That did not occur to me.

Q. Didn't it occur to you that there was some other difficulty that she was laboring under that she alluded to? A. I thought it very likely there were many, and I think so yet.

Q. Now, don't you think it was this difficulty that she had confessed to her husband? A. No, Sir.

Q. And made him promise not to reveal it? A. I don't believe any such thing as that.

Q. You do not? A. No, Sir; I believe it included all the scene of her trouble with her husband on my account.

Q. Well, now, will you tell me, if you please, what difficulty or what trouble or what suffering there had been during the past year—I mean the year preceding the writing of this letter to which she made reference and which had not been made known to you? A. There was a great deal, Sir, of which subsequently I became aware.

Q. Subsequent to the receipt of this letter? A. Yes, Sir.

Q. Then you did not interpret it in the light of that knowledge? A. No, Sir; but I now see.

Q. But interpreting the letter in the light of the knowledge that you had on the day that it was received—— A. I say——

Q. One moment. Will you tell me what suffering or what trouble she referred to there that had not been made known to you? A. Mr. Fullerton, I have told you already that whatever she meant in that letter I do not remember what I interpreted it at the time I received it, and you ask me what I interpret it now, and I now say I understand it differently.

Q. I don't ask you what you interpret it now. Didn't you regard it as referring to a difficulty between herself and her husband which was not made known to you on the 14th of December, when you were at Mrs. Morse's? A. I cannot say that I interpreted it so, for I do not remember what impression it made on my mind at the time.

Q. You did learn afterward, however, that Mrs. Tilton had confessed to her husband on the 3d of July of that year, 1870, did you not? A. I heard that she had during that time confessed to him an inordinate affection for me.

Q. Didn't you hear that she confessed to him that you had made improper advances? A. I don't think that I understood it on the July interview, Sir.

Q. Did not understand it from Theodore Tilton on the night of December 30? A. No, I don't think that I did. It may have been, I was in a——

Q. Don't speak of your condition. I want to know now positively whether you did understand on July 3, 1870, that the charge of improper approaches by you was made against you? A. Yes. [With a rising inflection.]

Q. Please answer. A. My reply is that my mind was, as I recollect, then in a state which was not in accordance with the truth; that is, I did not understand the truth, as it subsequently appeared to be.

Q. Didn't Mr. Tilton, on the night of the 30th of December, say to you that you had made improper advances to his wife, and that he had evidences of it—on the 3d of July previous? A. No, I don't recollect that as according to my corrected recollection.

Q. I read from this letter:

"My weapons were love, a larger untiring generosity, and nest-hiding."

What do you understand those weapons were used for? A. I now understand what they were used for; I do not remember what I then understood.

Q. She says:

"In all the sad complications of the past year, my endeavor was to entirely keep from you all suffering."

A. Yes, Sir.

Q. "To bear myself alone, leaving you forever ignorant of it." "My weapons"—I suppose to effectuate that endeavor, was it not? A. Well, Sir, that is——

Q. [Reading:] "Mere love, a larger untiring generosity, and nest-hiding."

Q. Don't you understand that that was the use that she put these weapons to—namely, to effectuate the endeavor to keep from you all suffering? A. I cannot say what I then understood; I know perfectly well what the letter seems to me now to mean.

Q. Won't you be kind enough to explain what you understood, at that time, "nest-hiding" to mean? A. No, Sir, I cannot.

Q. Had you no belief upon the subject? A. I have no

recollection of the state of mind produced by that letter.

Q. I now show you Exhibit No. 13; do you recollect of writing that letter? A. I recollect the period at which I wrote it, Sir.

Q. When did you write it? A. I think it was written some time in the latter part of January, 1872.

Q. How are you enabled to fix that date? A. By comparing it with the letters that passed between us.

Q. What letters passed between you at that time? A. There was a letter of mine to her about the—well, I should say about the last third of January, and then there was a reply from her, and this, I think, is the answer to that reply.

Q. Will you state why you did not commence in the ordinary way by a salutation? A. No, Sir, I cannot.

Q. Well, can you state why you did not finish it in the ordinary way, by signing your name? A. I cannot.

Q. Was there no object in omitting either a salutation or signature? A. I don't know that there was, Sir; I recollect no reason why.

Q. "Your note broke like Spring upon Winter, and gave me an inward rebound to life." You had just received a note from her, had you? A. I had.

Q. How many letters had passed between you prior to the writing of this letter? A. I had written once and she answered it, and that was my reply.

Q. Well, up to that time had you supposed that Mrs. Tilton had transferred her affections from her husband to you? A. Up till this time?

Q. Up to this time? A. Yes, Sir.

Q. Laboring under that impression at the time of writing this letter? A. Yes, Sir.

Q. How often had you met her after Dec. 30 up to the time of writing this letter afterward in 1872? A. I could not say, Sir.

Q. About how many times? A. That I could not say.

Q. Well, do you recollect of having met her at all? A. Yes, I had met her.

Q. You met her the first week in February, didn't you? A. Yes, I saw her; I saw her in——

Q. And you saw her in May afterward? A. In May afterward.

Q. Now, between that and the writing of this letter, how many times had you seen her? A. I only recall a single time, and I am not sure whether that was in that year.

Q. Well, when was it, if it were in that year? A. It probably was; she came around to Mr. Moulton's with her little carriage and babe, I think—at any rate, with one of the children.

Q. Didn't you meet her in the Fall of 1871? A. It is quite possible, but I do not recall the meeting.

Q. Don't you recollect of telling on your direct examination that you did go to her house in the Fall of 1871? A. Yes, Sir; I think that there was once in November that I saw—I think I did—I think it was.

Q. It was in the Fall, at all events? A. I think it was in November; that is, I was uncertain; but that was my best impression at the time.

Q. Well, you saw her then? A. Yes, Sir; I saw her at a third interview, that I had at her house; the only three times, all I recollect, being——

Q. And how long did that interview last? A. Well, I think perhaps a half hour; it was a short interview.

Q. There was no explanation then between you, was there, as to this charge of having secured her affections? A. None, Sir; none.

Q. Mrs. Tilton did not disavow it? A. It was not the subject of conversation at all.

Q. She did not disavow it? A. She did not.

Q. Did not say a word upon the subject? A. Not as I recollect.

Q. Permitted you to come and go laboring under the impression that you had secured her affections away from her husband and given rise to all this difficulty and trouble? A. That was certainly my impression that I derived.

Q. Well, at that interview in the Fall of 1871, was any one present during the interview besides yourself? A. Not that I recall, Sir.

Q. Was there anything said at that interview about the charge that had been made against you of improper advances? A. No, Sir; not that I remember.

Q. Don't you think that you would remember it if such had been the case? A. I presume I should.

Q. Anything said to her about the charge that she had made in writing, and the retraction of that charge and the recantation of the retraction? A. Nothing.

Q. You did not call her attention to it, and have it explained? A. No, Sir.

Q. You did not call her attention to the fact that she had told a falsehood? A. Not at all.

Q. Or written a falsehood? A. Not at all.

Q. No rebuke, no admonition, no word upon that subject? A. No word of admonition, no rebuke; but there was an admonition of Scripture.

THE CLANDESTINE LETTERS.

Q. Yes, I read:

Should God inspire you to restore and rebuild at home, and, while doing it, to cheer and sustain outside of it another who sorely needs help in heart and spirit, it will prove a life so noble as few are able to live; and in another world the emancipated soul may utter thanks.

Now, Mr. Beecher, who was that other person outside who was to be cheered? A. I suppose it was me, Sir.

Q. You suppose it was you? A. Yes, Sir.

Q. Can't you go beyond a supposition in answering that question? A. Well, if you ask me whether I recollect that I meant that to mean——

Q. No, I ask you this—I ask you who that person outside was that this lady was to cheer and console? A. Well, I presume it was me, Sir.

Q. Don't you know that it was you? A. I cannot say that: I do not feel inclined to use it in so strong language as that; but that is my present——

Q. Well, do you think there could be anybody outside whom you wished to have cheered by Mrs. Tilton? A. Oh, there were plenty of them; but I do not suppose that I was thinking of anybody but myself in that phrase.

Q. You are not willing to say positively that you were thinking of yourself? A. No, Sir; I do not like to; but then I give you all the advantage of the supposition, which is substantial enough.

Q. Well, how did you understand (if it were you) that Mrs. Tilton was to cheer and sustain you? A. By well-doing in her own household.

Q. In no other way? A. In no other way; nothing would comfort me more than that.

Q. Well, let us go on and see if you expected anything else.

[Reading:] "If it would be of comfort to you now and then to send me a letter of true inwardness, the outcome of your inner life, it would be safe."

A. Yes.

Q. Did you expect to be cheered and sustained outside by those letters of true inwardness? A. Not by the letters of true inwardness, but——

Mr. Fullerton—That is an answer.

Mr. Evarts—No.

Mr. Fullerton—Yes; it is.

The Witness—It is not an answer.

Mr. Fullerton—Yes, it is an answer.

Mr. Evarts—It is not *his* answer.

Mr. Fullerton—It *is his* answer.

Judge Neilson—The witness can explain if he desires.

The Witness—The letter to which that was an answer——

Mr. Fullerton—No; I don't want the letter.

The Witness—But that is an answer; you cannot have the meaning of that letter unless you have that to which it is an answer.

Mr. Fullerton—I propose to have an answer to my question first.

Judge Neilson—He has answered your question, and the suggestion is that he may wish to explain—which you will recognize as proper, I suppose.

Mr. Fullerton—If it is proper I will recognize it, Sir. Under present circumstances, when he says "no," I think that is a full answer; if it is not a full answer, he can state so.

Mr. Evarts—The witness is stopped in the midst of an answer which he has a right to make. Counsel finding enough in the answer, to satisfy him, has no right to stop the witness's mouth.

Mr. Fullerton—It does not follow that it is wrong to stop the witness in his answer, if it is an improper answer.

Judge Neilson—No; in the formal sense the question is answered; but yet, if the witness, for his own protection and benefit, thinks explanation is proper, he has a right to give it.

Mr. Fullerton—An explanation of that answer.

Judge Neilson—Or any qualification.

Mr. Fullerton—Or any qualification of that answer, certainly; but he was going on, Sir, to do something beside that, which I objected to.

Judge Neilson—I don't know what would be the effect of what he was going to do.

Mr. Evarts—You are assuming that he was going to do something beside that.

Mr. Fullerton—I assume it, because it appeared in the answer as far as it had gone.

Mr. Evarts—My proposition is that the witness has a right to answer a question and not be controlled in that answer unless he is giving illegal evidence.

Mr. Fullerton—Well, that is my proposition exactly.

Judge Neilson—Well, you agree.

Mr. Fullerton—Yes, Sir; and, inasmuch as he was giving illegal evidence, I propose to stop him.

Mr. Evarts—That you assume by stopping him.

Mr. Fullerton—I have a right to assume it.

Mr. Evarts—No.

Mr. Fullerton—Let us go back and have that question and answer read.

Judge Neilson [to the Witness]—Do you feel that you wish to make any explanation in regard to the last answer?

The Witness—All that I wished to say, Sir, was that it was impossible for me to explain those terms unless I was allowed to say what I had in my mind in writing those terms.

Judge Neilson—Well, that is a sufficient explanation.

WHY THE LETTERS WERE KEPT SECRET.

Mr. Fullerton—Well, that is not the evil that I was trying to ward off, by any means. Why did you say that it would be safe for her to do it? A. Because she had asked me not to let the letters of hers which related to her inward and private feelings be seen by Mr. Moulton.

Q. She had requested that? A. She had requested that in the letter to which this is an answer.

Q. Well, I don't ask you that; I don't propose to bring in any other letters. Was there no other reason why you thought it would be safe? A. It would be safe also because I was so much away that her letters were liable to be—to fall into other hands to whom confidential communications of this kind, delicate ones, should not fall; and it was both that her letter would be safe, so far as that is concerned, and that its contents should be safe, so far as they were to be made known to Mr. Moulton.

Q. Was there any understanding, then, between you and Mrs. Tilton, that some of her letters were given to

Mr. Moulton? A. She understood that I had given them to him.

Q. How did she understand it? A. Because Mr. Moulton had talked with her about them.

Q. How do you know that? A. Because I understood from him that he had.

Q. Mr. Moulton told you, then, that he had delivered—— A. That he had spoken with Elizabeth about letters that came from her to me.

Q. And what did he tell you about it? A. I don't remember, Sir, except the fact that he had spoken about talking with her.

Q. Can't you give the substance of what he said? A. No, Sir.

Q. You only recollect the fact that he said something upon that subject? A. That is all that I recollect, Sir.

Q. Well, I will read on:

"It would be safe, for I am now at home here with my sister."

A. Yes.

Q. Well, did that make it any safer? A. A great deal safer.

Q. Your wife was away, was she not? A. She was.

Q. And that would not have been so safe, would it? A. It would have been safe, perfectly safe for her, but if she was gone and my sister was not there, the letters were liable, therefore, to be misled or lost, or might fall into hands that ought not to have them.

Q. Who opened your letters in the absence of yourself and your wife? A. I opened them.

Q. In the absence of yourself and your wife? A. Oh, I think they were not opened, Sir; they were taken by the servants, and, or ought always to be, put where they would be safe, but were not always.

Q. Well, your servants had no authority to open letters? A. No, Sir; but they had a habit of misplacing a good many papers.

Q. How? A. They had a habit of misplacing a good many letters and papers.

Q. Do you recollect where your wife was at this time? A. What is the date, Sir?

Q. Well—— A. Oh! January; I presume she was in Florida, Sir.

Q. And which of your sisters was there? A. Mrs. Perkins.

Q. Now, was there any correspondence between you and Mrs. Tilton after this letter that I have just called your attention to? A. I received a letter from her after that; I do not recollect that I wrote her again.

Q. I did not understand your answer. A. I say I received a letter from her, but I do not recollect at the present moment of writing any other myself.

Q. I call your attention now to "Exhibit No. 18." A. Yes, Sir; I know what that is.

Q. Do you recollect of writing that letter? A. Yes, Sir.

Q. It is January, 1872, I believe it is? A. The 20th of January, 1872.

Q. I will ask you here, Mr. Beecher, how you sent these letters to Mrs. Tilton? A. I do not recollect, Sir.

Q. Have you no recollection upon the subject? A. Not the slightest.

Q. Can't you tell me whether you sent them by mail or by private conveyance? A. I cannot; I recollect sending one by Mr. Moulton—the 7th of February letter; that is, I put that into his hands, but I do not recollect in regard to the others.

Q. Well, were you in the habit of sending her letters by mail? A. Well, I wrote so few that a habit could hardly be predicated about it.

Q. You state in this letter:

"I shall be in New-Haven next week to begin my course of lectures to the theological classes on Preaching."

How did it happen that you communicated that fact to Mrs. Tilton? A. I thought she would be interested to know it.

Q. Did you communicate it to the rest of your congregation by private letters? A. No——

Q. You did not? A. I did not, Sir.

Q. Mrs. Tilton—was she the only one you communicated the fact to? A. By word of mouth to a very many.

Q. Did you write to any other member of your flock? A. I don't know but I did, and I don't know as I did.

Q. What made you think she would be interested to know that you were going to New-Haven? A. Well I flattered myself it would be interesting to almost anybody to know that I was going to deliver a course of lectures in Yale.

Q. So you sat down and wrote that fact to the lady who, you thought, had transferred her affections to you, and created a great domestic difficulty? A. When I was writing to that lady in regard to matters, I mentioned that incidentally after I had got through the other things.

Q. Did you not want to account to her for your absence? A. No, Sir, I did not.

Q. Hadn't you called upon her just prior to that? A. I had called to see her, but did not see her.

Q. Did you go by appointment? A. No, Sir.

Q. Then you went without an appointment? A. I went without an appointment as near as I can recollect; I do not remember any appointment.

Q. Do you recollect the time of day you called? A. I do not.

Q. Do you recollect whom you saw when you did call? A. I don't.

Y. Do you recollect whether or not you had been requested to call? A. I do not.

Q. Do you recollect whether you went of your own motive? A. I do not, though I suspect I did.

Q. Don't you recollect that it was in the daytime? A. I don't, but I presume it was.

Q. Do you know where Theodore Tilton was when you went? A. I do not.

Q. You went to make a call upon her, did you? A. I went to make a pastoral call upon her.

Q. Well, weren't you afraid that those pastoral calls would result in the same difficulty that—— A. Yes, I had fear, and, therefore, I never allowed myself to talk with her on anything but religious topics.

Q. Well, how did you think that she would be interested in knowing that your wife took boat for Havana and Florida on the following Thursday? You say in this letter, "My wife takes boat for Havana and Florida on Thursday?" A. Well, just at that time it was the most interesting fact, almost, that I had, and I naturally would impart it to a friend.

Q. How intimate had Mrs. Tilton and Mrs. Beecher been prior to the writing of this letter? A. I cannot say that they had been intimate, but they were acquaintances.

Q. Had they exchanged calls since December 30, 1870? A. I don't know.

Q. Don't you know they had not? A. I don't know.

Q. You don't know of any such call, however? A. I don't know of any.

Q. [Reading:] "I called on Monday, but you were out."

Mr. Shearman—It should be "Wednesday."

Mr. Fullerton—Well, "on Wednesday," then, "but you were out." A. Yes, Sir.

"My wife takes boat for Havana and Florida on Thursday"—"I called on Monday, but you were out." A. On Wednesday.

Q. Well, did you go to New-Haven? A. I presume I did, Sir; I went three successive Winters.

Q. Is that the time that you met Theodore Tilton on the cars? A. January, 1872; no, Sir.

Q. That was not the time? A. No; I think not, Sir.

Q. Well, Mr. Beecher, you did not permit yourself to talk to Mrs. Tilton upon anything but religious subjects? A. Well, that is the general designation; I don't mean that—absolute exclusion of any reference to other topics.

Q. Well, how many times had you been to see her when such conversations were had? A. I think I had seen her but three times before the writing of this letter.

Q. But three times? A. I think that was the extent.

Q. Now, before the writing of this letter, in any of the calls that you made was there any allusion to the fact that you had been charged with improper soliciations? A. Never; not once.

Q. No explanation, or word? A. Not one particle; never an allusion to it—that I recall, I mean, of course.

Q. Let me show you Exhibit No. 20? A. Yes.

Q. When did you write that? A. I cannot say with any definiteness, Sir; I can only give my impression.

Q. In what year? A. I should say that—I can't say certainly, but I have an impression that this was written in the Fall of 1871, but I cannot say certainly, Sir.

Q. Why do you fix the Fall of 1871 as the probable time for writing that letter? A. Well, the grounds for it are, I admit, not very stable, and I take them because I cannot get any other, for I really don't recollect the note; it has no date to it; it is a mere bit of paper——

Q. Well. I am asking you how you fix the time as having been in the Fall of 1871? A. Because I recollect that, at the time, Florence brought me a little note; I think it was from her mother, who was in trouble about her mother, and wanted to see me, and I—my impression is that I sent back this note, saying, "If you don't see me Friday night, you will next week Friday night;" that is my prayer-meeting night.

Q. [Reading:] "My Dear Mrs. Tilton: If I do not see you to-morrow night, I will next *Friday*, for I shall be gone all the forepart of next week. Yours, truly,

"H. W B."

Now, have you a recollection that that was in reply to a note brought to you by Florence? A. I would not say it positively, but I have an impression that that alludes to a scene that I recollect of that kind; that is my best recollection.

Q. Well, why did you fix Friday as the time you would see her? A. Because that was the time when persons having errands with me stopped after prayer-meeting to talk with me.

Q. But you don't say Friday evening? A. Didn't need to.

Q. Well, was there any necessity for underscoring "Friday?" A. Well, it is the *next* week.

Q. Yes? A. "I am gone all the forepart of the next week, but I shall be home at the Friday night prayer-meeting, and will see you."

Q. Does it say "Friday night prayer-meeting?" A. No; Friday.

Q. Well, you would be home Friday? A. That would not be understood by you, but it would by my parishioners; the habit was to see me on my Friday night meetings.

Q. But you don't say "Friday night" there, Mr. Beecher? A. I know I don't.

Q. Please look at "Exhibit No. 40." Do you recollect the receipt of that letter? A. No, Sir.

Q. Do you recollect the fact that you received it? A. I do not recollect the fact that I received it.

Q. Do you recollect what you did with it? A. No, I don't, Sir.

Q. Didn't you take it to Mr. Moulton? A. I presume so, if it came from him.

Q. It certainly did. A. I presume, then, I took it to him.

Q. What object had you in view in taking it to him? A. Same object I had in taking all my papers to him.

Q. Please state what it was? A. That it might be safe.

Q. And that is the object you had in giving it to Mr. Moulton? A. That is the object, and keeping him informed of what I knew in respect to the family.

Q. Did you explain to Mr. Moulton what that letter meant as you understood it? A. Not that I recollect.

Q. What is the date of it, Mr. Beecher? A. Oct. 20 or 24; it is very indistinct—24th.

Q. What is the year? A. No year given.

Q. Do you recollect the year? A. I do not, Sir.

Q. Have you no way of fixing the year? A. Only suggestively.

Q. Well, suggestively fix it. A. If that is true which I suppose, it was the year in which May Bradshaw was married; but now I cannot tell you what that year was.

Q. Was it not 1871? A. I do not recall.

Q. Let us read it, and see if it will bring it to your recollection. [Reading:]

MRS. MORSE'S LETTER.

"MY DEAR SON"——

Perhaps you may as well state now why she called you her son? A. Well, we were at a wedding which I attended (and I think it was May Bradshaw's, but I am not certain about that), and in the off parlor, the back parlor, Mrs. Morse and I were thrown together, and she was stating to me her trials and troubles, and, among others, that she was separated from her children, and that her sons were not living with her, and that her daughter was substantially separated from her, and she was in great trial—she had nobody to advise with or to consult, and I said to her, "Well, consult with me as if I was your son; I will give you all the help I can."

Q. How much were you her senior? A. That is a question that I never proposed to her, and I have not the slightest idea how old she was. [Laughter.]

Q. You were her senior, were you not? A. I don't know, Sir.

Q. You have no judgment upon that subject? A. No, Sir, none.

Q. You think that is the way she came to address you as "my dear son?" A. I know no other way.

Q. Because you told her to consult you as if you were her son? A. Because she came to me saying that she had no son, or no person to consult, and I said, "Consult me."

Q. Well, perhaps this last sentence will throw some light upon the subject: [Reading.]

"When I have told darling, I felt if I could, in safety to yourself and all concerned, you would be to me all this endearing name. Am I mistaken? MOTHER."

Was there any suggestions made between you and her, that gave rise to that expression? A. None that I remember, Sir.

Q. Did you answer that letter? A. Not that I recollect, Sir.

Q. I will read another, and see if it will throw any light upon the subject. [Reading:]

: Do you know I think it strange you should ask me to call you son?"

Did you ask her to call you "son?" A. In no other way than I have stated.

Q. No other way? A. No other way. It was not for my sake; it was for hers.

Q. But she says in her letter:

"Do you know I think it strange you should ask me to call you 'son'"?

Had you asked her to call you "son?" A. No.

Q. Did you explain any of these things to Mr. Moulton when you carried the letter to him? A. I don't believe I did. To explain a letter of Mrs. Morse to Mr. Moulton was not our habit.

Q. She says in this letter:

"I will promise that the 'secret of her life,' as she calls it, shall not be mentioned."

Whose life did she refer to there, as you interpreted the letter? A. It is not for me to say, for I don't recollect; it is not my language.

Q. The language was addressed to you, was it not? A. It was.

Q. And you took the letter to Mr. Moulton to have it kept safe? A. Yes, Sir; but it was Mrs. Morse's letter to me about what Mrs. Tilton had said, and now you ask me to say what two women said—what I thought about it.

Q. Yes, I ask you what you did think about it? A. And I tell you I don't know.

Q. Did you know then? A. I don't suppose I did.

Q. You formed no opinion about it? A. I don't suppose I did. My impression is that I did not read the letter.

Q. Let us read a little further [reading]:

"My darling spent most of yesterday with me. She said all she had in the way of money was $40 per week, which was for food and all other household expenses aside from rent, and this was given her by hand by Annie Tilton every Saturday. If you know anything of the amount it takes to find food for eight people, you must know there's little left for clothing. She told me he (T.) did not take any meals home, from the fact she could not get such food as he liked to *nourish his brain* [laughter]; and so he took his meals at Moulton's. Just think of that! I am almost crazy with the thought. Do come and see me. I will promise that the 'secret of her life,' as she calls it, shall not be mentioned. I know it's hard to bring it up, as you must have suffered intensely, and we all will, I fear, till released by death."

Now, did you know what she referred to there, in thus addressing you? A. Do you ask my present knowledge?

Q. At the time you received that letter, didn't you know what Mrs. Morse referred to in speaking of the secret of Mrs. Tilton's life, which she was not to mention in your presence? A. I reply to you specifically about that sentence, what I have told you generally about the whole letter, that I do not remember what I thought about the contents of it.

Q. Didn't you think it referred to the domestic trouble

in that family? A. I cannot say that I thought it did, when I have just stated that I don't remember what I thought.

Q. Never mind enlarging upon it. Did you not think it referred to the charge that Mr. Tilton had made against you of improper solicitations? A. I do not remember what I thought about it in any way, manner, or sort.

Q. It was a thing that did not make any impression upon your mind, was it? A. My impression is that I did not even read it.

Q. How? A. My impression is that I never read the letter through.

Q. What did you want it kept safe and take it to Mr. Moulton for, then? A. Mr. Moulton was the depository pretty much of all the papers that related in any way directly or indirectly to this case.

Q. Oh! did this letter relate to this case? A. It related to it by this, that Mrs. Morse and Mr. Tilton were adversaries.

Q. Well, did you read it far enough to find that out? A. I knew that, Sir, without reading that letter.

Q. You did? A. Yes, Sir.

Q. Did you instinctively know, without reading it, what was in the letter, so as to come to the conclusion that it related to this difficulty, and so take it to Mr. Moulton for safe-keeping? A. A letter from Mrs. Morse would go to Mr. Moulton anyhow, whether I knew the contents or not.

Q. That is not what I asked you? A. It is the substance of what you asked.

Q. No, it is not. If you did not ascertain the contents of that letter by reading it, how did it happen that you took it to Mr. Moulton upon the theory that it related to some difficulty that existed between yourself and Mr. Tilton, or between Mrs. Morse and Mr. Tilton? A. Mr. Fullerton, you take a letter and glance your eye over it, and see what its contents relate to, and then you don't care about going through it——

Q. Is that the way you did? A. I presume that is the way; I don't recollect.

Q. You think you looked into it far enough to see that it related to this matter? A. Just enough to see that it was a complaint about Mr. Tilton and his family.

Q. Did you look at that letter just enough to see that it referred to the difficulty in that family, speaking of this secret of Mrs. Tilton's which was not to be mentioned in your presence if you came to see her? A. I don't recollect it.

Q. Now did you go in pursuance of that letter? A. Go where?

Q. Where the letter asked you to? A. I don't know as it did ask me to go anywhere.

Q. Well, I will have to ask you to read it and see. [Offering witness the manuscript letter.]

The Witness—I beg you will let me read the print, Sir; the writing is very fine, and with very pale ink.

Mr. Fullerton—Certainly, Sir. A. [After looking at the letter.] I don't now see where she asks me to go anywhere; I don't perceive what your question pertains to.

Q. Did you go to see Mrs. Morse after the receipt of that letter? A. Not that I know of, Sir.

Q. Have you no recollection whether you did or not? A. I have no recollection.

Q. Where was Mrs. Morse residing at that time? A. That I cannot say, Sir.

Q. You have no recollection where she was at that time? A. I have none, Sir.

THE FIRST BLUSH OF THE SCANDAL.

Q. Now, Mr. Beecher, when did you first hear that this scandal had got out? A. I don't know; I should have to think that matter up.

Q. Well, Sir, we will give you plenty time to do so. A. [After a pause.] Do you allude to the fact that there was a difficulty between Mr. Tilton's family and mine—and myself?

Q. I allude to *this scandal*. I use the generic term.

Judge Neilson—In any form?

Mr. Fullerton—In any of its forms or ramifications.

The Witness—I think the first intimation I had of it was the card of Mrs. Woodhull in May, 1871.

Q. In '71, was it? A. Yes, Sir.

Q. You are quite sure that was the first? A. No, Sir. That is the first that comes to me.

Q. Do you recollect hearing at any time that Mr. Tilton had told it to any number of persons? A. This scandal?

Q. Yes. A. I do not now recall at this moment any—I heard of his repeating injurious stories of me.

Q. That is not it? A. Well, that is what I want to know, whether you refer to that, or whether you refer——

Q. I am referring to *this scandal* in any of its ramifications? A. Yes, Sir. I do not recall hearing that it had got out until the intimations of the card.

Q. Do you recollect the letter of Mrs. Morse, to which I called your attention last week, in which she spoke of twelve persons to whom Theodore Tilton had told this story?

Mr. Shearman—No, that is not what she said.

Mr. Fullerton—Well, it is it substantially.

Mr. Shearman—No. Twelve persons whom he had told, she did not say what.

Mr. Fullerton—Mrs. Morse says: "I know of twelve persons whom he has told, and they in turn have told others?" A. Told what, Sir.

Q. I am not under examination. A. No, but I ask in order to be able to answer your question.

Q. I am reading all that there is here. Do you recollect that? A. Allow me to see it, if you please, Sir.

Q. Certainly, Sir? A. [Having looked at the letter.] I cannot say that I recollect about this letter. I can recollect that there was a time in which the subject of Mr. Tilton's speaking about his family troubles was discussed

between Mr. Moulton and myself, but I don't recollect it as associated with this letter, though it may have been so and probably would be.

Q. How is that? A. I recollect that Mr. Moulton and I talked about the allegation that Mr. Tilton had disclosed the family difficulties that existed to several persons—to many persons.

Q. Did you understand that he had disclosed the family difficulties, and at the same time disclosed that you were the author of the difficulties? A. I don't recollect about that. Of course there could scarcely be any other understanding than it.

Q. Did you not take this letter to Mr. Moulton to the end that he might ascertain from Mr. Tilton whether the allegation was true that he had told any persons of the difficulty? A. Very likely; though at this moment I don't recall that; I presume that was the reason of taking it to him.

Q. Don't you recollect that, after you had taken it to him, Mr. Moulton sent for Mr. Tilton—and don't you recollect that an interview followed between you three gentlemen? A. I remember that there was an interview between us on the subject of whether he had made reports, but partly it was whether he had made reports about what was called the Bowen scandal, and partly whether he had also spoken about the difficulties in his own family as connected with me.

Q. Now, what took place between you on the latter subject? A. I do not recall what the result was, except, in general, that I received from Mr. Moulton the assurance that it was not so.

Q. Was not Mr. Tilton, after he came there and became one of the three, asked whether he had told the story about any difficulties, and if so, to whom? A. Very possibly, Sir, but I don't recall it.

Q. Don't you recollect? A. I do not recollect it.

Q. Don't you recollect that he denied having told it to twelve persons, and that he went on to state to whom he had told it? A. I do not recall that. I recall in general that this was discussed and that Mr. Moulton assured me, either then or afterwards, that that statement was exaggerated; and also I received from Mr. Tilton a denial of the substantial allegation that he had told it to twelve persons—that is, to many persons.

Q. Now, my question is, whether it was not the subject of discussion there as to whether he had not told it to some persons? A. I do not remember the discussion sufficiently distinctly to say.

Q. Do you not recollect that he denied having told it, except to Mrs. Bradshaw and Oliver Johnson? A. I don't recollect it.

Q. Do you recollect that their names were used? A. I do not now recall that I knew it then; it might have taken place, but I don't recall it.

MRS. WOODHULL'S CARD.

Q. Then you heard it first, as you think, in May, 1871, when Mrs. Woodhull published her card? A. That, I think, is the first, Sir.

Q. Where did you first see that card of Mrs. Woodhull? A. It was published in the New-York ——.

Q. Did you see it in that paper? A. I either saw it, read it, or some one stated the substance of it to me; I do not recall the act of reading it.

Q. How soon after the publication of that card did you see Mr. Tilton? A. I don't know that, either, definitely; it was within a short period.

Q. Did you go directly to see him? A. I do not recollect that I did.

Q. Did you go to see Mr. Moulton? A. I don't recall; it is quite likely.

Q. Did you take, as you now remember, any step whatever in regard to the publication of that card? A. No, I took no step; it is quite likely that I had a conference with Mr. Moulton whether anything should be done, but I don't recall the conference.

Q. Don't you know that you had an interview with Mr. Moulton, and that it was agreed that Mrs. Woodhull should be seen in regard to it? A. No, I do not recall, Sir.

Q. Don't you recollect that it was thought advisable that her threatened publication should be averted if it could be accomplished in any way? A. I do not recall it, Sir.

Q. When did you first learn that Mr. Tilton had seen Mrs. Woodhull? A. It was when he told me within a few days, a day it may be, or a few days, at any rate, of the interview; he described it to me.

Q. Where were you when he described it to you? A. That I forget, but I presume it was at Mr. Moulton's house; I don't remember.

Q. Didn't he tell you in substance that he had had that interview with Mrs. Woodhull for the purpose of establishing pleasant relations with her, so as to avert that blow that she threatened to strike? A. He said that he meant, as I recall it, to bring to bear upon her an influence which would restrain her from meddling with the domestic troubles of his family.

Q. And didn't you approve of that? A. Yes, Sir; in the light I then had I thought it was not an improper thing to do.

Q. And didn't you thank him for his interference? A. Possibly I might; I don't remember that I did.

Q. Did he at that time disclose to you your plans—how that kindly influence was to be brought about? A. I understood that it was to be brought about by the exercise of his personal influence upon Mrs. Woodhull, and by stating to her that she had no right to attack a fellow-laborer in the same field with herself.

Q. Did you understand that his influence was to be exerted in the shape of argument? A. Both; but it was

more than that, it was to be personal influence as distinguished from argument.

Q. Didn't he tell you that he would go to her house to see her? A. I don't recollect that he did.

Q. Will you state that he did not? A. No.

Q. Will you state that he did not disclose to you his intent to go to the house and see Mrs. Woodhull for the purpose of exerting this influence and getting a control over her so as to prevent the publication of the scandal, and don't you recollect that you approved of it? A. No, Sir; I never approved of any such thing.

Q. You did not approve of his going there? A. No, Sir; I don't recollect ever approving of any steps; they were announced to me after they were taken.

Q. I am speaking of what was said to you *before he went there.* A. Nothing that I recall was said to me before he went to see Mrs. Woodhull; the first knowledge I had of his seeing her was the historical account which he gave me of his interview with her.

Q. Didn't he tell you before he went that he was going, and make known to you what object he meant to accomplish? A. No, Sir; I recall nothing of that kind.

Q. You say you do not *recall* it; do you mean to state positively that that did not take place between you and Mr. Tilton? A. I do not believe it took place between me and Mr. Tilton.

Q. That is not an answer to my question. A. According to the best of my recollection it did not take place.

Q. Is that all you can say? A. That is all I can say.

Q. You cannot positively deny it, then? A. According to the best of my recollection nothing was said to me before his going to see her.

Q. You cannot positively deny that it did take place? A. That is as far as I feel that I can go, Sir.

Q. You have no positive recollection that it did not take place? No, I don't know that I have, but I have a very positive feeling that it did not.

Q. Not so positive as to swear to it? A. No, I would not like to swear to it.

Q. When did you next see Mr. Tilton after that interview, in regard to this scandal? A. That interview with whom—his with Mrs. Woodhull, or mine with him?

Q. Mr. Tilton's with you? A. Oh, I don't recollect when my next interview with him was.

Q. When did you next hear of the scandal after that publication of Mrs. Woodhull? A. I don't know, Sir—I am speaking now at a venture a little—my impression is that it was not until the Fall—the scandal, you mean, as a published thing?

Q. Yes. A. I think it was in the Fall of 1872, the publication of it, but I may be mistaken.

Q. Now, intermediate the card of Mrs. Woodhull and the publication in the Fall of 1872—did you hear privately that it had got out in any way? A. That there was a difficulty between me and Mr. Tilton, I heard had got out.

Q. From whom did you hear that? A. I cannot say positively.

Q. What did you hear the difficulty was that had got out? A. That I cannot say—merely that there was talk about it, and that there were rumors about it.

Q. Can you state what the difficulty was, as you heard it? A. No, I cannot.

Q. Did you ever hear of the difficulty before the publication of it in the Fall of 1872 by Mrs. Woodhull? A. Never, in any detail.

Q. Well, in general did you hear it from any quarter? A. Only that there was difficulty; that was all.

Q. Had you never heard that Mr. Tilton charged you with the commission of this offense? A. No; not that I recall.

Q. Do you recollect of receiving a letter from a nephew of yours, F. B. Perkins? A. Yes, Sir.

Q. Do you recollect when that was? A. No, Sir; but I can tell you.

Mr. Fullerton—Look and see, please. The Witness—I have got it down here somewhere (referring to a memorandum).

Mr. Beach—That letter is on exhibit.

Mr. Shearman—Exhibit D, 46.

The Witness—What date?

Mr. Shearman—Feb. 13.

The Witness—1871; that is too far along.

By Mr. Fullerton—Look at Exhibit D, 46, and say whether it is the letter that you received from your nephew? [Handing letter to witness.] A. I presume it is, Sir; this is his handwriting.

Q. Look at Exhibit D, 47, and see whether it is your reply to it? A. This is my handwriting; yes, Sir, until you get over to here; this, I think, Sir, is the first draft of a letter, Feb. 23, 1871.

Q. How? A. I think this is the first draft of a letter.

Q. In reply to your nephew's? A. In reply to my nephew's.

Q. Now, are you not enabled to say you heard of this scandal in 1871, in February? A. No, Sir.

Q. Let me read a clause from your nephew's letter. [Reading.]

"Theodore has been justifying or excusing his recent intrigues with women by alleging that you have been detected in the like adulteries, the same having been hushed up out of consideration for the parties."

A. You are referring to the Bowen letter?

Q. Did you understand it as referring to the Bowen letter? A. Unquestionably; the letter will show it.

Mr. Fullerton—I don't understand that it does show it. "By alleging that you have been detected in the like adulteries." A. Yes, Sir.

Q. Bowen's charges had been hushed up? A. Certainly they had.

Q. How had they been hushed up? A. So far as Mr. Tilton was concerned, he had ceased to believe them, and there was no publication of them directly by Mr. Bowen, except by being whispered in his ear; they had never gone into the newspapers, nor, that I know of, into the common air. They had worked around in the various channels, which I am ignorant of, by which newsmen get hold of things.

Q. How had they been hushed up? A. They had been dropped.

Q. How? A. I didn't say how.

Mr. Evarts—He didn't say that.

Mr. Fullerton—No, but he is saying so now.

The Witness—I am saying now that I don't know how they were hushed up.

Q. You did not regard this, then, as a reference at all to the charge against you by Mr. Tilton? A. Not as I recall it.

Q. Well, let us see your reply?

"Feb. 23, 1871.—Whatever Mr. Tilton formerly said against me—"

The Witness—Please read on.

"Whatever Mr. Tilton formerly said against me—and I know the substance of it—he has withdrawn."

A. Yes, Sir.

Q. Now, prior to that, Mr. Tilton had charged you with improper relations with his wife, had he not? A. That was not the subject between Mr. Tilton and me.

Mr. Fullerton—Answer the question.

Mr. Evarts—Read the whole sentence.

"And frankly confessed that he had been misled by the statements of one who, when confronted, backed down from his charges."

Mr. Fullerton—I know what the sentence is. I will give you a great many more than you want before I get through.

Mr. Evarts—You cannot.

Mr. Fullerton—I am going to ask questions in regard to this in detail.

Mr. Evarts—But I propose, when the witness is asked concerning a written letter, that half a sentence shall not be put to him as if it were a whole sentence.

Mr. Fullerton—I did not read half a sentence and put it to him as if it was a whole one.

Judge Neilson—You have a right to frame your question.

Mr. Fullerton—I have that right, and I will enjoy it. [To the witness.] I will ask you this question. [Reading.]

"Whatever Mr. Tilton formerly said against me—and I know the substance of it—he has withdrawn."

Now, I ask you whether prior to the date of this letter he had not charged you with having had improper relations with his wife? A.—[To Mr. Fullerton]—I cannot answer the truth without making a statement besides yes or no.

THE CHARGE OF ADULTERY.

Q. Can you tell me whether the charge was made prior to Feb. 23, 1871? A. You ask me for the interpretation of that letter.

Mr. Fullerton—I am not asking you for any interpretation at all.

The Witness—It is an interpretation you ask of me.

Mr. Fullerton—It is not. I ask you whether, prior to February 23, 1871, Mr. Tilton had not made the charge against you of having had improper relations with his wife? A. He never made such a charge against me.

Mr. Fullerton—Well, we will settle that question now. Now let me read from your direct examination; I won't read the whole of it; "that I had—that in consequence of the differences which had sprung up by reason of my conduct, his family had well nigh been destroyed; that I had suffered my wife and his mother-in-law to conspire for the separation of the family; that I had corrupted Elizabeth, teaching her to lie, to deceive him, and hide under fair appearances her friendship to me; and that I had made her to be—that I had—that he had married her one of the simplest and purest women that he ever knew, and that under my influence she had become deceitful and untrustworthy; he said that I that had tied the knot in the sanctuary of God, by which they were to be bound together in an inseparable love, had also reached out my hand to untie that knot, and to loose them one from the other; he then went on to say that not only had I done this, but that I had made overtures to her of an improper character."

Mr. Evarts—Read the rest of that.

The Witness—Will you read the whole of it, please, Sir?

Mr. Fullerton [reading]—"And again I expressed some surprise, probably, by my attitude—I don't recollect that I talked—but he drew from his pocket a strip of paper about that [producing a paper about five inches by one and a half]—like that, and read to me what purported to be the statement of his wife to him that Mr. Beecher had solicited her to become his wife, to all the intents and purposes which were signified by that term, or substantially that."

Q. Now, didn't he charge you with improper advances? A. Strictly speaking, he did not.

Q. Well, I don't want anything but strictly speaking—I want you to strictly speak, and answer the question I put to you: Didn't he charge you with having improper relations with his wife? A. I do not consider that he did, strictly and literally speaking.

Q. Did you give the evidence that I have just read in your direct examination? A. I presume I did; I have not read it since.

Q. Is it true as I read it? A. I presume it is true in the sense in which I meant it.

Q. Didn't you understand yourself as saying in the evidence that he made the charge first and then fortified it

by producing the certificate of his wife? A. If I used the word "charge"——

Q. Did you understand yourself as saying that? A. Please repeat the question.

Q. Didn't you understand yourself in your direct examination as saying, "Mr. Tilton made the charge of improper overtures to his wife, and then produced a certificate of his wife in substantiation of the charge?" A. I didn't intend to be so understood, Sir.

Q. You did not; very well; let it stand there. Let me read to you and see whether you ever said this at any other time

"He then declared that I had injured him in his family relations; had joined with his mother-in-law in producing discord in his house; had advised a separation; had alienated his wife's affections from him; had led her to love me more than any living being; had corrupted her moral nature, and taught her to be insincere, lying, and hypocritical; and ended by charging that I had made wicked proposals to her?"

A. Very likely I said so, Sir.

Q. Now in saying that, did you refer to the same interview between you and Mr. Tilton on the 30th of December, 1870? A. I did, Sir.

Q. Then I go back to the letter. Well, I will put this question to you: Do you mean now to say that Mr. Tilton did not on the night of the 30th of December, 1870, charge you with having made wicked proposals to his wife? A. I mean to state——

Q. Do you mean to state that that didn't take place? A. I mean to state that he charged me, according to my present——

Q. No, no; now, Mr. Beecher, if you please; I don't want what you suppose.

AN INACCURACY IN THE DIRECT EXAMINATION.

Judge Neilson—That is the only way, to let the witness answer, and if the answer is not proper we can strike it out, or a part of the answer.

Mr. Fullerton—I ask him if he now means to say that Mr. Tilton did not make that charge against him on the night of the 30th of December, 1870. He either means it or he does not mean it, and he can tell us by a simple answer

Judge Neilson—He might mean it in one sense and not mean it in another sense. I think we must take the answer.

Mr. Beach—We ask him if he didn't mean a certain specific thing, and whether a certain specific thing did not occur upon that occasion. He begins an answer by saying, I do mean this or that. That is not an answer to the question. By giving a different sentence or a different thing that he means is not answering a specific question whether he means the particular thing embodied in the question. I submit upon a cross-examination we are not bound to accept answers of that character.

Judge Neilson—The witness ought to answer as directly as he possibly can of course.

Mr. Fullerton—If he did n't mean it he can say so.

Mr. Evarts—If he did mean it he can say so.

Mr. Fullerton—Yes.

Mr. Evarts—And if he did mean what he is going to say now he can say that. That he can do.

Mr. Fullerton—Yes.

Mr. Evarts—They think the counsel have a right to catch a witness between a "yes" and a "no" when neither of them is telling the truth.

Mr. Fullerton—I don't know what your object may be in examining a witness. That is not my object now. I know without any aid from the counsel on the other side that Mr. Beecher can say whether he meant a certain thing by what he said.

Mr. Evarts—He can if you will let him.

Mr. Fullerton—I will.

Mr. Evarts—You cannot stop his mouth.

Mr. Fullerton—No, I cannot stop his mouth, and that is not the only one whose mouth I have not been successful in stopping. Your Honor will perceive that Mr. Beecher meant to say that he was charged with improper advances by Theodore Tilton on the night of the 30th of December, 1870, or he was not so charged in his judgment. I don't want any oration about it. I wish to know simply the operation of his own mind, the judgment he formed in regard to that interview. It certainly is a very simple question.

Judge Neilson—What you read just now was not from his direct examination.

Mr. Fullerton—What I read first was from the direct examination. What I read in the second place was what Mr. Beecher said upon another occasion.

Judge Neilson [to the Tribune stenographer]—Read the last question, Mr. Stenographer.

The Tribune stenographer read the question, as follows: Q. "Do you mean now to say that Mr. Tilton did not, on the night of the 30th of December, 1870, charge you with having made wicked proposals to his wife?"

Mr. Evarts—Your Honor is aware the whole inquiry has been upon the point whether the husband made the charge, as distinct from making the charge that the wife had communicated to him.

Judge Neilson—Now, suppose the witness should answer that Mr. Tilton did make that charge. It would be legitimate on a redirect examination to inquire on what he alleged it was founded.

Mr. Beach—Undoubtedly; but this difficulty, if your Honor please, arises upon the volunteer declaration of the witness that Mr. Tilton did not charge him with making improper proposals to his wife.

Mr. Evarts—Excepting through his wife.

Mr. Beach—Not excepting through his wife, but that he read a paper or statement of his wife's making that

imputation. Now we have read what he stated on his direct examination. We have read what he stated upon another occasion, wherein he explicitly declares that Mr. Tilton did make these charges, and we now ask him, for the purpose of enabling him to rectify or confirm the declaration which he has made within a few minutes, whether he meant to say Mr. Tilton did not upon that occasion make that accusation. We don't ask him what he does mean to say; we ask him whether he meant to say that.

Judge Neilson [to the Witness]—Give us the best answer you can.

The Witness—From my present point of view?

Judge Neilson—Yes.

The witness—I do not regard Mr. Tilton as having made that charge personally. He charged——

Mr. Fullerton—One moment. Did you say that? [Reading.]

"He ended by alleging that I had made wicked proposals to her. Until he had reached this I had listened with some contempt, under the impression that he was attempting to bully me, but with the last charge he produced a paper purporting to be a certified statement of a previous confession made to him by his wife of her love for me and that I had made proposals to her of an improper nature."

Q. Do you recollect that? A. I think very likely those are my words.

Q. Preceding the confession of his wife or the production of the certificate of his wife, did he not charge you with having made improper proposals to his wife? A. No; I do not think he did, Sir.

Judge Neilson [to the Witness]—The inquiry is whether he said anything on that subject.

The Witness—I know it; I can tell very plainly what the whole is, but I am not allowed to, Sir. It is a very simple matter, indeed, in my view, but, of course, I must defer to the better judgment of counsel.

Mr. Fullerton—After having charged you with making improper proposals, did he produce a paper purporting to be a certified statement of a previous confession made to him by his wife? A. Do you ask me?

Q. Yes? A. I think not.

Q. You think not? A. I think not.

Q. That statement then is not the truth? A. I think it is inaccurate.

Q. And your direct testimony was inaccurate upon that subject? A. If it contravenes what I state now it needs correction.

The Court here adjourned until 11 o'clock on Tuesday morning

SIXTY-EIGHTH DAY'S PROCEEDINGS.

CROSS-EXAMINATION OF THE DEFENDANT STILL IN PROGRESS.

NATURE OF MR. TILTON'S ORIGINAL ACCUSATION—THE "RAGGED EDGE" LETTER—THE PAYMENT OF THE MONEY TO MR. MOULTON FOR THE GOLDEN AGE—GEN. BUTLER'S RELATIONS TO THE CASE—THE TESTIMONY OF MRS. MOULTON AGAIN CONTRADICTED—DEACON BELL'S TESTIMONY CALLED IN QUESTION.

TUESDAY, April 20, 1875.

Mr. Fullerton resumed the cross-examination with questions concerning Mr. Beecher's belief as to whether Mr. Tilton, apart from Mrs. Tilton's letter of confession, had personally charged him with making improper proposals to her. Mr. Beecher emphatically repeated his previous declaration that Mr. Tilton had not personally made that charge. When questioned as to what he meant by his former testimony that Mr. Tilton had ended a long talk by "charging him with wicked proposals to his wife," Mr. Beecher explained that he had used the word "charge" in a general sense, as synonymous with "state" or "declare." It was not used in a "specific," but "generic" sense.

Mr. Beecher's letter of Feb. 5, 1872, to Mr. Moulton was brought up again by Mr. Fullerton, who made the witness go over the principal parts of it almost word by word. Mr. Beecher explained that his proposed resignation of his pastorate was only conditional. The point was that he feared it might appear that he was using his church as a "smuggling place," and to disprove that he was willing "to step down and out." Mr. Beecher said that it was his custom when waiting for Mr. Moulton to lie down on the sofa, and on account of his hay-fever he always spread a newspaper or other covering over his feet to keep them warm. Perceiving this Mrs. Moulton had frequently spread a shawl or something of that kind over his feet when he was lying down. Mr. Beecher distinctly remembered the incidents of the interview of May 31, 1873. He firmly denied that he had told Mrs. Moulton, as she affirmed in her testimony, that she was to him a section of the day of judgment. That he had not used those words he swore positively, and to the best of his recollection he had not used any expression akin to that. In further contradiction of Mrs. Moulton's testimony Mr. Beecher reiterated his declaration, on the direct examination,

that he had made no statement or confession of adultery to Mrs. Moulton.

The circumstances of Mr. Beecher's departure for Peekskill on June 2, 1873, the day on which Mrs. Moulton testified that he called at her house and had a long interview with her, in the course of which he said he had a poison-powder at home which he would take, were rehearsed. Mr. Beecher swore positively that he was not at Mr. Moulton's house at all on that day, and that he saw no lady entering the house as he was leaving it. Mr. Beecher also denied that he had requested George A. Bell to prevent a meeting of the deacons to consider the "West charges."

One of the most interesting passages of the cross-examination was in reference to the appointment of the Investigating Committee, and Mr. Beecher's statements made before that Committee about the payment of money for Mr. Tilton's benefit. The details of the appointment of the Committee were described very minutely, and Mr. Beecher's relations and conversations with the various members of it, but especially with Mr. Cleveland, were made the subjects of close inquiry. The fact was developed that Mr. Beecher had told Mr. Cleveland, before the Committee was appointed, some of the circumstances of his relations with Mr. Moulton, and that Mr. Cleveland had expressed opinions favorable to Mr. Beecher. The fact was also brought out that before Mr. Beecher made his statement to the Committee Mr. Cleveland had emphatically expressed his opinion that blackmail had been levied upon him. Mr. Beecher said that he had never read the Committee's report, and had only heard generally that it was a triumphant acquittal of himself. He had never heard what it contained about the charge of blackmail and the "pistol scene." In reference to the payment of money to Mr. Moulton for Mr. Tilton, Mr. Beecher declared that he had made the payments voluntarily, as an act of kindness, and without thinking that he was being blackmailed in any sense. He declared that if he had thought the payment of the money was going to be used as a means of bringing about a settlement of his troubles with Mr. Tilton, he "would not have paid a cent, if he had been killed for it." The witness was plied with questions as to the time when he first began to think that blackmail was being levied upon him. He insisted that at the time he made the payments, amounting in all to $7,000, he did not think he was paying blackmail, although the idea had flitted through his mind at various times, which were not very well fixed, that such might be the case. The passage in his statement to the Committee, in which he said that he had paid the money because he understood that the whole difficulty would be settled by it, was read by Mr. Fullerton, and Mr. Beecher admitted that it was not the same statement of his motives as the one he had just given, but said that in the sense he then intended it he would make the same statement again. Mr. Beecher remarked that there were inaccuracies in his statement before the Investigating Committee.

Mr. Fullerton finally put the question whether Mr. Beecher now believed that Francis D. Moulton had intended to blackmail him. There was utter silence in the court-room. At last Mr. Beecher said, hesitatingly, "I am afraid he did." He explained that his confidence in Mr. Moulton had been so complete that sometimes, even now, he could scarcely persuade himself that he had been guilty of levying blackmail. Mr. Fullerton insisting on a more direct answer to his question whether he believed Mr. Moulton had intended to levy blackmail upon him, Mr. Beecher replied slowly, "If for his own advantage, he did n't, but if he took advantage of my generous feelings for the benefit of Mr. Tilton, I think he did."

THE PROCEEDINGS—VERBATIM.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Are you ready to proceed, Sir?

Mr. Beecher was recalled. Cross-examination resumed.

Judge Neilson—Officer Rogers, you must enforce silence to-day with this audience, on some terms.

THE CHARGE OF IMPROPER ADVANCES.

Mr. Fullerton—Mr. Beecher, after a night's reflection, are you enabled to state now whether you regarded Theodore Tilton as charging you with improper advances toward his wife on the night of the 30th of December, 1870? A. I regard him as making—as communicating to me——

Q. No; one moment. Now, Mr. Beecher. A. No, Sir.

Q. You did not regard him as having made that charge against you? A. No, Sir, not in the strict sense.

Q. Did you regard him as having made that charge against you in any sense, whether strict or otherwise? A. Yes, in a general way; regarding the interview as a general narrative and interview, I should use that language again.

Q. Yes? A. But if scrutinized and made exact in terms, I should say not—that he charged me with those

things which he personally knew, and repeated the charge that his wife had made.

Q. Did not he make the charge in his own behalf? A. I don't think that he did, Sir.

Q. Did he profess to be the representative of his wife? A. He made no profession whatever.

Q. You regarded this charge as a charge made by him, did you not? A. I didn't think of it in that light, Sir; it was a narrative.

Q. Well, the charge was in the narrative, was it not? A. Her statement was.

Q. He repeated it to you before he read the narrative of his wife, did he not, or the confession of his wife? A. He mentioned that she had made charges against me.

Q. Did he not charge you with the offense before he referred to his wife's statement? A. He did not charge me in that sense; he said that his wife had made such statements and then read them.

Q. Now, let me read this to you again, Mr. Beecher, and see whether it is right or wrong. [Reading]:

He charged me in substance, that, acting for a long time in an unfriendly spirit, that I had sought his downfall, had spread injurious rumors about him, was using my place and influence to undermine him, had advised Mr. Bowen to dismiss him, and much more that I cannot remember. He then declared that I had injured him in his family relations; had joined with his mother-in-law in producing discord in his house; had advised a separation; had alienated his wife's affections from him; had led her to love me more than any living being; had corrupted her moral nature, and taught her to be insincere, lying, and hypocritical; and ended by charging that I had made wicked proposals to her.

Is that narrative true, of that interview? A. Will you allow me to see that, Sir?

Q. Yes, Sir. [Handing witness the book.] A. The term "declare" and "charge" I use as equivalent in the narrative here.

Q. Is that narrative true? A. As it is here?

Q. Yes, as I read it? A. In the general it is, but if you give a specific sense to "charge," not.

Q. One moment; I don't give anything; I want to know whether that narrative of yours is true? A. Subject to a correction, Sir.

Mr. Evarts—He has a right to answer, Sir.

Mr. Fullerton—He has a right to answer, Sir, and I mean he shall answer.

Mr. Evarts—He may state how far he regards it as true and how far untrue.

Mr. Fullerton—Did you regard it as true, giving the ordinary significance to the terms you employed in that statement? A. I regarded the word "charge" as used in that last place as only a synonym for 'declare."

Q. Very well; you regarded yourself as being charged with improper advances, did you not? A. I did.

Q. I called your attention to the correspondence between yourself and Mr. Perkins last night. I wish to call your attention still further to it. The letter in reply to Mr. Perkins is Feb. 23, 1871, and opens with this expression:

Whatever Mr. Tilton formerly said against me—and I know the substance of it—he has withdrawn, and frankly confessed that he had been misled by the statements of one who, when confronted, backed down from his charges.

Did you mean in that communication to convey to your nephew the idea that Mr. Tilton had withdrawn what he had said against you? A. I understood by that communication that Mr. Tilton had withdrawn the charges made by Mr. Bowen and repeated by him.

Q. Why didn't you refer to the charges that Mr. Tilton had made, or Mrs. Tilton had made against you? A. It was the special object of such a letter as that not to have that brought out into public. We were all engaged in keeping that still.

Q. One moment. That is enough. Your object was not to allude to it? A. I will not say that was the specific object of the letter, but that was a part of the advice, and what——

Q. I am talking about your object? A. Yes, I know, but it was a joint letter; the letter was written in consultation with Mr. Moulton.

Q. And your object was not to embrace within the meaning of the terms used here what Mr. Tilton or Mrs. Tilton had charged you with? A. I certainly did not intend to go into that, as I understood it. Will you allow me to see that letter again, please?

Q. Undoubtedly, Sir. [Handing witness the letter.] A. [After looking at the letter.] Yes.

Q. Have you any further explanation in regard to it? A. No, Sir.

Q. I call your attention now, Mr. Beecher, to another expression, and see whether you did not at one time consider the charge as having been made by Mr. Tilton. I read:

Moreover, from the anger and fury of Mr. Tilton, I apprehended that this charge was made by him and supported by the accusation of his wife was to be at once publicly pressed against me.

Mr. Shearman—"As made."

Mr. Fullerton—Yes, "as made," it ought to be; it is printed wrong; "as made," "was to be at once publicly pressed against me." Did you not regard the charge as being made by Mr. Tilton when you made use of such language as that? [Handing witness the letter.] A. If the charge was made—I used that word in the generic sense.

Q. Now, I don't use it in any sense. A. Well, I do.

Q. Well, I am asking you whether you did not think then that the charge was made by Mr. Tilton in the sense in which you used that language? A. Not in the sense in which I am now using the term "charge," but in the sense——

Q. Mr. Beecher, I am not asking you as to the sense in which you now use it. You understand distinctly that I

am asking you as to the meaning of that phrase in the sense in which you then used the term? A. That was what I was attempting to explain to you, Sir; that I then used the term in the generic, and as equivalent to "declare," or "narrate," or "state" to me these facts which were, in a general way, charges. But, now I understand you to seek for a more specific, not generic, and in that regard I say that, while Mr. Tilton narrated to me the matters that were under his own knowledge, he charged only by reading his wife's charge.

Q. Very well, what matters did you think Mr. Tilton knew of his own knowledge at that time? A. The distress and trouble in his family; the distress and trouble between himself and Mr. Bowen.

Q. You did not think he knew, of his own knowledge, that you were the cause of either of those difficulties? A. Well, I should say he did.

Q. Of his own knowledge? A. Of his own knowledge; yes, Sir; I think it would come within that designation.

CONVERSATIONS WITH MR. MOULTON.

Q. I call your attention now to the letter of February 5, 1872; how long before the writing of that letter was it that you met Mr. Tilton in the cars? A. I met him in the cars, I think, Sir, in the forepart of February—I mean of January.

Q. Do you know the date? A. No, I do not, Sir; not exactly. I might come pretty near it. I only know that it is probably the first half of January.

Q. Now what occurred intermediate the time when you met him in the cars and the writing of this letter of February 5 in regard to this difficulty? A. There occurred [*sotto voce*]—January—there occurred a good deal of conversation between Mr. Moulton and myself; and, if I recollect right, there occurred the letter of Mrs. Tilton, before they left for the West, speaking of his hardness of feeling; and there occurred also—I cannot say that I recollect now that there occurred any interview with himself except this one; there may have done; but I was put in possession of the facts through Mr. Moulton, and through this intimation of Mrs. Tilton. I don't know whether I saw Mrs Tilton or not. I cannot recall all the circumstances, but I was in possession of the knowledge that he felt very greatly dissatisfied, and that he was saying that the difficulties into which he had found himself entangled subsequently to his publication of the life of Woodhull, and the Steinway Hall meeting—the pressure of those difficulties he was attributing to me, and saying that my church was using its great influence as against him, and that I was tolerating my friends in injurious representations of him, and that, while he had been the injured man and I the injurer, I was allowing people to think that he was the injurer and I the magnanimous man that bore it.

Q. Had the scandal then in any way permeated the church? A. The scandal—I don't know to what extent it was suspected, Sir.

Q. Had it permeated the church at all? A. I cannot answer that, Sir.

Q. What did you think at the time in regard to that? A. I don't know that that—I held myself so aloof that I was the poorest one to know in regard to that.

Q. Did you hold yourself aloof purposely? A. I did; I didn't allow myself to speak of it, nor allow others to speak to me, for the most part.

Q. You didn't mean to learn, then, if the scandal were afloat in the church? A. I meant to maintain absolute silence, as I had promised to do.

Q. Well, did you regard the other as keeping that contract? A. The other side?

Q. Yes. A. I did, and I didn't.

Q. Well, then, you didn't? A. Oh, both.

Q. Well, you didn't; that is, one part of it? A. Yes, but I did, too. [Laughter.]

Q. Very well; were you in a divided judgment about it? A. I will make the statement exactly——

Judge Neilson—Mr. Rogers, you will remove from the court-room any person that interrupts the proceedings, no matter who it is; I won't have these interruptions.

Mr. Fullerton—Except the counsel, if your Honor please.

Judge Neilson—Except the counsel; yes, Sir.

Mr. Beecher—And the witness.

Mr. Fullerton—Why didn't you take occasion, then, in this new phase of that business, to consult some person other than the friend of Mr. Tilton in regard to it? A. I was satisfied with the consultation that I had.

Q. You still had confidence in him. A. Unbounded.

Q. Well, if you had been guilty of no improper advances, and regarded yourself as amenable only to the charge of winning this woman's affections, which was unconsciously done, why didn't you make a statement of that fact, so as to satisfy the public in regard to this matter? A. That is the very thing Mr. Moulton insisted on ought not to be done; that it could not be touched at all without opening and going into an investigation, which he thought would be injurious all round. I thought it would be to me, and he thought it would be to the family interest.

Q. And didn't Mr. Moulton, at that time, regard the charges against you as of a more serious character than improper solicitations? A. No, I don't think he did, Sir.

Q. Do you know that he didn't? A. Why, I don't know what was in him, but he never made any manifestation to me of it.

Q. Never spoke to you about any charge more serious than improper solicitations? A. No, Sir; he didn't speak to me even of that.

Q. Well, what did you suppose Moulton believed in regard to this scandal at that time? A. Well, I believed that Moulton thought there had been difficulty, and that

—at different times, I thought he had different notions in his head about it, but I never asked him, and he never told me, unasked, and it was merely therefore passing thoughts in my mind.

Q. Well, pray, why didn't you learn from this man what his conclusions were in regard to this difficulty? A. I learned them enough for all purposes that I had in view.

Q. Well, didn't you wish to vindicate yourself in his opinion if you came to the conclusion or learned that he—— A. I had vindicated myself.

Q. One moment—had vindicated? A. I was an inmate of his family, his personal friend; he admitted me to his wife's confidence and to her chamber; I didn't want anything better than that.

Q. No, even though he believed you to be guilty of improper advances? A. He couldn't believe such a thing of me.

Q. You simply infer that he didn't believe it from his conduct? A. His whole conduct was that of a man who believed me to be innocent.

Q. And in this close intimacy between you and Mr. Moulton, resulting in almost daily conferences, you never asked him the question whether he believed you to be guilty? A. Never certainly did.

Q. You never sought to find out? A. I know that.

Q. All inference? A. That is all you could find out by words—it is all inference.

Q. Well, I am trying to find out something else. A. And not succeeding very well.

Q. Not very well; no, but it is not my fault.

THE "RAGGED EDGE" LETTER.

Q. Now in this letter of February 5, you state as follows:

To *say* that I have a church on my hands is simple enough—but to have the hundreds and thousands of men pressing me, each one with his keen suspicion, or anxiety, or zeal; to see tendencies which, if not stopped, would break out into ruinous defense of me; to stop them without seeming to do it; to prevent any one questioning me; to meet and allay prejudices against T. which had their beginning years before this; to keep serene, as if I was not alarmed or disturbed; to be cheerful at home and among friends when I was suffering the torments of the damned; to pass sleepless nights often, and yet to come up fresh and full for Sunday;—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearing and grinding on the nervous system.

Now, Mr. Beecher, let me ask you what was the keen suspicion that you apprehended each one of these persons might indulge? A. Will you allow me, Sir, a copy of it? You, perhaps, want to use that. Mr. Shearman will furnish me one. I can get one in my satchel. [Searching among papers.) Let us see; that was a letter of 1872, if I recollect.

Q. Feb. 5, 1872? A. Yes, Sir.

Mr. Porter—Paragraph about the middle.

The Witness—I know where it is, Sir; I am reading it. I didn't say each one with his keen suspicion, as if each one of all the hundreds had the keen suspicion.

By Mr. Fullerton—Mr. Beecher, you need not explain that? A. I understood that to be your question.

Q. What you said; oh, no. A. No; but that——

Q. I asked you what you apprehended was the keen suspicion that was indulged in as therein stated. A. I beg pardon, I thought the point of your question was to find out about the keen suspicion which each one of hundreds and thousands of men—[reading]—

To have the hundreds and thousands of men pressing me, each one with his keen suspicion.

Q. Well, what was the keen suspicion? A. The suspicion that some of them had—of these hundreds and thousands of men.

Q. Suspicion of what? A. Suspicion of my moral conduct and character.

Q. Yes, Sir. Well, didn't you want to clear up that suspicion? A. I wanted to have it cured, unquestionably.

Q. Did you expect to cure it by silence? A. I did.

Q. And yet innocent and able to vindicate yourself? A. Perfectly innocent, and if worst came to worst, I should vindicate myself.

Q. What could be worse than a keen suspicion running through your large congregation? A. My life could—could kill that, if I was, Sir, to go right on.

Q. Then, by silence, and going right on, you meant to leave this keen suspicion afloat through the whole congregation? A. No, Sir; I meant to make it die.

Q. Not by contradicting these stories? A. Not by running after stories.

Q. Not by telling the truth, as you assert? A. By not telling a lie, but at the same time not speaking the truth respecting these things.

Q. I read still further [Reading]:

If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out. No one can offer more than that. That I do offer. Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby.

A. "His happiness and safety thereby."

Q. Well, it is transposed? A. Simply transposed.

Q. That is the way, then, you expected to get rid of this keen suspicion that was afloat in your church, by stepping down and out, was it? A. No.

Q. You were willing to be sacrificed, were you, if they could see thereby the safety and happiness of Mr. Tilton? A. This is all conditional—that "if" at the beginning.

Q. Well: "If my destruction would place him all right, that shall not stand in the way?" A. If it should; I state it and then answer it.

Q. Yes; you were willing, then, to be destroyed, were you? A. That was the feeling that I had, extravagantly expressed, I will admit, but it was the feeling.

Q. Yes; and was willing to be destroyed rather than meet these keen suspicions afloat in your congregation?

A. Not at all; these keen suspicions afloat in my congregation respected the rumor set on foot by Mr. Bowen.

Q. By Mr. Bowen? A. By Mr. Bowen, principally.

Q. Oh, then it had no reference to the Tilton matter? A. It might have drawn that in, but that was the principal trouble.

Q. The principal trouble was with regard to Bowen? A. Mr. Bowen's rumors, which had been propagated by Mr. Tilton.

Q. Yes; it had no connection, then, with the slander or the scandal? A. It might draw that in; that was the danger, that it would do it.

Q. Didn't you refer to it here? A. I don't think that I had that in my mind.

Q. Oh, not at all, eh? A. I don't think that I had that in my mind, Sir.

Q. Well, "Sacrifice me," you say, "without hesitation if you can clearly see your way to his safety and happiness thereby." Was that Mr. Bowen's happiness or Mr. Tilton's? A. No; any action that would bring the whole matter before the church would bring out all that which we had kept secret.

Q. Well, what did you think you had to do before the church, except to tell what you have told here to vindicate yourself? A. I thought, Sir, that I should have to meet a divided church, with a party on the side of Mr. Bowen, with a large party of young men on the side of Mr. Tilton, and with a large class in the church that are always very sensitive to—or of the congregation, very sensitive to any ill-rumors that relate to a minister who is in charge of them. I supposed that if it came out into the church it would go through the regular form of church trial. I thought that there was no tribunal on earth so unfit to investigate the charges that then would come out, with statements that would come out, as a Congregational Church, and I believed at that time and for a long time that there would be a conflagration that would destroy the church, and me too.

Q. You preferred, then, as I understand you, to be the subject of keen suspicion rather than to defend yourself before the church? A. I thought, not that in the form of a deliberate calculation, but I thought that when the charge was made against me that that great church was my smuggling place, and that I permitted out of that church injurious statements and criticisms upon Mr. Tilton, and that I was not careful about them, and I did not care about him so I was safe; I declared, if it would—so far from being indifferent—if it would clear him and restore him to his happiness again in his family and in his business, I would be willing to be sacrificed. The charge was that I was saving myself.

Q. Now, answer my question; just answer my question, Mr. Beecher. You were willing to be sacrificed, and rest under those suspicions rather than defend yourself before the church, were you? A. That was not the point of sacrifice. The point of sacrifice was that I was using that church to save myself by it, and sacrifice Mr. Tilton.

Q. That is not an answer to the question, Mr. Beecher, at all.

Mr. Evarts—That is.

Mr. Fullerton—No, it is not. What did you mean by the expression that you were willing to step down and out?—resign your pastorate?

Mr. Evarts—Is his answer to be taken or not?

The Witness—The whole passage has but the one meaning.

Mr. Fullerton—One moment, Mr. Beecher.

The Witness—I was willing——

Q. One moment; what did you mean by the words "I am willing to step down and out?" Did you mean that you would resign your pastorate? A. Yes, Sir, conditionally.

Q. And at that time, Mr. Beecher, the only offense that you regarded yourself as having committed, if offense it was, was that you had, unconsciously to yourself, won this woman's affections? A. No, Sir; that was not the way it presented itself to my mind. By unconsciously winning her affection I had destroyed her and the household and the man that was at the head of it, and I looked at it in its whole.

Q. You say:

I am well-nigh discouraged. If you too cease to trust me—to love me—I am alone. I have not another person in the world to whom I could go.

Why could not you go to some relative, or some friend, or some member of the congregation, and explain all this thing? A. I could on the conditions that it was to be exposed to the public, but if it was not to be, I could not; maintaining my honor and pledge of keeping this silent and not speaking of it, I had no one else to go to but him, and I did go to no one but him.

Q. Could not you trust any member of your congregation? A. No, Sir.

Q. Not one? A. Not one, in the condition of things.

THE READING OF THE "TRUE STORY."

Q. Well, it is well to know that. Now, Mr. Beecher, when were you called upon to hear the "True Story" read? A. I cannot give you the precise date, Sir; it was somewhere, I take it, in November, the last, or December, the first, or somewhere near that—in that neighborhood—of 1872.

Q. It was after the publication of the Woodhull scandal, wasn't it? A. It was, Sir.

Q. I understand you to say that when that story was read to you, or that part which was read to you, that he asked you whether you would be able to stand—if a particular passage which he would read to you—— A. No, he did not; I did not say so.

Q. Well, what did you say upon that subject? A. I said that he said before he began to read it that if I could

stand one sentence in it I could stand the whole; and then, when he went on and read it and came to that sentence, he told me that that was the sentence; and I thought myself I could stand the whole if I could stand that. [Laughter.]

Judge Neilson—Silence!

Mr. Fullerton—Yes; I read from your direct examination.

Mr. Tilton began, sitting on the sofa, to fix his papers, and opened the matter to me by saying that there was one single sentence that if I could stand, he thought I would be able to stand the whole document; and then he commenced reading. He did not read the sentence; he began reading what was called afterward the "True Story," and read on until he came to that passage in which I was charged with asking Mrs. Tilton to be a wife to me with all that is implied in that term; and he looked up and said: "That is the sentence that if you can stand the rest of the document won't hurt you." I made no reply. I was lying on the bed I think. He went on reading, I getting madder and madder; and when he had finished I got up and began to walk around the room; and I said nothing; but, finally, I think he or Mr. Moulton asked me what I had to say.

Q. Is that a true narration of what occurred there? A. That is substantially true, Sir.

Q. Well, Mr. Beecher, how did it happen that you did not rise instantly when that charge was made against you and deny it, if it were untrue? A. Mr. Fullerton, that is not my habit of mind, nor my method of dealing with people or things.

Q. So I observe. We will pass on then. [Laughter.] Did you understand that that was for publication? A. I do not recollect that there was anything definite said about that. I understood either for publication or for showing; I do not think there was anything determinate said on the subject.

THE PROPOSITION TO PUBLISH THE "LETTER OF APOLOGY."

Q. Do you recollect the time when there was a threat or a proposition to publish the "Letter of Apology," so called? A. May 31.

Q. That was the date, was it? A. About that, Sir; or in that vicinity; I am not——

Q. From whom did you learn that it was intended to publish that? A. I cannot recall from whom.

Q. That was after the publication of the Tripartite Agreement, wasn't it? A. Yes, Sir.

Q. Don't you recollect who made known to you the fact that there was an interest to publish that? A. I do not now recall, Sir.

Q. Well, with whom did you converse upon that subject? A. I conversed with Mr. Moulton in chief.

Q. Where did you hold the conversation? A. At his house.

Q. Did you then understand what the "Letter of Apology" contained? A. I understood that it contained——

Q. Did you understand what it contained? A. No; I did not understand it in the full sense.

Q. Who made use of the term "Letter of Apology" in that conversation? A. I do not know, Sir.

Q. And what did you suggest in regard to it? A. I do not know that I had any suggestion made in regard to that.

Q. Didn't you suggest that Mr. Moulton should go to see Mr. Kinsella? A. Ah; but that was a suggestion in regard to a line of conduct; I thought your question related to the letter itself; I misunderstood you, Sir.

Q. Did you take any steps to prevent the publication of that "Letter of Apology?" A. I did, Sir.

Q. What did you suggest in regard to it? A. From what had been told me—the card was never read to me, but from what——

Q. One moment, please. What steps did you take to prevent its publication? A. I said to Mr. Moulton substantially this: "That if that is published, that is the end of things, and there will be an explosion. If you don't want that, then that must not be published;" and he thought that he could—he told me that he could hold Mr. Tilton, and prevent the publication of it. I doubted it, and I said to him: "If you trust to Mr. Tilton he will cheat you," or words to that effect; and he thought not; he thought he had got a hold upon him, that he could control him. I said, "No." "He won't publish it to-day anyhow." Said I: "You better make that thing sure"—words to that effect—"and you had better go down and see Mr. Kinsella, and see that he don't publish until you have had time to turn yourself round and use your influence."

Q. Then it had been made known to you at that period, had it, that the publication was to be in *The Brooklyn Eagle*, Mr. Kinsella's paper? A. I understood it was to be, from Mr. Moulton.

Q. Had you seen the card that it was proposed to publish? A. I had not, Sir.

Q. Do you know where it was then? A. I don't know where that was.

Q. Who told you what the card would probably contain? A. I have said already I did not know who first. I had a conversation with Mr. Moulton on that morning in respect to it.

Q. I understand you to say you also at that time made known the fact that if that card was published you would resign your pastorate? A. I did not in that morning's statement, that I recollect.

Q. During that day? A. During that evening I—after Mr. Moulton went down to Mr. Kinsella's, I drew up that card upon reflection—or rather that declinative of further pastorate, and put it in my pocket, and at evening when I went down to Mr. Moulton's house. I then showed it to him.

MR. BEECHER'S LETTER DECLINING HIS PASTORATE.

Q, Now, will you be kind enough to produce that resignation? A. I cannot, Sir.

Q. Haven't you got it? A. No, Sir.

Q. When did you last see it? A. I don't recollect seeing it since the evening that I showed it to him.

Q. Then, how are you enabled to remember its contents so as to correct the copy that Mr. Moulton gave us? A. Well, it is only by the knowledge of precisely what I had in my mind at that time.

Q. You recollect of writing a statement for the Committee of Investigation, don't you? A. Do you refer to the first statement, Sir, the 15th of July statement?

Q. Yes. A. I do, Sir.

Q. Hadn't you that resignation before you then? A Not that I recollect, Sir.

Q. Well, have you no recollection upon the subject? A. No, Sir; I don't think I had, but I have no recollection which would authorize me to be positive.

Q. Well, refer to the other statement—the long statement that you made before the Committee. A. Yes, Sir.

Q. Hadn't you it then? A. No, Sir, I had not; not within my knowledge.

Q. Well, let me read to you. [Reading]:

I wrote a letter of resignation, not referring to charges against me, but declaring that I had striven for years to maintain secrecy concerning a scandal affecting a family in the church, and that, as I had failed, I herewith resigned. The letter was never signed. A little calmer thought showed me how futile it would be to stop the trouble—a mere useless self-sacrifice—but I showed it to Mr. Moulton and possibly he copied it. I have found the original of it in my house.

A. Evidently, then, I had it, but I had forgotten that I had it; but it passed out of my hands, and I never have seen it from that day to this, although I have made a thorough search for every paper that bears on this subject.

Q. Well, you didn't give Mr. Moulton the original, did you? A. My impression is that I did not, Sir; I put it in my pocket again.

Q. Well, you say here in 1874? A. Yes.

Q. In the month of August, I think? A. In the month of August that was published; yes.

Q. [Reading.] "I have found the original of it in my house." Do you remember when you found it? A. No, Sir.

Q. Do you remember the fact that you had it? A. I do not remember to have seen it at that time, Sir.

Q. Do you recollect the fact that you had it? A. No, I don't; I should have said—except by being refreshed—I should have said that I never had seen it nor knew of it, from the evening in which I first read it to Mr. Moulton; that was my memory, but by that statement it is evident that it was among my papers.

Q. Well, have you looked for it lately? A. Not very lately I haven't, Sir, because I took it for granted it was a thing gone forever.

Q. This was on Saturday evening, was it? A. Saturday evening, 31st of May.

INTERVIEW WITH MRS. MOULTON.

Q. Did you see Mrs. Moulton on Saturday? A. I saw her Saturday morning, Sir.

Q. Where did you see her? A. At her own house, Sir.

Q. In what part of the house? A. In her chamber.

Q. How long an interview did you have with her? A. 15 or 20 minutes.

Q. Think it was not longer than that? A. No, Sir.

Q. Were you in great distress of mind at that time? A. I was in great indignation of mind.

Q. Manifest that indignation? A. Well, I think I did.

Q. By words and conduct? A. Both, as I recollect it, Sir; I walked up and down, a little storm——

Q. Yes? A. I denounced Mr. Tilton.

Q. Say anything about your sufferings of the past year? A. I said that I had gone through enough in attempting to keep this matter quiet, and that it was treachery on his part; he was insisting all the time one way or another in attempting to bring it out. I told Mrs. Moulton that my belief was that Theodore Tilton wanted to have the credit of being a hero, and that he wanted somebody to get out, before the public, the trouble in his family, that he might appear to have kept it secret all the time and been suffering under it, and that it was that sneaking business that I could not stand any longer; that I believed him to be treacherous and rotten to the root, and afterward I was very much blamed by Mr. Moulton for it.

THE SOFA AND KISSING SCENES.

Q. One moment, I haven't got to that. Did you lie down upon the sofa that morning? A. No, Sir, I did not lie down on anything that morning; I bore down on Mr. Tilton.

Q. Well, that will only provoke replies, Mr. Beecher; so you had not better make use of such observations as those. At any time when you were in the presence of Mrs. Moulton did you lie down on the sofa? A. In that interview?

Q. At any time when in the presence of Mrs. Moulton? A. Oh! yes, Sir.

Q. At any time did she cover you up with an afghan? A. Yes, Sir.

Q. When was that? A. A good many times.

Q. A good many times? A. Oh, yes, at least a dozen, I think; I will not make it precise, but it was not an uncommon thing, when I went there and was waiting for Mr. Moulton, for me to lie down on the afghan——

Mr. Beach [Interrupting]—You mean the sofa.

The Witness [Continuing]—And I would sometimes take a newspaper or something and throw it over my

feet—for, if you will allow me to say it, since I have been afflicted with hay fever I never can lie down on a sofa without my feet becoming cold and bringing on a fit of sneezing, and so I always put some covering over me, and she very soon saw it, and it used to be quite common for her to throw a little shawl or something over my feet.

Q. On how many occasions do you suppose that occurred? A. Well, I don't suppose that there was, of the times that I was there, when I was familiar and visiting there—I don't believe there was a month when she did not do me some kindness of that kind.

Q. When Mr. Moulton was absent you waited for him, did you? A. I did, Sir.

Q. When was it that Mrs. Moulton gave you this "kiss of inspiration," as you term it? A. It was Saturday night, the 31st of May.

Q. Where were you then? A. In Mr. Moulton's study.

Q. Did you lie down on the sofa then? A. No, Sir; I was sitting at the table.

Q. At the time? A. At the time.

Q. But were you at any time during that evening lying upon the sofa? A. No, Sir.

Q. You have a distinct recollection of that? A. I know I was not.

Q. Your recollection is positive upon that subject? A. It is very positive, Sir.

Q. You can distinguish between that visit and all the other visits that you made at Mr. Moulton's? A. That visit stamped itself very indelibly on my mind in regard to such features as I recollect.

Q. Do you recollect that when Mrs. Moulton was on the stand she was asked the question by your counsel whether she kissed you on that occasion? A. I heard but a part, myself, of her testimony.

Q. How? A. I heard but a part of her testimony.

Mr. Evarts—I did not ask her whether she kissed him on that occasion.

Mr. Fullerton—Or any other occasion. Do you remember that? A. I don't recollect whether I did or not, Sir; that is a question which would——

Q. Was not Mrs. Moulton asked in your presence in regard to kissing you? A. I cannot now say whether she was asked in my presence, and I learned it from hearing her, or whether I read it in the testimony, and learned it so.

Q. Didn't you suggest to your counsel to ask her that question? A. It may be that I did.

Q. Do you recollect whether you did or not? A. I think you are helping my memory.

Q. That is what I am trying to do. A. O. I know, Sir; you and I together will get it out. [Laughter.] I have an impression that I did ask my counsel, and, therefore, that I must have heard it.

Q. Didn't you write it on a slip of paper and hand it to him? A. I won't say about that; whether I whispered it or wrote it on a slip of paper. I won't affirm; but my impression is that I suggested it, and therefore I must have heard it.

Q. Did you ever use this expression or its equivalent to Mrs. Moulton, that she seemed to you like "a section of the Day of Judgment?" A. No, Sir.

Q. You heard Mrs. Moulton use that phrase, did you not, in her testimony? A. I am just in the same state of mind about that that I was in about the other question; whether I heard her or not does not at this moment occur to me; that she used such a phrase I either knew from hearing or from reading the testimony afterward.

Q. Didn't you use some such expression in conversation with her? A. No, Sir; I don't think I did.

Q. No kindred expression? A. I don't think I did.

Q. Will you swear positively that you did not? A. Well, the term "kindred expression" is a very generic phrase, and I cannot tell what phrase I used out of which—out of which her imagination may have framed that.

Q. I am not talking about her imagination. I am talking about your appreciation of the terms. A. I did not use any such phrase as that she was a "section of the Day of Judgment;" nor do I recollect that I used any phrase out of which that could be naturally derived or made.

Q. Did you use any phrase of that character or signification? A. I don't recollect that I did.

Q. Will you swear that you did not? A. I will swear that I made use of no phrase that would justify such a statement as that.

Q. You will swear positively to that? A. That is my best recollection, Sir.

Q. Is that all you mean to say, that that is your best recollection? A. I mean to say that I did not use that phrase; and, according to the best of my recollection, nothing of that kind.

Q. I ask you again, will you go no further than to say that you don't recollect? A. I will say that I did not say that she was to me a "section of the Day of Judgment."

Q. Well, Mr. Beecher, you are quite aware that that was not my question? A. No, I was not; I thought it was.

Q. I asked you whether you said that, or something akin to it. A. Well, I said that I did not say that, positively; and that something akin to it, according to my best recollection, I did not say, either.

Q. Now, I ask you whether you will go beyond your best recollection, and say positively that you did not? A. In regard to something akin, I won't.

Mr. Fullerton—Very well, then, I have got it. [Laughter.]

The Witness—Yes, Sir.

NO REMARKS ABOUT A CONFESSION TO THE CHURCH.

Q. Was there ever anything passed between you and Mrs. Moulton in regard to a confession to the church? A. A confession on my part?

Q. Yes. A. No, Sir; no, Sir.

Q. Was there ever anything passed between you and her in reference to a statement to be made by you to the church? A. No, Sir.

Q. Was there no suggestion on her part that you should make a statement of this difficulty to the church, so as to satisfy your people? A. No, Sir.

Q. That was never the subject of conversation between you and her, directly nor indirectly? A. Neither statement nor confession.

Q. Nor was it the subject of conversation? A. Not the subject of conversation.

Q. In the course of the examination of Mrs. Moulton you were asked by your counsel whether she said a certain thing to you, and your reply was in part, "Not of her own accord." A. No, Sir, I do not; I think, Sir, you have made a mistake in your designation; you say in the examination of Mrs. Moulton, and I think you have made an error.

Q. Perhaps I have; in the examination of yourself, then? A. Yes, Sir.

Q. You were asked as to whether Mrs. Moulton did not say a certain thing to you, and you said, in substance, that she did not, or she "never did of her own accord;" do you recollect the circumstance? A. I do, Sir.

Q. What did you mean by the words "not of her own accord?" A. Perhaps I meant what I ought not to have said——

Q. Never mind that. A. [Continuing.] But this is what I meant, that I believed that Mrs. Moulton had been made to make that statement by influence.

Q. Who do you think exerted the influence upon her? A. I think that Mr. Moulton did.

Q. And when do you think he did it? A. Ah! I don't know; after we broke, probably.

Q. In the Summer of 1874? A. Yes, Sir.

Q. Well, have you made up your mind as to what particular time? A. No, Sir.

Q. How? A. No, Sir.

Q. One question more with regard to the resignation. Are you quite sure that your proposition to resign was with reference to the publication of the proposed card, as you have now stated it? A. Yes, Sir.

THE WEST CHARGES.

Q. Have you ever stated that you proposed to resign in reference to the West charges? A. I don't recollect, Sir.

Q. Well, did you propose to resign if the West charges were pressed? A. I don't recollect, Sir, now.

Q. Why, can't you recall to mind the important fact whether you proposed to resign your pastorate of Plymouth Church upon any occasion? A. Yes, Sir, I did, on half a dozen.

Q. Connected with this scandal? A. Connected with, not this particular one, but connected with the antecedents.

Q. Did you ever write any proposed resignation other than on May 31, 1873? A. I do not now recall, Sir.

Q. Did you not propose to resign, and write a proposed resignation, if the West charges were pressed? A. I cannot, without some refreshment of memory, answer.

Q. Well, I am willing that you should refresh because I desire an answer. A. I have no opportunity unless you will help me, Mr. Fullerton.

Q. Well, I will help you. I read as follows to refresh your memory. Do you recollect, speaking of the West charges, anything of this kind: [Reading:]

I felt that we had no right to claim him [Tilton] as a member, under the circumstances, for the sole purpose of his public trial. Mr. Moulton insisted that everything must be done to prevent that trial, as the Examining Committee was likely to be equally divided, whether the facts sustained Mr. Tilton's plea, whether he was out of the church or not. I was so determined to carry out my pledge to Moulton for him, and do all in human power to save him, even from himself, that I was ready to resign if that would stop the scandal. I wrote a letter of resignation, not referring to charges against me, but declaring that I had striven for years to maintain secrecy concerning a scandal affecting a family in the church, and that, as I had failed, I herewith resigned.

A. That evidently refers to the letter of May 31, I should say, Sir.

Q. [Handing book to witness.] Please read it and see whether it does or not? A. I should judge so by internal evidence.

Q. You will find it at the foot of the page, marked. Please read it. A. [Having looked at the book.] This is evidently referring to that.

Q. Which? A. The letter of May 31—the resignation of May 31.

Q. It does not refer to the West charges? A. The West charges had originated the difficulties which brought about this decision. It did not refer to them in a primary sense, but only in their sequences. The West charges brought the whole church more or less into a state of excitement, and the state of things in the church was such as it is stated there, explicitly; I cannot state it any better than it is stated in that paragraph, Sir.

Q. When were the West charges made? A. The West charges were made—he moved first in the Winter of 1871, but the distinct charges were made in the Winter of 1872 and ran on—they and the consequences of them ran on clear to the Spring of 1873.

Q. Yes? A. And he—yes, they ran clear into the Spring of 1873. No, let me think a moment.

Mr. Beach—Yes, they did.

The Witness—Mr. West's charges?

Mr. Beach—Yes, they were pending in 1873.

The Witness—What, Sir?

Mr. Beach—They were pending in 1873.

The Witness—Through the Winter of 1873?

Mr. Beach—Yes, '72 and '73, I think.

Mr. Fullerton—Was not the first notification of Mr. West that he was going to press these charges on June 27, 1873, or about that time? A. The charges that were made, that were formulated—there was notice about that time.

Q. Were they perfected before October, 1873? I don't recollect.

Mr. Beach—Still there was a movement by West in 1871.

Mr. Fullerton—Yes. [To the witness.] Now when was this resignation that you speak of prepared? A. This one that is referred to there evidently refers to the resignation which I prepared on the 31st of May.

Q. What year? A. 1873.

Q. Well, did you not write a letter of resignation when the West charges were pressed? A. I don't recollect that I did, Sir, though I recollect saying that in certain contingencies I should resign—saying it to different persons; but I don't recollect writing any; I may have done it, may have drawn up something, but I don't recollect it, Sir.

Q. Didn't you see the West charges after they were perfected? A. No, Sir.

Q. Did you learn from no one what they were? A. No, Sir, I didn't converse about them particularly.

Q. Didn't you care to learn what the charges were? A. I was not particularly careful, Sir.

Q. Didn't you understand that Mrs. Bradshaw was to be a witness to prove the charges against Mr. Tilton? A. I don't think that I did, except so far as her letter was concerned, but that was at a later period, if I recollect right.

Q. Look at that, [Exhibit 47,] and say if you recognize the handwriting. Do you recognize that paper? A. I recognize the handwriting; it is mine.

Q. Yes. I read:

The Eagle ought to have nothing to-night. It is that meddling which stirs up our folks. Neither you nor Theodore ought to be troubled by the side which you served so faithfully in public.

The Witness—Is it "in public," or "in politics?"

Mr. Fullerton—In public.

The Witness—Well, I think it is meant for "politics," only the "t" is not crossed; that is my impression.

Mr. Fullerton—Well, it makes no difference; I make no point of that.

The Witness—There is no essential difference.

Mr. Fullerton—[Reading.]

The deacons' meeting I think is adjourned. I saw Bell; it was a friendly movement.

Q. What deacons' meeting did you refer to there? A. I cannot tell you what it was, now.

Q. Was it not a deacons' meeting to take into consideration the West charges? A. I cannot say. I suppose it was, but I don't remember this conversation with Mr. Bell about matters, except that there was a meeting of the deacons in respect to the charges.

Q. Did you see Bell in regard to it? A. No doubt.

Q. Didn't you request Bell to go and break up that deacons' meeting? A. I don't think I did.

Q. Did you hear his testimony on that subject? A. Yes, Sir, I heard it.

Q. Well, don't you recollect that what he stated was true?

Mr. Evarts—Ah! let us have his testimony.

The Witness—I don't remember what it was, Sir.

Q. Don't you recollect that you stated to Mr. Bell that you wanted him to break up the deacons' meeting, so that the West charges should not be pressed?

Mr. Beach—Or to prevent it.

Q. Or to prevent it? A. I don't recollect it.

Mr. Evarts—Well——

Mr. Fullerton—I have a right to put the question, Sir.

Q. I read further: [Reading.]

The only next near danger is the women, Morrill, Bradshaw, and the poor dear child.

What danger did you apprehend from the women? A. Talking.

Q. About what? A. About me and the church and these matters.

Q. Then you had heard that Mrs. Bradshaw knew something about it? A. I had heard that Mrs. Bradshaw was talking.

Q. Didn't you hear that she was to be a witness in the trial, if it came on, against Mr. Tilton? A. I don't think I did at the time, Sir.

Q. Hadn't you heard such a story as that? A. I may have, but I don't recall it.

Q. I read to you now the third specification in the West charges, with a view of asking you a question: [Reading.]

Third: At an interview with Mrs. Andrew Bradshaw, in Thompson's dining saloon, in Clinton-st., on or about the 3d of August, 1870, Theodore Tilton stated that he had discovered that a criminal intimacy existed between his wife and Mr. Beecher. Afterward, in November, 1872, referring to the above conversation, Mr. Tilton said to Mrs. Bradshaw that he retracted none of the accusations which he formerly made against Mr. Beecher.

Witness: MRS. M. A. BRADSHAW.

Q. When did you first become acquainted with that specification? A. I never did.

Q. You have not become acquainted with it yet, then? A. No, Sir, it is quite a stranger to me.

Q. And is yet? A. Is yet, Sir.

Q. Do you mean to say you did not hear me read it? A. I did; but I am not acquainted with a man because I hear

his name, nor with a paragraph because I have heard it read.

Q. You never were made acquainted with that paragraph? A. No, Sir; I never knew anything about that paragraph.

Q. Although the charges were made by a member of your church, affecting yourself, and brought before a committee of your church, which led, as you say, to a good deal of conversation between yourself and other members of the church, you never heard what that charge was? A. I did not hear that specification.

Q. Did you hear that charge? A. That charge—no; that was an after addition.

Q. One moment if you please. After it was added did you hear it. My question covers the whole ground. Did you not hear what the charge was? A. No, Sir; I did not hear it, or know it.

Q. And no one ever intimated to you that such a charge was in existence? A. Not that I know.

Q. Will you say that they did not? A. No, I will say that if they did, it made no impression on my mind.

Q. A charge to the effect that Theodore Tilton had accused you of sexual intercourse with his wife——

Mr. Evarts—No, no.

Mr. Fullerton—Well, criminal intimacy with his wife—that charge would make no impression upon your mind. Do you mean that? A. I do, Sir.

Q. Well then I will not try to make any impression upon it. [Laughter.] Let me read Mr. Bell's statement. [Reading.]

Mr. Beecher stated that he sent for me because he had understood—he had heard, I think the day before, that there was to be a meeting of the deacons in regard to this matter, and that he was very anxious that no meeting should take place, and he wished me to go and see Mr. Halliday and arrange with him that the meeting should not take place.

Q. Do you recollect that? A. I do not recollect it, Sir.

Q. You recollect no such conversation with Mr. Bell? A. I don't recall it.

Q. Do you mean to deny that this conversation occurred between you and Mr. Bell? A. I don't mean to deny nor to affirm it. I merely say that I have no recollection of it.

Mr. Evarts—Let us understand. When does Mr. Bell state this to have happened.

Mr. Beach—We don't make that a part of our inquiry. We ask if he remembers any such conversation at any time.

Mr. Evarts—Yes, but you asked the question in connection with these West charges, as reduced to writing.

Mr. Beach—Oh, no; it was not in connection with them.

Mr. Evarts—Well, if it is admitted that it was not that will do.

Mr. Shearman—It was months before the West charges.

Mr. Fullerton—Ah! the West charges ran through a long period of time.

The Witness—Yes, but that had a beginning.

Mr. Fullerton—How, Sir? A. They had a beginning, however.

Q. Yes, Sir; and they might have had an earlier end if they had been tried.

THE CARD PUBLISHED IN THE EAGLE.

You have spoken of the 2d of June; what time did you go to meet Mr. Kinsella on the 2d of June? A. He came to my house about 9 o'clock in the morning.

Q. Did you send for him? A. It was understood between me and Mr. Moulton that Mr. Moulton was to ask him to come.

Q. Where were you and Mr. Moulton when that took place? A. I was in my own house; I don't know where Mr. Moulton was.

Q. You could scarcely have an understanding unless you were together? A. What do you mean by "when that took place?"

Q. I mean where were you and Mr. Moulton when the understanding was entered into between you. A. I beg pardon; I thought you meant the interview.

Q. No? A. I was at Mr. Moulton's house.

Q. When was it? A. It was Saturday or Sunday night; I cannot tell which.

Q. The arrangement was that Mr. Kinsella was to meet you at your house on Monday morning? A. Yes, Sir, on his way to his office.

Q. And you say he did? A. Yes, Sir; he came to me.

Q. About 9 o'clock? A. About 9 o'clock.

Q. How are you enabled to fix the time? A. Well, I have—it is fixed because I recollect thinking about the hours that he kept, having an evening paper, and about the time that he would come down, and I held myself ready for the interview about that hour.

Q. How long did the interview last? A. About an hour, Sir.

Q. What was done during that interview. A. Conversation in respect to Mr. Tilton and his affairs.

Q. I mean what was written. A. The card that appeared on that afternoon in *The Eagle*.

Q. Who prepared it? A. I prepared it; I wrote it, if I recollect right, all of it.

Q. When you left your house, after this interview with Mr. Moulton, where did you go? A. I went over—well, I didn't leave immediately; I had to do up some little matters about the house before leaving, as I was not expecting to—I was expecting to be gone for a fortnight, with a slight intermission. About half-past ten I went over to *The Christian Union* office.

Q. How do you recollect you went there about half-past ten? A. I recollect of going there about half-past ten, because it was about the time I was accustomed to go on Mondays—which was my editorial day—to *The Christian Union* office, and because I expected to be absent for two weeks, and had, therefore, more to do than usual.

Q. Is that the only way you recollect the hour you went

to the office? A. That is the only way I judge it to be about that time.

Q. Where was the office of *The Christian Union* then? A. 27 Park-place.

Q. In New-York City? A. Yes, Sir.

Q. Did you return to Brooklyn that day? A. No, Sir.

Q. You went from there to the depot? A. I went from there to lunch, and to the depot.

Q. Where did you lunch? A. That I cannot say.

Q. Where were you accustomed to lunch? A. I had no custom. I seldom took lunch in New-York, and when I did I more often than any other way took lunch in a different place, because I had a little curiosity to see what the places were.

Q. Did you go to lunch alone that day? A. I do not recollect, Sir, of lunching except when I went up on the 2 o'clock train I arrived in Peekskill so late I took lunch in New-York.

Q. Do you remember taking lunch in New-York that day? A. I do not recall the lunching.

Q. Why do you say you lunched? A. That was my custom, and I presume that it was a fact that I did.

Q. Can you name any other place where you used to lunch in New-York? A. I have lunched in Delmonico's, and I have lunched at the corner of Tenth-st., up stairs, and Broadway; I have lunched at a little place on the south side of the Forty-second-st. Depot; there is a very nice little house there, or was there; and I have lunched —I don't now recall them. These lunch-rooms were not so familiar to me as if I was doing business in New-York.

Q. What time did you leave Brooklyn to go to the office? You said you got to the office about half-past ten. A. No, Sir; I left here about half-past ten, and got there at eleven.

Q. What time did you leave the Forty-second-st. Depot? A. I cannot say; I know I was over there an hour. I had business to transact.

MR. BEECHER SWEARS THAT HE WAS NOT AT MR. MOULTON'S HOUSE ON JUNE 2, 1873.

Q. You are very sure you were not at Mr. Moulton's house on the 2d of June? A. Very sure.

Q. Quite positive? A. Yes, Sir.

Q. You swear to it positively? A. I do.

Q. Do you remember any occasion about that time, when you left the house of Mr. Moulton, of meeting a lady who was about entering? A. No, Sir; I do not.

Q. No recollection on that subject? A. No, Sir.

Q. At no time? A. No, Sir; at no time.

Q. Do you recollect of seeing a lady as you were about leaving at any time? A. No, Sir; I mean on leaving, I have seen ladies walking up and down the street.

Q. No, a lady about entering, or having entered? A. No, Sir; I don't recall anything of that kind.

Q. At all? A. No, Sir.

Q. Now, Mr. Beecher, will you swear that on the 2d day of June, 1873, you did not meet a lady as you were coming out of Mr. Moulton's house who was about entering? A. I will swear that I did not come out of the house on that day, and did not meet a lady coming out.

THE APPOINTMENT OF THE INVESTIGATING COMMITTEE.

Q. When was this Committee appointed, Mr. Beecher? A. I think it was on the 26th of June, 1874, if you refer to the Church Investigating Committeee.

Q. When was it made public? A. Well, not for some week or ten days, or something like that; I cannot say precisely.

Q. Was it purposely kept secret? A. That was their work, and not mine, Sir; I had nothing to do with it.

Q. Was it purposely kept secret? A. I cannot tell you.

Q. Did you make any request in that regard? A. No, Sir; I did not.

Q. Did you speak of it openly, if you did not? A. I did not.

Q. Where were the Committee appointed? A. In my house; that is, the determination of who should be on the Committee was principally arranged in my house.

Q. And whom did you call in to consult with in that regard? A. The first person I consulted with was Mr. Cleveland, and on that Friday night of the 26th of June, the Bacon letter having been published the day before. I was in Peekskill and came down—I did not get it until Thursday noon—and came down the next day and called upon Mr. Cleveland on my way over and announced to him——

Mr. Fullerton—Not what you said to him.

The Witness—I was only going to express to you what I did.

Mr. Fullerton—That is the reason I object. With whom did you consult? A. With no one; but at a later period in the evening I consulted Mr. Shearman and Gen. Tracy, I think; I don't know whether there were more than two or not.

Q. Who suggested the names of the Committee? A. I suggested them in the first instance, with the help and suggestion of Mr. Cleveland. Then, in the second interview, I think Mr. Cleveland suggested various names.

Mr. Fullerton—I don't ask what was suggested.

The Witness—In the second interview, if I recollect right, they were suggested either by Mr. Cleveland—I think Mr. Cleveland was present on the second interview, but I will not be certain.

Q. How many persons were present during the second interview? A. Three, if Mr. Cleveland was present; two if he was not; but I think the three were.

Q. I understood you to say in your direct examination that after the publication of the Bacon letter Mr. Moulton was full of schemes and devices by which the effect

of it should be warded off? A. Will you repeat my words, if you please, Sir.

Mr. Fullerton—Yes, I don't use the exact language. [Reading]:

I don't remember much about what was said that first evening, Sir. My mind was running on other things, and Mr. Moulton had his plan, and I had dismissed from my mind his generalship, and yet my personal relations were very cordial, and my confidence in him personally was very strong, and I didn't wish in any way to hurt him, or to be indifferent to what he really seemed to me to be laboring to accomplish; yet my mind was set; I had come to the end, and I meant to have no more intermediate stages, and I therefore, when this was first brought to my notice, said, "I will consider it; I will take it into consideration."

That is the card.

That, so far as I recollect, was the first interview substantially.

Then again—

Q. What further passed between you and Mr. Moulton in regard to this card and its publication, and what could be done or would be done if you assented to it? A. At a later—at some interview later, Mr. Moulton urged me very strongly; as I recalled the conversation it was substantially this, that Mr. Tilton had bound himself in the presence of witnesses if I would publish that statement, that he would be content himself, and Mr. Moulton said if I would publish that statement he would burn every document that he had, and that if Mr. Tilton ever undertook to move again in the matter he would take sides with me and fight him. He expressed himself very strongly; I think the word he said, he would "smash" him.

Now, is that a correct statement of what you said and did, and of what Mr. Moulton said and did, after the publication of the Bacon letter, and with reference to its publication? A. It was substantially correct, I think.

Q. Mr. Moulton had then a plan for the purpose of doing away with the effect of that Bacon letter, had he? A. Yes, Sir.

Q. And you did not approve of it? A. No, Sir.

Q. You rejected it? A. I did.

Q. You had come to the end? A. I had come to the end.

Q. You had no faith in his generalship? A. No faith in his generalship; that is, in the past; I didn't know what he might develop in the future.

Q. Were you willing to be guided by his generalship at that time? A. If he had suggested anything which met my approval, I was willing.

Q. Were you willing to be guided by his generalship at that time? A. I was not willing to be guided by any plan that he suggested.

Mr. Fullerton—Very well, that is an answer. I want to call your attention to something else in a moment.

Q. Have you never said that you lost confidence in Mr. Moulton after the publication of the Bacon letter, because he suggested no plan?

A LEGAL DISCUSSION.

Mr. Shearman—One moment. I object to that unless the paper is shown to the witness.

Mr. Fullerton—What paper?

Mr. Shearman—I ask if it is in writing. I object to the witness proceeding. If we are to have the question up, this is as good a time as any. I asked you [to Mr. Fullerton] a question politely.

Mr. Beach—You won't get an answer.

Mr. Shearman—I insist upon an answer.

Mr. Morris—Insist.

Mr. Shearman—We may as well have the right of counsel to interrupt settled. This question has been decided once before. I say that it is a rule of law that has been settled for 50 years, and I want to have it observed; and when I last cited an authority on that point (Newcomb agt. Griswold, 24 N. Y.) I was told by the learned gentlemen it had been overruled by the Court of Appeals. So far from that being overruled, it was confirmed.

Judge Neilson—You mean the rule in the Queen case, in the second of Brod. and Bing.

Mr. Shearman—Yes, Sir.

Judge Neilson—I don't think that can be——

Mr. Shearman—If my friend persists in his question, I insist that my question shall be answered, whether that statement was in writing or not.

Judge Neilson—You have a right to put that question preliminarily.

Mr. Shearman—I have a right to put that question to the counsel, and to have it answered; and if they say it is not in writing, they have no right afterward to produce a written statement to the contrary.

Mr. Fullerton—Well, I cannot reply to that, because it is inappropriate to the question before the Court—entirely so. I have asked the witness whether he ever said such a thing.

Mr. Shearman—I object to that question unless counsel means to say whether it is oral or in writing.

Judge Neilson—I think the question imports an oral statement, to ask a man if he ever said a thing.

Mr. Shearman—That is the very point I say was raised in the question. The question was put to the witness by Mr. Brougham, since Lord Brougham, whether he had ever said such and such a thing. Counsel on the other side intervened and demanded that it should be first stated whether that was in writing or oral; and the counsel for the prosecution in that case declined to answer that question, and it was upon that very point the judges of England were consulted, and it was held the counsel must answer whether they meant to allege that was an oral statement or a verbal statement.

Judge Neilson—And if they do not, the counsel who has raised the question has the right, preliminarily, to ask the witness.

Mr. Shearman—Yes; but after that the counsel on the other side cannot take advantage of that, and produce a written statement; they must stand by that. That is the point.

Judge Neilson [To Mr. Fullerton]—Is this in writing, or is it oral?

Mr. Fullerton—I ask him if he ever said a thing.

Mr. Shearman—I ask the question be put whether it is in writing or oral.

Judge Neilson—Ask him whether he ever said it, independent of the writing.

Mr. Fullerton—Did you ever say to any person, in substance, that you had lost confidence in Francis D. Moulton because he didn't suggest some plan to get out of the difficulty created by the publication of the Bacon letter? A. I do not think I did, Sir.

Mr. Evarts—We understand the question to be asked under your Honor's direction; if it was a statement in writing it must be so stated.

Judge Neilson—Yes.

Mr. Shearman—We shall object.

Mr. Fullerton—I am going to the writing.

Judge Neilson—I think this has reference to a conversation.

Mr. Fullerton—Certainly.

Mr. Fullerton—In addition to that, didn't you write that in substance at one time?

Mr. Shearman [to the Witness]—You will not answer until the Court says you may.

Judge Neilson [to the Witness]—I think you may answer the question.

Mr. Fullerton—I will put another question:

Q. Did you ever entertain that sentiment, or that belief? A. I never did, Sir.

Q. See if that refreshes your recollection? [Handing witness a paper.] A. I think it likely that is mine; I presume it is.

Q. I ask you if you recollect that statement?

Mr. Beach [to the Witness]—Does that refresh your recollection? A. I never entertained any such opinion; I still affirm what I said.

Mr. Beach [to Mr. Fullerton]—Did he in August, 1874, entertain any such sentiment?

Mr. Fullerton—Did you in August, 1874, entertain the belief or the idea? A. What idea?

MR. MOULTON'S SUGGESTIONS.

Q. That Mr. Moulton was not worthy of your confidence, because he had failed to suggest any mode of getting rid of the effect of the Bacon letter? A. No, Sir, not that.

Q. Did you ever entertain this belief or idea:

When I brought to Moulton what seemed to be the bad and treacherous things I learned of Tilton, he said: Don't believe a word of such things; I will make inquiries, and the next time I would see him he would have a plausible explanation of the whole thing, and I felt as though it was no use to attack Tilton; that he shed every arrow that was aimed against him. I have said this not only in reference to the impressions he produced upon me, but until the time of the Council I was in an abiding faith of Mrs. Moulton's truth. Until the reply of Mr. Tilton to Bacon's letter, I never had a suspicion of his good faith, and of the sincerity with which he was dealing with me; and when that letter was published, and Mr. Moulton, on my visiting him in reference to it, proposed no counter-operation—no documents, no help—I was staggered, and when Tilton subsequently published his statement, after he came to this Committee, when that came out, I never heard a word from Moulton; he never sent for me nor visited me, nor did a thing.

A. That paragraph covers the whole period from the publication of the Bacon letter down to at least the early weeks in August.

Q. Well, did Mr. Moulton propose any counter-operation when the Bacon letter was published? A. No satisfying—nothing.

Q. Did he propose no counter-operation? A. I don't know that he did, Sir.

Q. Did he propose no document? A. By document there, I did not——

Mr. Beach—No.

Mr. Fullerton—No. Did he propose no document? A. Yes, he proposed a paper.

Mr. Fullerton—Well, that is an answer.

The Witness—A document.

Q. Did he propose no help? A. Yes, he proposed what he considered help.

GEN. BUTLER PROFFERS HIS SERVICES AND ADVICE TO MR. BEECHER.

Q. When did you first hear of Gen. Butler in connection with this case? A. I think it was about the 29th of June, Sir.

Q. Of what year? A. 1874.

Q. And through whom did you hear it? A. Mr. H. A. Bowen.

Q. Under what circumstances did you hear it? A. I was at my house, in conference with Mr. Tracy and Mr. Shearman, and I think Mr. Cleveland was called out to see a gentleman, who proved to be Mr. H. A. Bowen.

Q. Didn't he come by appointment with you? A. No, Sir—not that I recollect; I don't recall that, but I went with him; he said he had something he wished to talk with me about, and he went with me to my study above, where we were in conference, and stated that he had just come from Washington, and had an interview with Gen. Butler, and that he, Gen. Butler, told him that he felt very deeply interested in my case, that he thought I was too great a man to be sacrificed, and that he felt that I had not the best advisers, and that he was very sure that he could be of service to me, and that he should be in New-York in the course of ten days, and that if I wished he would give me an interview at that time, and that he thought he could pull me out of these matters whatever the facts were. That was the substance of the statement. There was some more conversation. Mr. Bowen represented the very cordial and kindly feelings that Gen. Butler had toward me.

Q. Didn't Mr. Bowen tell you that he asked Gen. Butler's permission to repeat the conversation which he had with Gen. Butler? A. I do not recollect that he did.

Q. Didn't he say to you this: "I asked Gen. Butler if I might say this to Mr. Beecher from you;" and didn't Mr. Bowen say that Gen. Butler replied in substance as follows: "I feel kindly to Mr. Beecher, and don't feel like seeing him brought into difficulty, and I have no objection to your saying this much to him: Tell him to go to a good lawyer and take his advice and follow it closely, after telling him the exact facts about the whole matter;" and didn't Mr. Bowen say to you: "I have come to you, and have now told you what Gen. Butler has said?" A. No, Sir; there was no such thing as that said.

Q. Nothing of that kind? A. No, Sir; it was the reverse; it was as I have stated it.

Q. Did you say in reply: "That is a great relief; and if Gen. Butler will act as my friend and adviser he will be the Moses that takes me through the wilderness?" A. No, Sir.

Q. Nothing of that kind? A. Nothing! Preposterous!

Q. Did you say to him, in substance, "Gen. Butler is a great man; God Almighty permits but one or two such men to be born in a century?" A. No, Sir; no, Sir. [Laughter.]

Q. And didn't you say, "I will follow his advice, whatever it is." A. I did not.

Q. Didn't Mr. Bowen say to you, in substance, "Gen. Butler does not intrude his advice or opinion upon you?" A. He did not, to my recollection, say any such thing.

Q. And didn't you reply, in substance, "I understand that?" A. No, Sir.

Q. Now, Mr. Beecher, did you send any one to see Gen. Butler on that interview? A. I did not.

Q. Did you request anybody to go? A. I did not.

Q. Did anybody go on your behalf? A. There did; or, as I understood that, there did.

Q. Did you communicate your interview with Mr. Bowen to any one after that? A. Immediately I went down stairs after he had had this interview, and communicated——

Q. One moment. Did you communicate it to any one? A. I did.

Q. And did that person to whom you communicated it go to Boston to see Gen. Butler? A. One of them did.

Q. Was it not at your request? A. Not that I recollect. It was the result of consultation.

Q. You agreed to it, did you? A. I didn't make any objection to it.

Q. Didn't you approve of it? A. Yes, Sir, I presume I did; but I don't distinctly recall that.

Q. When did that person go? A. I don't remember.

Q. How soon after the interview? A. That I cannot say; not a great while.

Q. About how long? A. I should say within a fortnight, but I could not locate it more definitely.

Q. Can you not fix the day when the person went? A. No, Sir, I cannot; I do not know.

Q. Did the person report to you after his return? A. I have a recollection of hearing—yes, I think I recollect only one single thing.

Q. Did the person who went to see Gen. Butler report to you after his return? A. He talked with me; he did not make a formal report to me.

Q. I don't suppose he made a formal report. Did he communicate to you the substance, or what purported to be the substance, of what took place between him and Gen. Butler? A. No, Sir; he communicated to me his impression of the result.

Mr. Fullerton—No, I ask you that question.

The Witness—He did not.

Mr. Beach [to Mr. Fullerton]—He says he communicated the result.

Mr. Fullerton—Did he communicate the result of the interview? A. He communicated to me the impression which the whole interview had left upon his mind.

Q. Without telling you what took place? A. Without telling me what took place.

Q. Now, who was that person that went to Boston? A. Gen. Tracy.

Q. Did he go more than once? A. I do not know that he did.

Q. Did you have an interview with Gen. Butler? A. No, Sir.

Q. Never saw him upon the subject? A. Never saw him upon the subject.

Q. Did you write him upon the subject? A. Never wrote him.

Q. Did you ever get any letter from him upon the subject? A. I never did.

Q. Now, Mr. Beecher, I call your attention to the instances in which you walked with Mrs. Tilton——

[Mr. Beach here made a whispered suggestion to Mr. Fullerton.]

Mr. Fullerton—Yes, there is one question I have omitted.

Q. In this conversation with Mr. Bowen, did you speak of Gen. Tracy as your counsel? A. I do not recollect that I did, Sir.

Q. Don't you recollect of Mr. Bowen asking you who your counsel was? A. No, I don't recollect that he did.

Q. And you don't recollect of telling him that Gen. Tracy was your counsel? A. I do not recollect it; it is quite possible, but I don't recall it.

Q. It is quite possible? A. It is quite possible, but I don't recollect any such thing.

Q. Was Mr. Tracy your counsel at that time? A. No, Sir, not in the proper sense of that term; he was my personal friend and adviser.

Q. He was advising you? A. He advised me whenever I asked advice of him.

Q. Well, that is all counsel can do, I think. Now, do

you recollect of Mr. Butler being at Mr. Tracy's house? A. No, Sir; I don't know where Mr. Tracy's house is.

Q. Were you ever at Gen. Tracy's house? A. No, Sir.

Q. On no occasion? A. No, Sir; I don't know where he lives now.

Q. Were you at any house in Brooklyn when Gen. Butler was there? A. Not that I recollect, Sir.

Q. Don't you recollect of consulting Gen. Tracy in regard to your difficulties at one time when Gen. Butler was in the same house, in another room? A. Not that I knew of, Sir.

Q. You never were informed of that fact? A. I was not informed of it.

MR. BEECHER'S WALKS WITH MRS. TILTON.

Q. Now, as to your walks with Mrs. Tilton; when did they occur? A. I cannot give you any definite dates. It was in the early period, but whether it was in the Fall of 1871, or anywhere along there, I cannot say with certainty.

Mr. Evarts—1871? He don't mean 1871.

Mr. Fullerton—Yes, he does mean 1871.

The Witness—Yes, I am speaking of walks with her subsequent to the breaking out of the difficulty.

Mr. Fullerton—Certainly. What time in the Fall of that year? A. I cannot say whether it was in the Fall or whether it was in the early Summer.

Q. Where did the first one take place? A. I cannot say which was the first one. I can tell you where one of them was.

Q. Well, the first one that you remember of? A. The first that I tell of was when going out of my house, I have forgotten for what errand, just about sundown, I met Mrs. Tilton on the corner of Clark-st. and Columbia Heights. She was going over toward the Heights, and I was coming away. I was surprised. We stopped and had a few words of conversation, and she turned and walked back with me, and I think walked back about as far as Hicks-st., or somewhere there; I know it was a very short walk. That was one of them.

Q. And there you separated? A. There we separated.

Q. What time of day was it? A. It was, as I have said, just about sundown.

Q. You cannot tell us the season of the year? A. No, I cannot accurately.

Q. But you think it was in the latter part of 1871? A. I should say it was some time between—I should say even this is uncertain—but my best recollection is, it was between the early Summer and the late Autumn, but I cannot say certainly.

Q. When do you recollect of another walk with her in the street? A. I recollect meeting her somewhere, I should say in the vicinity of Montague or Remsen-st., on Clinton, or some of those streets there, Henry or Clinton, and walking down with her—she was going home, I think; I overtook her and walked down with her as far as her house. and left her there.

Q. And how far was that? A. I should say it was about as far as from here to Montague-st.—the corner of Montague, in Brooklyn.

Q. How many blocks is that? A. I don't know how many blocks it is.

Q. What is the distance in yards and rods? A. Well, dear me! yards and rods! I am not a surveyor that I should measure the distance.

Q. Well, miles then? A. Well, it is less than a hundred.

Q. Less than a hundred what? A. Miles; it was from Clinton-st., in Brooklyn, or about there, in the neighborhood, down Livingston-st. to her house.

Q. Well, about how many blocks? What is the distance? Give us some idea. A. That is what I was stating; I do not recall the particular blocks; and then the blocks usually are irregular and of different sizes.

Q. A dozen blocks? A. O, I should not think it was as much as that; I should not think it was more than a part of a block to Smith, and then [*sotto voce*] one, two, three, four—four or five blocks; it may be a little more or a little less.

Q. What time in the day did you say it was? A. I cannot recall it, Sir; my impression is it was in the afternoon.

Q. Do you recollect of any other walk? A. I do not recall any other, Sir.

Q. You left her at her dwelling? A. I left her at her door; I did not go into the gate.

Q. Where were you going on that occasion? A. I don't recollect.

Q. Do you know whether it was in the direction of your errand, whatever it was? A. I do not.

Q. It was not in the direction of your house, was it? A. No, Sir; right away from it.

Q. Right away from it! Were you walking away from it when you overtook her? A. I think I was; that is my impression.

Q. You cannot recollect where you were going? A. No, Sir.

Q. You conversed with Mrs. Tilton upon those occasions, did you not? A. I did.

Q. Any explanation of the scandal at all? A. No, Sir.

Q. You did not seek to learn from her, then, whether the charge made against you, of having won her affections, was true? A. I did not, Sir.

Q. You took it for granted that it was so? A. I assumed it.

Q. And yet walked in the public streets with her? A. I did, Sir.

Q. And no word was said in regard to the difficulty that existed between you and her? A. No word that I recall, or allusion.

Q. Do you recollect of walking with her at any other time? A. I do not.

Q. Mr. Beecher, I will now ask you whether you recollect of having ridden with her on any occasion other than the two buggy rides that you have already spoken of? A. I don't recollect any other occasions.

Q. You do not recall to your recollection any other? A. I have a faint impression that I went out to Greenwood with them at the burial of Paul, or of one of their children, but that is a fugitive——

Q. I am speaking of rides with Mrs. Tilton when no person was with you except herself. A. I recollect only those two.

Q. None other? A. I don't recollect any other.

Q. Do you recollect now of being in a photograph gallery with her in the City of New-York or Brooklyn? A. I do not, Sir.

Q. How? A. I don't recollect it.

Q. You recollect of no occasion when your likeness was taken in her presence? A. I don't recollect any occasion.

Q. You cannot tell me whether she was at Sarony's with you when your likeness was taken there? A. I can tell you pretty certainly she wasn't.

Q. On no occasion? A. On no occasion.

Mr. Fullerton [Looking at the clock.] If the Court please——

Judge Neilson—Get ready to retire. Gentlemen keep their seats. Return at 2 o'clock, gentlemen.

The Court then took a recess until 2 p. m.

THE AFTERNOON SESSION.

The Court met at 2 p. m. pursuant to adjournment. and Mr. Beecher was recalled.

Mr. Fullerton—Mr. Beecher, did you walk with Mrs. Tilton in the City of New-York in the Autumn of 1871, at any time? A. Not that I recollect, Sir.

Q. Were you in a house of refreshment or an oyster saloon with her in the year 1871 or 1872? A. Not that I recollect, Sir.

Q. Do you think that it could have taken place and you not recollect it? A. I don't think it could.

Q. Well, are you in a condition to swear positively that it did not take place? A. According to the best of my recollection no such thing ever took place.

Q. That is as far as you go? A. That is as far as I go.

Q. In these walks with Mrs. Tilton of which you have spoken, or in these conversations with Mrs. Tilton of which you have spoken, did you admonish her against permitting her affections to be enlisted to any farther extent than they had been already? A. I did not, Sir.

Q. Was there anything upon that subject said? A. Not a word.

Q. And you at the same time, as I understand you, was laboring under the strong conviction that she had given her affections to you? A. I was, Sir.

Q. Well, were you not in fear that they would be still to a greater extent enlisted in you than they had been? A No, Sir; not to a greater extent.

Q. You thought that no evil or difficulty would result from this communication with her? A. I thought that some good might.

Q. Although you did not warn her against going any further in that direction? A. Not by warning her, but by bringing to bear upon her mind moral influences that would lift her above it.

MR. BEECHER GIVES MR. TILTON FINANCIAL AID.

Q. I understand you to say that you did not learn of Bessie Turner's absence until the letter of Mrs. Morse was written to you in January, 1871. A. I believe I said so, Sir; that is my recollection.

Q. Were you not made acquainted with the fact that she had been sent away? A. No, Sir; I was not.

Q. Until you received that letter of Mrs. Morse did you suppose that she was still in Mr. Tilton's family? A. I don't suppose I thought anything about it, Sir; I had no reason to suppose but that she was.

Q. Had you been informed by herself, or by any other person, that she knew of this charge that had been preferred against you? A. I was not.

Q. Had you no intimation from any quarter that she was—— A. Not a shadow of it.

Q. When did you first pay out any money in connection with Bessie Turner? A. I don't recollect, Sir. I shall have to refer to a memorandum.

Q. Please refer. A. [Referring to memorandum] I have it on my memorandum, Jan. 23, Sir.

Q. And what amount did you advance at that time? A. I could not say.

Q. Did you keep no account of it? A. None.

Q. And how did you make the advance? A. To Mr. Moulton.

Q. By check, or otherwise? A. Sometimes one way and sometimes——

Q. No; but that time? A. I cannot say, Sir.

Q. Did you keep a check-book? A. I do keep a check-book.

Q. Did you make entries on the margin? A. I do now, but I don't know whether I did as early as that.

Q. Haven't you examined to see how you made that first payment? A. I did; that is one way that I examined, or rather requested my son to examine.

Q. Well, didn't you find a stub which indicated the amount that was given and the date when it was given? A. I doubt—or at any rate I cannot speak certainly on that; I requested him to examine all my return checks running back to that year.

Q. I am not speaking of return checks, I am speaking of the stub of the check-book. A. Well, as to that, I have never personally examined it at all; I requested my oldest son, who has charge of my financial matters, to make an examination.

Q. Haven't you seen a check-book that you had at that time? A. No, Sir.

Q. And don't you know whether the stub indicates the time and the amount and the object for which the check was given? A. I do not, that I recollect, Sir.

Q. Is that one of the checks that you gave to Moulton? [Handing witness a check.] A. Yes, Sir.

Q. What occurred previous to the giving of that check which resulted in your giving it? A. He said to me in substance that the term bills of Bessie Turner, who was in the West, were due, and that it would be embarrassing to Mr. Tilton to have to meet them in his state of affairs; that he had already advanced, himself, a great deal of money, and he thought it would be a very kind thing for me if I would pay them. I told him that I should do it with great pleasure. That was the substance of the representation.

Q. Well, did you ask at that time why he was educating Bessie Turner? A. I did not, Sir.

Q. Did it occur to you to ask anything about the matter? No, Sir; that is not my habit.

Q. Had anything taken place between you and Mr. Moulton prior to that upon the subject of advancing money? A. I only recollect one thing, and that was that prior to that he had spoken about the mortgage on Mr. Tilton's house, and said he thought that ought to be raised, and that he thought that Mr. Tilton would be willing to settle the house then upon his wife. I told him that whenever anything of that kind was undertaken by the friends of Mr. Tilton I wanted to be counted in, I would do my share.

Q. Well, to what extent were you willing to contribute? A. Oh, it was not a matter that came to thought.

Q. Well, to what extent do you think you would have contributed if you had been called upon? A. I cannot tell you, Sir; I cannot begin to tell you four years after, what I think I would have done if it had been brought up to my mind four years before.

Q. Is that all that occurred between you and Mr. Moulton upon the subject of money prior to giving your check dated June 23, 1871? A. All that I recollect, Sir.

Q. Well, you were quite willing to give that check? A. Very willing, Sir, and another just like it.

Q. No threat was made at the time? A. Not the slightest, Sir; it was done as kindly and with as much gentlemanliness as I ever knew.

Q. There was no suggestion that there was any duty resting upon you? A. None at all, Sir.

Q. You did it freely? A. I did it as an office of kindness; that was the ground upon which he put it.

Q. And that is the ground upon which you gave it? A. That is the ground upon which I did it, Sir.

Q. Well, you did not regard that as blackmail, then? A. Oh, I did not; no, Sir.

Q. He told you distinctly what it was for, I understand you? A. I knew what it was for. We did not go into any considerable conversation about it. It did not take three minutes, the whole thing.

Q. But had there been no suggestion on your part of a general nature, that you wanted to contribute to the wants or necessities of Mr. Tilton? A. I think not, except in the—in regard to the first, that is, the mortgage on his house. There may have been, but I do not recall anything.

Q. Didn't you state to him generally that if Mr. Tilton wanted any assistance you were willing to render it? A. I did at some part of our interviews; not unfrequently at certain portions of our interviews.

Q. Well, don't you think that you did that pretty early in the history of the difficulty? A. That I cannot say, Sir.

Q. Your best judgment upon that subject—what is it? A. I have a recollection only of these two cases.

Q. Now, the question that I ask you, Mr. Beecher, is whether you did not at an early day in this difficulty suggest to Mr. Moulton that you would assist if assistance were needed? A. I do not think I did, except in the instance that I have mentioned to you, in regard to the mortgage on the house.

Q. And before the giving of the check which I have shown you, in June, 1871, don't you think that you had made some general suggestion about assistance? A. I don't remember that I did, Sir; it would be quite a possible thing, but all things that are possible are not actual.

Q. When were you called upon the second time? Please consult your memorandum. A. I don't know whether it gives more than the first. I don't think there are many others, Sir, that are given. [Referring to the memorandum.] Oh, the second check I find mentioned, November 10.

Q. What year? A. November 10, 1871, Sir.

Q. And for how much? A. It don't state.

Q. See if that is the check that you refer to? [Handing Witness a check.] A. I presume it is, Sir; it is my signature, and it is to Mr. Moulton, and it is November 10, 1871.

Q. Now between the giving of the check in June and the giving of this check in November, was anything said by Mr. Moulton or by you in reference to other advances to Mr. Tilton? A. I was gone away from town most of the time between, but I don't recollect that there was anything said in the fringes of time that remained.

Q. Well, was there anything said in the interim upon the subject, one way or the other? A. Not that I know of, Sir.

Q. Well, what was said at the time you advanced this money? A. I don't recollect that there was anything, except he merely said that he had got another term bill, and would like me—giving me the sum probably.

Q. And you gave a check? A. I presume so, Sir.

Q. Were the circumstances attending the giving of this second check about the same as those that accompanied

the first? A. I presume they were, Sir. Sometimes he asked me by a note, sometimes personally, and I cannot identify one from the other.

Q. Have you any of those notes that he wrote to you? A. I think there is one in evidence.

Q. Is that one of the notes written to you in regard to that subject? [Handing witness a paper.] A. Yes, Sir.

Q. Did you understand at the time what this money was for? A. Yes, I supposed it was to be for the education of Bessie Turner.

Q. Now, subsequent to the giving of the check of November 10, 1871—this seems to be dated October—— A. 1872, Sir.

Q. Subsequent to the giving of the check of November 10, 1871, and up to the time of writing this letter of October 21, 1872, had anything passed between you and Mr. Moulton upon the subject of advances to Mr. Tilton? A. I presume there had, Sir; I cannot locate. I gave him money in currency at different times.

Q. When? A. I cannot say, Sir.

Q. Under what circumstances did you give him money in currency? A. Well, under the same circumstances, substantially, that the time had come round for another bill.

Q. What was the largest amount that you gave to him in currency? A. I don't remember, Sir; I could not recall.

Q. I think you mentioned the sum of $500 that you gave to him at one time? A. Well, I suspect I did not mention it as a positive sum, but that my impression was that it was about that.

Q. Was there any bill of Bessie Turner, or for Bessie Turner's schooling, which amounted to that sum? A. Sometimes they ran over, and two were included in one, or something to that effect.

Q. Do you recollect of any instance in which her schooling, whether for one or more terms, went to the amount of $500? A. No, Sir; I never made any inquiry as to that. I never saw a term bill, nor anything of the kind. I paid to Mr. Moulton what sum he said he wanted.

Q. Well, in all instances before the money was raised upon the mortgage, did Mr. Moulton state to you that the sums he wanted were for Bessie Turner's schooling? A. I don't know that he did, Sir; I should not be willing to say that he did.

Q. Well, do you remember of his stating any other object for which money was wanted? A. No, Sir, I do not.

Q. Cannot recall any instance of that kind? A. No, Sir.

Q. Now, Mr. Beecher, in all of these instances prior to the giving of the mortgage, was there anything said to you by Mr. Moulton, either by way of intimidation or by way of enforcing what he should term to be your duty, in giving this money? A. Not a word.

Q. Was it all entirely voluntary upon your part? A. Entirely upon his suggestion of anything of this kind; it was always suggested to me in the most delicate manner, and I always responded to it promptly, and feeling that I was coöperating with him.

Q. Do you know how much in the aggregate you gave to Mr. Moulton for Bessie Turner's schooling? A. No, Sir, I do not.

Q. Did you keep no account of it? A. None whatever; I never kept an account in my life.

THE MORTGAGE ON MR. TILTON'S HOUSE.

Q. Well, now, with regard to this mortgage, when was that subject first broached to you? A. It never was directly broached to me; when I returned in that Spring from a Western tour I told Mr. Moulton that I had had a fortunate tour, and made $12,000, and that gave rise to some conversation in respect to how fortunate I was, and how easy I was, and naturally in respect to the different situation of Mr. Tilton; we had many conversations on that subject, and they were all like two brothers talking about a third unfortunate one.

Q. Didn't you suggest to Mr. Moulton at that time, that, having been so fortunate, you were willing to contribute? A. No, Sir.

Q. Nothing of that kind? A. No, Sir; the $12,000 had gone, I guess, before I told him about it.

Q. Well, was there no suggestion at that time on your part that you would contribute if it was needed? A. No, Sir, there was no suggestion that I recollect at all.

Q. Well, how was the subject of the mortgage brought up? A. It never was brought up until after I had accomplished it and told him about it.

Q. I mean that mortgage that was on Mr. Tilton's house. You misunderstand me? A. Oh! I beg pardon! I thought you meant the mortgage that is on mine.

Q. No. A. Well, the mortgage in regard to Mr. Tilton's house was brought up in the early days of 1871.

Q. How early do you think? A. I should think it was as early as the middle of January, 1871. Some of those conversations ran—with me and Mr. Moulton—there were several business conversations, and I should think it was about—not later than the middle of January.

Q. Of 1871? A. Of 1871.

Q. Well, did you suggest that there was a mortgage upon his house, or did he do it? A. He told me that, for I didn't know it. I had known it at a previous date, and had vehemently urged Mr. Tilton, while he was in prosperity, to take that mortgage off—gave him fatherly advice about money matters, and supposed it probably had been taken off.

Q. Well, you did not suppose so, when Mr. Moulton brought it up for consideration? A. No, Sir, I thought that my good advice had not been taken.

Q. In what terms did Mr. Moulton make known to you the fact that there was a mortgage existing there? A. In a general conversation as to the condition of Mr. Tilton

and his family—how they could be best helped. That is the general way in which it came in.

Q. And suggested that there was a mortgage upon his property? A. That should be lifted, and that he ought to make it over to Elizabeth, and secure it to her and the children.

Q. Well, did you think he brought up that subject at that time to impress you with the idea that there was an incumbrance upon his property, and that you ought to contribute to pay it? A. No, I did not so understand it at that time.

Q. He said nothing that would lead you to understand it in that way, did he? A. No, Sir; I understood it simply that it was an act of kindness that Mr. Tilton's friends ought to do for him and his family.

Q. Well, did he say they ought to do it? A. No, no; oh, there was not the slightest pressure brought upon me.

Q. Well, after he had mentioned this mortgage to you, and suggested that if it were taken off that he would convey the property unincumbered to Mrs. Tilton—— A. He did not state that; he said that he thought he could pursuade Mr. Tilton to do it.

Q. Well, when he said that, what did you reply? A. I replied that I should be willing to stand in my place; whenever any movement of that kind was made I would stand in my place and do my part.

Q. That suggestion, then, proceeded from you entirely? A. Of coöperation?

Q. Yes. A. Oh, yes, I was very prompt on the mentioning of that.

Q. Was there any intimation of any kind or character from Mr. Moulton before you made this offer that you should do so? A. Not the slightest.

Q. Or was there anything that might be construed into an intimation that it would be pleasant if you would do so? A. He said that he thought it would be the right thing to do for Mr. Tilton's friends—right thing to do.

Q. He did not suggest that you were one of his friends who should do it? A. Oh, no; no, Sir.

Q. Well, did Mr. Moulton ever call upon you to assist in taking up this mortgage? A. He never did, Sir.

Q. Did you recur to the subject afterward? A. I think once I mentioned it again.

Q. Now, how long after this first conversation when the mortgage was suggested? A. I have not the slightest; I couldn't tell you within two years. It was at some later period. I mentioned it because I thought that perhaps some feeling of delicacy on his part hindered him, and I made the suggestion to him, "Whenever you make that movement——"

Q. Then Mr. Moulton's conduct in regard to money matters was of that character which induced a belief in your mind that he might be delicate in suggesting it? A. Altogether so, Sir.

Q. Well, didn't you speak more than once to him upon the subject of that mortgage, after it was first brought to your consideration? A. I think not, but once, Sir.

Q. I think you stated in your direct examination, "He never, that I recall, mentioned it to me again, but I did to him once or twice, but I cannot tell how long space after." A. My impression is that I should prefer the once.

Q. Well, you asked him, if I recollect aright, if anything had been made, or anything was going to be done, in regard to that mortgage? A. Well, I cannot state distinctly about that. I remember distinctly the motive that actuated me in mentioning it, and that I brought it to his memory, that he might know that I stood ready to fulfill my share in any movement.

Q. You brought the subject then up for his consideration? A. I did, Sir, in the second instance.

Q. Fearing that he might have forgotten it, or was too delicate to speak about it? A. Yes, Sir, either.

Q. Now, Sir, up to the time when that $5,000 was raised and paid, as you have stated, did Mr. Moulton, at any time or place, suggest to you anything more than he had suggested in the first instance in respect to taking up this mortgage by the friends of Mr. Tilton? A. Not that I recollect, Sir.

Q. The mortgage, I understand you, was dated May, 1873—the money was paid over in May, 1873? A. On Mr. Tilton's house?

Q. The money, the $5,000. A. Oh, I did not know that you had come to that subject.

Q. Yes. A. I believe it was, Sir.

Q. Just be accurate about it, please. A. May, you say, of 1873? [Referring to a memorandum.]

Mr. Shearman—May 1 or 2.

The Witness—May 1; I have it marked here, Sir; $5,000, mortgage.

Q. 1873? A. 1873.

DISCUSSION CONCERNING "THE GOLDEN AGE."

Q. Now, Mr. Beecher, I want you to state what occurred prior to the payment of that $5,000 between yourself and Mr. Moulton which led you to mortgage your property and pay it over? A. There were several conversations with Mr. Moulton and me, as it respects the pecuniary condition of *The Golden Age* and of Mr. Tilton; and in those conversations I got more or less information as to the state of the paper. Mr. Moulton said that he thought—was an indispensable to Mr. Tilton's salvation—he must have some work to do; he must have some channel through which to communicate to the public, and things were dragging heavily—I think he said that Mr. Tilton himself did not know what was the real condition of his paper, but that he himself had to meet bills for paper, and for other things, from time to time; and he knew more about the paper; and that became a topic of conversation. But, as I understood from him, it was

a matter of consultation by other friends of Mr. Tilton elsewhere; and there was more or less conversation about putting *The Golden Age* on to its feet, so that it should be immovable—a prosperous paper; and the immediate occasion, or the occasion out of which the final thought in my mind sprang, was on a visit one evening to his house, when we were sitting in the back parlor, and with the tea-table uncovered, of course—cloth removed—and we were alone there, and he introduced the matter again in some way; I have forgotten what the conversation ran over, except it was generally on the state of things; he then drew out a letter from his pocket and read me some extracts from it, which were, as I recall it, a statement from a friend that a check—a cash check, I understood, but I will not be positive about that—of $2,000 had been sent, and that two time-drafts also had been sent; I understood from—and that the friend presumed that they would answer the purpose just as well as if they were payable at once, and made some statement about the condition of money matters which did not enable the friend to make it all a payment at once. He had the two time-drafts before him on the table, and mentioned, as near as I can recollect, but I will not be positive about this, that they were of about equal sums with the cash payment; and I said to him, "Well, you will use these, will you not?" "No," he said, he should not; said it would not do.

Q. That is, the time-drafts? A. Yes. I did not question him further than that; but I understood that the cash paid had been applied to that purpose, and after he had read the letter and spoke about the papers, he brought his hand down on the table in an admiring way, and said, "That is what I call friendship."

Q. Well, that is what you would call friendship, too, wasn't it? A. Well, I should, Sir.

Q. Nothing extraordinary in his observation? A. What?

Q. There was nothing extraordinary, therefore, in his observation? A. No, Sir; No, Sir; it seemed very natural to me.

Q. *The Golden Age* had been the subject of conversation between you and him? A. Yes, Sir; for a considerable length of time.

Q. Its wants had been the subject of discussion? A. They had.

Q. The prosperity of the project? A. Yes, Sir.

Q. You took an interest in having it succeed? A. I did.

Q. So did Mr. Moulton? A. So did Mr. Moulton; I thought we were of one spirit.

Q. Well, did you think it at all extraordinary, inasmuch as you and he were in the same frame of mind upon that subject, that he should show you any evidences of the prosperity of the paper or of the liberality of his friends? A. I did not; I was very much pleased to learn it.

Q. You thought, then, it was a natural thing for him to show you these drafts, to give you an account of this money which had been received for the paper, did you not? A. I cannot say that exactly; it did not strike me as at all unnatural, because it did not occur to me any way, you know, whether natural or unnatural.

Q. But it did not excite any apprehension on your part? A. Not the least; no, Sir.

Q. You did not regard it as a hint given to you? A. I did not, although I took a hint from it; but I did not think that he intended——

Q. You did not think that he intended it? A. It did not occur to me in that light at all.

Q. But you did not take the hint right away? A. No; not till after I had got home.

Q. He did not say anything, however, upon the subject? A. No, Sir; no, Sir.

Q. Didn't intimate, in any way whatever, did he, that you ought to contribute? A. Oh, no, he did not.

Q. Nor did he express a wish that you might contribute? A. He did not, Sir.

Q. And the contribution that was subsequently made by you was entirely voluntary upon your part? A. It was entirely so.

Q. Now, have you told us, Mr. Beecher, all that Mr. Moulton said prior to the contribution of that $500 with reference to any contribution? A. That $5,000 you mean?

Q. $5,000—in reference to any contribution by you? A. No, not all; but I have told you that which is a fair specimen.

Q. Now, had the contribution of that money by you anything to do with the settlement of the difficulties between you and Mr. Tilton growing out of these charges? A. I did not understand it so, Sir.

Q. No connection whatever? A. I did not understand it to have any connection of that kind.

Q. It was not given to you then for the purpose of settling it?

Judge Neilson—Given by you?

Q. By you, for the purpose of settling that difficulty? A. Oh, no, Sir; no, Sir. It was given to me as——

Q. Well, that is an answer. Nor was it given by you with any idea that it would settle the personal difficulty between you and his family or himself? A. No, Sir; it had no relation to that.

Q. Nor you were not told anything to that effect? A. Not that I recollect, Sir; I think not.

Q. Well, if anything of that kind had taken place you would be apt to remember it, wouldn't you? A. It never would have taken place if any such thing as that had been said.

Q. That is, you would not have given the money? A. Not a cent.

Q. You would have rebelled at once? A. I should.

Q. If you had thought that the money had been asked from you, or was to be received from you, with any view

of settling this personal difficulty, or settling these troubles, you would not have given it? A. I would not have paid a cent if I had been killed for it; I did it out of the purest kindness, and I thought that Mr. Moulton did it out of the purest kindness and sympathy.

Q. See if you recognize this, Mr. Beecher. [Reading.]

Q. Under what circumstances did you come to pay the $5,000 in one sum? A. Because it was represented to me that the whole difficulty could be now settled by that amount of money; which would put *The Golden Age* on a secure footing; that they would be able to go right on, and that with the going on of them, the safety of Tilton would be assured, and that would be the settlement of the whole thing——

Do you remember anything of that kind? A. I don't know what that refers to; I cannot say unless I see the writing.

Q. Perhaps if you look at it you can tell? A. Yes, Sir. [Book handed to witness.] I presume this is substantially what I said.

Q. Well, Sir, that is an answer. A. [Continuing.] And what I should still say.

Q. Were you asked this question, also: [Reading.]

Q. Were there any documents shown to you by Moulton--what did he show you before you made the payments? A. It was the result of intimations and general statements, and I finally said to him, "I am willing to pay $5,000."

A. I presume I said so, Sir, if it is there.

Q. Now, how long after that interview with Mr. Moulton, when he showed you the time-drafts and the letter, was it that you raised the $500 that you paid to him? A. $5,000?

Q. $5,000. A. I cannot say how long, Sir; I think that within a few days I took the steps toward it.

Q. How long do you think it was afterward? A. I have no gauge, or no data, by which I could tell, except that it was not far removed from it.

Q. And where did you find Mr. Moulton when you gave him the money? A. I don't remember; I recollect giving it to him, but I don't remember where he was.

Q. Can't you tell whether he was at his house, or at your house, or at the store? A. I have an impression that I was walking with him in the street, or met him, but I cannot say that certainly.

Q. Well, what did you say to him at the time that you gave him the $5,000? A. I don't know that I said anything more than that I had raised this. I told him, you know, immediately that I was going to do it, and then I brought it to him.

Q. Well, can't you tell me what you said when you brought it to him? A. No, Sir, I do not now recall anything, except that I had succeeded in obtaining the money which I gave him.

Q. Well, did you think that was obtained from you by Mr. Moulton in any improper way? A. Not—that was not my feeling then at all, Sir.

Q. You did not regard it as blackmail then? A. I did not, Sir.

Q. Well, cannot you tell us how much you paid prior to the payment of the $5,000? A. Not accurately, Sir; I have an impression that the whole sum amounted to about $7,000; over rather than under.

Q. That is including the $5,000? A. Including the $5,000.

Q. About $2,000 before the payment of the $5,000? A. That is my impression, Sir.

Q. Well, did you pay any money after the payment of the $5,000? A. No, Sir; I think not.

Q. Well, up to the time that you paid the $5,000, did you look upon those payments at all in the light of blackmail? A. I did not, Sir.

Q. You felt entirely satisfied with the money that you had given? A. Oh, yes, Sir.

Q. The fact that you had given it? A. I rejoiced to be able to give it.

Q. And did it willingly? A. I did it cheerfully.

Q. And rejoicingly? A. And rejoicingly.

Q. Without finding fault with anybody? A. Without finding the slightest fault.

Q. Or thinking that you had in any way been taken advantage of? A. I did not dream of it.

Q. Or imposed upon? A. Or imposed upon. When I say that, of course you understand me to say that this applies to my thoughts about Mr. Moulton.

Q. Yes, certainly. Now, Mr. Beecher, I must ask you again whether you have no means of getting at the exact sum which you contributed? A. No, Sir; I have not.

Q. Well, did you think that Mr. Tilton had any agency in getting this money at that time—that is, any sum that you paid? A. Well, no; no agency that I know of. The thought occurred to me at times in regard—that he knew of it.

Q. Well, when Mr. Moulton got the $5,000 from you, didn't he tell you he should not tell Mr. Tilton where it came from? A. I don't recollect about that, Sir.

Q. I wish you would tax your recollection upon that subject. Now, didn't he say to you that he should not inform Mr. Tilton the source from which that sum came? A. I don't recollect about that, Sir.

Q. Well, don't you think something took place upon that subject? A. All that I recall now is that he should husband that, and feed it out to Mr. Tilton carefully and judiciously.

Q. Yes, and you believed he would do so, didn't you? A. I did, Sir; and I believed him to be as good a friend as need be.

Q. And he did not say anything about concealing the source from whence it came, that you recollect? A. I don't recall that he did. Sir.

THE QUESTION OF BLACKMAIL.

Q. Well, did you think that Theodore Tilton, up to the time you paid the $5,000, was levying blackmail upon you in any way? A. I cannot say that I thought so.

Q. Had you any reason to think so at all? A. I had no reason, and I don't know that I did. I may have had the suggestion flit across my mind, but it was nothing that made any serious impression, Sir.

Q. Well, if it didn't flit then, don't let us have it—anything more than flit. Let me read to you and see if you recollect this:

[Reading.]

The full truth of this history requires that one more fact should be told, especially as Mr. Tilton has invited it. Money has been obtained from me in the course of these affairs in considerable sums, but I did not at first look upon the suggestions that I should contribute to Mr. Tilton's pecuniary wants as savoring of blackmail. This did not occur to me until I had paid, perhaps, $2,000.

A. It only occured then.

Q. Did it occur then? A. I presume that that thought flitted through my mind then.

Q. Did it occur then? A. It occurred in that sense—transient thought.

Q. That you had been imposed upon, and had paid blackmail? A. That Mr. Tilton was receiving money from me.

Q. Now, Mr. Beecher, if you please, did it occur to you when you paid the $2,000 that you had been imposed upon, and that blackmail had been obtained from you? A. Will you read that, if you please, again, Sir?

Q. I will [Reading]:

The full truth of this history requires that one more fact should be told, especially as Mr. Tilton has invited it. Money has been obtained from me in the course of these affairs in considerable sums, but I did not at first look upon the suggestions that I should contribute to Mr. Tilton's pecuniary wants as savoring of blackmail.

Mr. Evarts—He has not said so.

Mr. Fullerton—Well, wait until I get through. [Reading]:

This did not occur to me until I had paid, perhaps, $2,000.

Now, I pause there and ask you whether it did occur to you that those payments savored of blackmail when you paid the $2,000? A. I cannot state positively as to the time; it certainly did not in all the earlier periods of my contribution.

Q. Now, I ask you whether it occurred to you at that time, as stated here? A. I am—that which is stated there is simply not that it occurred; that it did come to me.

Q. Now, I beg your pardon; you are not to give an exposition of this language. A. I am to give an exposition of my meaning of the language.

Q. No, you are not.

Mr. Evarts—Mr. Beecher's statement is that it did not occur to him before a certain time.

Mr. Fullerton—Yes, Sir; but my question is whether it did occur to him at that time, and I am obliged to you for commending it.

Mr. Evarts—I did not do it for the sake of politeness.

Q. I want an answer to that question; and I am going to have an answer to the question, as to whether at that time it occurred to him that it savored of blackmail.

The Witness—May it please your Honor, I am not avoiding the answer at all; I only want to have the distinction made between a conviction—of an occurrence of that kind making a permanent conviction, and merely the thought passing through my mind. Up to that time I had not even thought of such a thing; but at that time it occurred to me; the thought began to come into my mind whether he was not making use of me for his advantage; it was a transient impression.

Mr. Fullerton—That is an answer to my question, although addressed to the Court. I understood you to say a moment ago, Mr. Beecher, that up to the time of the payment of the $5,000 it had never occurred to you in any shape or form—— A. That Mr. Moulton——

Q. And when you made the distinction, I went to Mr. Tilton and asked whether Mr. Tilton was levying blackmail upon you in any form or shape, and I understood you to say, "No."

Mr. Shearman—No, he did not.

The Witness—No, Sir.

Mr. Fullerton—Well, one moment.

Mr. Shearman—I beg pardon; but I have taken especial pains to look over this gentleman's statements; and I say to your Honor, and in the presence of the Court and jury——

Mr. Fullerton—But I object to these assertions in the presence of the Court; and I don't believe this is proper at all. I am examining this witness, Sir, and I have a right to examine him without interruption.

Mr. Shearman—And I to speak——

Mr. Fullerton—There is no question before the Court.

Mr. Shearman—And I shall not stop because of the insolence of the counsel.

Mr. Fullerton—May I ask your Honor now, at this stage, to stop the counsel until I get through with the examination. There is no question before the Court at all.

Mr. Shearman—I say that this gentleman has misstated——

Mr. Fullerton—I insist upon it that he shall not inform this witness what there is in this paper. It is evidently an attempt to do so.

Judge Neilson—The whole matter is simply this: Counsel thinks that you were mistaken as to the fact embraced in your question. That is all; it is very simple.

Mr. Fullerton—If your Honor please, I stated to the

witness what I understood him to say in order that he might correct it if I were incorrect.

Judge Neilson—It is a very simple matter.

Mr. Shearman—It is a very curious coincidence that, whenever this gentleman undertakes to state verbally, and without reference to the minutes, he is so unfortunate as not to be able to state it correctly.

Mr. Fullerton—I quote it word for word, and then hand it to the witness for his examination.

Mr. Shearman—I should like to see it quoted word for word.

Mr. Fullerton—I do quote it word for word, and then hand it to the witness for examination.

Mr. Shearman—When he does that he is able to do it correctly, but never except at those times when he refers to the printed record.

Mr. Fullerton—Well, if Brother Shearman cannot be impertinent he is not anything; so we will put up with his impertinence. I have not misquoted any testimony; I have not misquoted any statement; I have with the utmost frankness quoted word for word as it is written in the book, and then handed it to the witness for his examination.

Judge Neilson—I observe you have done that pretty uniformly, but at the same time the learned counsel might think that, although you intended to quote it correctly, yet, in a given instance like this, you had committed a mistake.

Mr. Fullerton—Oh, what Mr. Shearman might think, Sir, is not of importance enough to take up your Honor's attention, or mine either, for a moment.

Judge Neilson—He thinks it his duty to call your attention to it.

Mr. Fullerton—I don't know what he thinks; I only know what he says is very impertinent indeed, and that he cannot be otherwise. Now, Mr. Beecher—- [To the stenographer.] Will you recur to the last question and see whether I am correct?

[Last two questions and answers were read by the Tribune stenographer.]

Q. Now, was I correct in my understanding of what you said on your direct examination? A. I don't know, Sir.

Q. Well, when did you first become convinced or impressed with the idea that this money had been obtained from you improperly? A. I think it was some time late in August, 1874.

Q. In August, 1874? A. Yes, Sir.

Q. And what did you think were the improper means used by Mr. Moulton to get the money from you? A. Well, Sir, I did not think—I was not—I could not make myself think he had used any improper means to get the money from me.

Q. What means did he use to get the money from you that you thought were improper? A. He used no means which at the time I dreamed were improper.

Q. Did he suggest to you the payment of money? A. He did not, except in the case of the term bills, but not of the $5,000.

Q. You told me a moment ago that the $2,000 and the $5,000 (as I understood you—if I am incorrect you will correct me) were paid willingly by you. A. More than willingly, Sir; you were correct in your understanding.

Q. You sought the opportunity of paying the money, did you not? A. I cannot exactly say that.

Judge Neilson—As to the $5,000.

The Witness—Yes, as to the $5,000; the others were brought, from time to time, to me.

Q. And didn't you tell us on your direct-examination that you chided Mr. Moulton for not calling upon you for aid, as you had offered it? A. I did, Sir; I told him I thought he was altogether too sensitive and too delicate.

Q. Now, did you believe that he had used improper means in taking this money from you? A. I did not, of my own self.

Q. Somebody did for you, is that it? A. I was told that that was blackmail.

Q. I don't want what anybody told you. don't want to get into a controversy with Brother Shearman about it. [Laughter.] [Reading:]

Money has been obtained from me in the course of these affairs, in considerable sums, but I did not at first look upon the suggestions that I should contribute to Mr. Tilton's pecuniary wants as savoring of blackmail. This did not occur to me until I had paid perhaps $2,000. Afterward I contributed at one time $5,000. After the money had been paid over, in five $1,000 bills, to raise which I mortgaged the house I live in, I felt very much dissatisfied with myself about it.

Now, did that dissatisfaction have its rise in 1874, as you have stated, in the month of August? A. Afterward, Sir.

Q. And in the month of August, 1874? A. I think not before that.

Q. Not before? A. I think not. There are other inaccuracies in that statement.

Q. Well, Sir, if it flitted through your mind when you had paid the $2,000 that blackmail was being taken from you, how did it happen that you afterward paid the $5,000? A. I did not consider *that* as blackmail, Sir.

Q. You did not consider what as blackmail? A. The $5,000.

Q. I didn't ask you that. A. You asked me how, if I considered it as blackmail, I paid the $5,000.

A. No; you misunderstood me. A. I will be corrected, then, if you please.

Q. If you regarded the $2,000 as blackmail, how did you happen to pay the $5,000 afterward? A. I did not consider that as blackmail, nor did I *consider* the other.

Q. Well, we will employ other terms, then. If it had "flitted through your mind" that perhaps the $2,000 was blackmail, how did it happen that you paid the $5,000 afterward? A. I did not consider that Mr. Moulton, in levying any part of it——

Q. One moment—leave out Mr. Moulton, if you please, and everybody else. I am talking about the abstract payment of the money. A. I am talking about the same thing.

Q. Well, then, don't bring in anybody. I ask you again if it flitted through your mind (to employ your own language) that the $2,000 had been obtained from you by blackmail, or that the payment of the $2,000 savored of blackmail, how did it happen that you paid the $5,000 afterward? A. Because *that* did not savor of blackmail to me then, nor did the other until afterward.

Q. After what? A. After I had paid it.

Q. Well, after you paid the $2,000, you thought it savored of blackmail, did you? A. The suggestions came afterward.

Q. Well, now I ask you, after those suggestions came to your mind that it was blackmail, how did it happen that you paid further money? A. The suggestion did not come to my mind that the further money was blackmail.

Q. Oh, it didn't——

Judge Neilson—Did not the suggestion come to your mind until after all the money had been paid over?

The Witness—The suggestion came to my mind, may it please your Honor, in this form—that Mr. Moulton was pursuing a course of perfect uprightness toward me, and honor, but that Mr. Tilton was in a position in which he was willing to use my help for himself; and when Mr. Moulton, in the conversation, represented the great advantage which would be had in setting *The Golden Age* free from all its difficulties by an immediate and liberal contribution, and ending, therefore, its difficulties, I had not the slightest thought that it was blackmail.

Mr. Fullerton—Why did Mr. Moulton tell you that liberal and immediate contributions would set *The Golden Age* on a good footing? A. He told me that the friends of *The Golden Age* were taking steps to do it.

Q. That is what he told you? A. That is the substance of it.

Q. Now, I repeat the question: If the thought flitted through your mind that the $2,000 savored of blackmail, why did you pay the $5,000? A. Because I did not think *that* savored of blackmail.

Q. You told me a moment ago that if you had had an idea that any of those sums savored of blackmail, you would not have paid them at all? A. I did not think they did savor of blackmail until after they had been paid.

Q Very well. The $2,000, after it was paid, you thought savored of blackmail? A. No, I did not.

Judge Neilson—His statement is, that it did not occur to him until after $2,000 was paid.

Mr. Fullerton—Well, *then* it did occur to him.

Judge Neilson—But how long afterward?

Mr. Fullerton—After the payment of the $2,000, and before the payment of the $5,000.

Mr. Evarts—Oh, no; that does not appear.

The Witness—That does not appear

Mr. Fullerton—It does appear. I put the question to him three or four times, how it happened that he paid the $5,000 after he thought that the $2,000 savored of blackmail, and his answer has invariably been, because he did not think that the $5,000 did savor of blackmail. That is his answer over and over again.

Mr. Evarts—That is not his answer.

Mr. Fullerton—Well, I will put the question to him again. Mr. Beecher, did it occur to you, or did the thought occur to you, or come to your mind in any way, that the $2,000 savored of blackmail before or after you paid the $5,000? A. The $2,000 that I had paid to Mr. Tilton?

Q. Paid to Mr. Moulton? A. Not under that designation.

Q. Under what designation. A. I don't think the "blackmail" came to me until after the Committee's investigation in 1874.

Q. That is the first time? A. *I* did not put that name on it, but it was put on it, and I spoke of it because we were counseling upon the subject at that time, and I called it by the name that I heard it called by.

A. Who put it on? A. I don't know which of them.

Q. Tell us who were there, and let them divide the honors. [Laughter.] Where was it, and who were present? A. I don't know of any particular interview that can designate.

Q. Tell me, Mr. Beecher, if you please, who it was that suggested to you that the payment of this money was blackmail? A. I think Mr. Shearman will have to take a part of it, won't he?

MR. BEECHER'S REFUSAL TO USE THE TERM BLACKMAIL.

Q. I thought so. Perhaps the whole of it? A. No. Then I spoke with—it must have been Gen Tracy.

Q. Yes, *par nobile fratrum.* A. If it was not him then it was somebody else that I don't remember.

Q. You cannot remember who the third person was A. I cannot, Sir.

Q. It never occurred to you that the payment of the money, which gave you so much joy in 1871 and 1872, was blackmail, until you had a lawyer tell you? A. I was fought with actually, and beaten into the use of that term. I defended Mr. Moulton up and down, and said that he had no thought of that kind; I would not believe it of him; and it was in the subsequent conferences I was made ashamed of my simplicity—that it was—they told me that I was green. [Laughter.]

Q. Yes. It was fought into you, was it? A. It was beaten into me by good, sound admonitions.

Q. Do you think it was beaten into you by sound argument? A. I don't think it was by argument exactly.

Q. Well, has it stayed in you ever since? Do you now believe it was blackmail? A. Well, I fall from grace every once in a while, and recover myself.

Q. Well, recover as best you can, and tell me whether you believe now that Francis D. Moulton intended to blackmail you in obtaining these sums of money from you? A. I have no—my belief is——

Q. No. Tell me whether you believe it now? A. I was going to tell you, Sir.

Q. Well, you can say yes or no to it? A. Well, just now I have no thought about it—in the matter. In the confusion and excitement of your questions that does not rest as a matter upon my mind.

Q. I will give you ample time to make up a judgment upon it, and to consult with your two lawyers, if you choose; but I want to know now whether you think that Francis D. Moulton intended to levy blackmail upon you in obtaining the $7,000, or any part of that sum? A. [With hesitation] I am afraid he did.

Q. You are afraid he did? A. I am afraid so. I don't want to say so.

Q. That is not an answer. I did not appeal to your fears; I appealed to your judgment? A. Well, Sir, I have, on that subject, no hard, immovable judgment. I found—Mr. Moulton made such an impression on me that to think evil of him is the hardest thing that I can do, and therefore, although when I am brought up to the facts by others, I am constrained to say that it looks like it, yet, when I am left to myself, my other thoughts often get the ascendency.

Q. Now, then, when these thoughts occur to you that he may have done it, will you be good enough to point out any act or word of Mr. Moulton's on which you predicate that thought? A. No, I cannot.

Q. You cannot? A. No, I cannot.

Q. Now I want to know, therefore, upon what this suggestion rests that he may possibly have levied blackmail? A. It is upon the representation that, upon such a man as I am, the way to levy blackmail is not to intimidate him, but to work upon his kindly feelings, and that by such delicate touches my feelings were worked upon, they knowing that generosity was a weakness of mine, and so the money was obtained by moral blackmail.

Q. By your moral blackmail? A. Yes, Sir; by moral blackmail.

Q. Is that the way the lawyers argued it with you? A. Yes, Sir.

Q. The way they beat you into it? A. Yes, Sir; the way they rubbed it into me. [Laughter.]

Q. The way they fought you up and down? A. Yes, Sir; fought me up and down until I surrendered.

Q. How long did the battle last before you surrendered? A. It lasted a good while.

Q. How long? A. It ran through weeks.

Q. And when was the complete victory obtained? A. I think it was since I returned from the White Mountains.

Q. When was that? A. That was in October, 1874.

Q. Then you gave up? A. Well, I gave up to this effect, that I did not say in their presence, any more, that it was not blackmail.

Q. How? A. I had been so suitably disciplined by them, that I did not dare to say in their presence that it was not blackmail.

Q. They intimidated you? A. Well, yes, Sir.

Q. They treated you worse than Moulton did, didn't they? A. A great deal worse. [Laughter.]

[Here Mr. Fullerton consulted with the other counsel for the plaintiff.]

Q. Mr. Beecher, your answer to the question which I put to you, whether you now believe that Francis Moulton intended to levy blackmail upon you has not been answered satisfactorily to some of my associates, and I put it to you again, as to your present belief? A. Well, Sir, if you mean by blackmail that he levied contributions for his own advantage on me, I do not think it; but if you mean——

Mr. Fullerton—That is——

The Witness [Continuing]—But if you mean that he levied money upon me, using my generous feelings as the instrument, for the benefit of Mr. Tilton, I think he did.

Q. Now, when did he take advantage of, or use, your generous feelings? A. Well, I think he did in regard to the $5,000, though it did not at the time seem so to me, and though it is entirely an after judgment and an artificial judgment.

Q. Entirely voluntary, that payment was, was it not? A. Oh! so far as I was concerned, perfectly so.

Q. You had not intimated to Mr. Moulton that you intended to give him $5,000? A. Yes, Sir; I had.

Q. Before you gave it? A. Yes. Sir.

Q. Before you gave it to him? A. Yes, Sir; certainly.

Q. When was it? A. After that interview I told him that after a few days I was going to contribute $5,000, and then I took steps to get it.

Q. You fixed the sum yourself? A. I did.

Q. He did not? A. No, Sir.

Q. You could have fixed it at $500 or $1,000? A. I could have fixed it at $1,000, or any other sum I pleased.

Q. You have spoken of your return from the White Mountains—when was that? A. In October, 1874.

Q. And it was not until after that that your lawyers subdued you into the belief that this was blackmail? A. No, Sir; I think it was after that when I became at all manageable on that subject.

Q. Your statement, however, was before that; was it not in the month of August? A. My statement?

Q. Yes, before the Committee? A. Yes, Sir, it was; but you know that during this——

Q. That will do; that is an answer? A. Yes, Sir, that is an answer.

Q. Did you not, then, before you came to the conclusion that this was blackmail in October, state, in substance, that you thought it was blackmail? A. Will you read it, if you please?

Q. Look, please, and see what you said upon that subject, and tell me whether that was a final or interlocutory judgment of yours, to use the legal phrase? A. [Looking at the book.] I presume this is my statement, substantially.

Q. Now, do I understand you to say that when you wrote your statement in August you had not come to the conclusion that it was blackmail that was levied upon you? A. My statement was not written altogether, Sir; it was written and extemporized and taken down by a phonographer.

Q. Well, I didn't know that it made any difference whether it was written or taken down by a phonographer. A. You asked me about my *written statement.*

Q. Well, it was written out, was it not? A. Not by me.

Q. It was written out, was it not? A. Not by me.

Q. Was it not written out? A. It was not *my* written statement.

Q. Was it written out? A. Not when I delivered it.

Q. Was it afterward? A. It became a written statement, but not mine.

Q. When? A. After it went into the phonographer's hands.

Q. When was that? A. I cannot tell you exactly.

Q. Do you remember when? A. I do not.

Q. Did you revise it? A. I did not.

Q. After the stenographer took it down? A. I did not.

Q. Tell me now when that was as near as you can? A. When he took it down?

Q. Yes. A. I have forgotten the date.

Q. What month? A. It was about the 14th of August.

Q. Then it became a written statement, didn't it? A. Became a written statement.

Q. Very well. When it became a written statement, I understand you to say you had not made up your mind that it was blackmail. Is that so? A. I don't recollect that I have said that.

Q. You told me that you came to that conclusion on your return from the White Mountains in October? A. Yes, Sir.

Q. I now ask you whether in August, after this became a written statement, you thought it was blackmail? A. That was one of the periods in which I thought it was blackmail.

Q. One of the periods? A. Yes, Sir; I have stated to you that it was a fluctuating state of mind.

Q. Periodical? A. Well, not quotidian exactly; it was fluctuating.

Q. Did it wax and wane with the moon in any way? [Laughter.] A. No, I think not, Sir. I more days thought it was not than I did that it was.

Q. When you began to falter in your judgment, did the lawyers come to the attack again? A. When I came back and talked with them, I found myself strengthened in that conviction.

Q. Were you settled in the conviction that this was blackmail in August, 1874, when your statement became a written statement? A. At the time that I made my written statement I supposed it was so.

Q. Were you settled in your conviction? A. Not settled.

Q. Then were you willing to make a statement to go forth to the world that Francis D. Moulton had levied blackmail upon you without its being a settled conviction in your mind that it was true?

Mr. Shearman—That is assuming that it is in the statement.

Mr. Fullerton—It is in the statement.

Mr. Shearman—I say it is not in the statement, nor anything like it.

Mr. Fullerton—We will put it in another form then.

Q. Were you willing in August, 1874, before you had a settled conviction that this was blackmail—were you willing to say what you did say upon that subject in your statement? A. When I said what I said in that statement I said it upon the supposition that that was my fixed impression.

Q. And it became unfixed afterward? A. Afterward.

Q. How soon afterward? A. I don't know, Sir.

Q. Tell me about how soon afterward? A. I cannot say; August—September—some time in the month of September, I think, I vibrated very much the other way.

Q. And you gave up this contingent conclusion, did you? A. That it was only by a kind of—well, by a kind of figure of speech.

Q. Well, did you publish anything at that time to do justice to the members upon whom any imputation might rest? A. No, Sir, I had the fear of my lawyers before my eyes.

Q You succumbed, did you? A. I did.

Q. You were afraid to tell what you thought upon that subject? A. Oh, when I saw them they made me think t'other way; they thought that I was a chicken-hearted man about such things, and I don't think their opinion of me was complimentary.

CONVERSATIONS OF MR. BEECHER WITH HIS LAWYERS AND THE MEMBERS OF THE COMMITTEE.

Q. Don't you recollect the press generally throughout the country, so far as it fell under your observation, denounced, in the bitterest possible terms, Mr. Moulton for having levied blackmail upon you? A. I don't think I ever read a newspaper with that in it.

Q. No allusion to it? A. I don't think I read a newspaper during all that time that touched upon that subject.

Q. Did you not hear from various quarters that Mr. Moulton was condemned in unmeasured terms for having levied blackmail upon you? A. Not much; I was out of town.

Q. Where were you? A. White Mountains.

Q. You didn't hear it there? A. I may have heard it, but I don't recollect.

Q. Don't you recollect whether you did hear it or not? A. I do not.

Q. What occurred in October, 1874, which brought you to the conclusion that this was blackmail? A. The same things that had operated in the beginning.

Q. The talk with Mr. Tracy and Mr. Shearman, was it? A. Mr. Tracy and Mr. Shearman, and Mr. Winslow, and Mr. Sage, and Mr. Storrs, and Mr. Cleveland, and—who else did I talk to? I know I didn't talk to anybody about this time that did not push me in that direction.

Q. You talked to them all upon this subject of blackmail? A. I cannot say I talked to them all, but I think it quite likely I talked to them; Mr. Sage I recollect talking with, and I have an impression I talked with Mr. Winslow.

Q. He was another lawyer? A. He was another lawyer.

Q. He thought it blackmail, didn't he? A. I think he did.

Q. Don't you recollect whether he did or not? A. I talked also with Mr. Bartlett.

Q. What Mr. Bartlett? A. O. E. Bartlett, is it?

Mr. Shearman—W. O. Bartlett.

Mr. Fullerton—W. O. Bartlett.

The Witness—W. O. Bartlett of New-York.

Mr. Fullerton—When did you talk with Mr. Winslow about it? A. I could not say; it was some time——

Q. About what time? A. I talked with Mr. Winslow about it during the month of August.

Q. And he thought it was blackmail then, did he? A. I have an impression that he did.

Q. You talked with these men after they were put on the Committee, did you? A. Yes, Sir.

Q. And they insisted upon it to you that this was blackmail? A. Members of the Committee—I do not think I talked with them so much as I did with the lawyers that were employed by the Committee.

Q. Well, did you talk with members of the Committee, whether it was as much as you talked with the lawyers, or not? A. I think I talked with some members of the Committee.

Q What member of the Committee did you talk with about the blackmail? A. If I were to say that certainly of any one I should say with Mr. Cleveland and with Mr. Sage.

Q. Well, now, with any others? A. I cannot say positively, Sir. It is quite possible that I talked with Mr. Storrs, although I do not recollect it distinctly.

Q. This was before the evidence was taken before the Committee, was it not? A. It was while the Committee were taking the evidence.

Q. Was it before your evidence was taken? A. I cannot say positively about that.

Q. What is your best recollection about it? A. I talked also with Mr. Rossiter Raymond—Rossiter W. Raymond.

Mr. Fullerton—Yes, a very excellent man, I take it.

The Witness—Yes; only his hand was heavy on me.

Mr. Fullerton—Well, you had a hard time of it, no doubt.

The Witness—I did.

Q. Will you tell me what other members of the Committee you talked to on the subject of blackmail? A. I cannot tell you any more distinctly.

Q. And whether it was before or after you gave your evidence before the Committee? A. I think I talked with the members of the Committee, with the exception of Mr. Cleveland probably, afterward, but I think that——

Q. After what? A. I talked with Mr. Shearman, with Mr. Cleveland, and with Mr. Raymond while I was making my statement.

Q. While you were preparing it? A. Yes, Sir.

Q. And before you delivered it to the Committee? A. Before I delivered it to the Committee.

Q. Was Mr. Raymond a member of the Committee? A. No, Sir.

Q. Mr. Cleveland was? A. Yes, Sir.

Q. What relation did you bear to Mr. Cleveland? A. I was his pastor.

Q. Any other relation? A. No other.

Q. Any business relation? A. 1872; at that time he was——

Mr. Shearman—1874.

Mr. Fullerton—1874.

The Witness—In 1874 I bore no direct business relations with him.

Q. Indirect, did you bear any relations to him? A. Yes, Sir; he was employed by J. B. Ford & Co., who were the publishers of *The Christian Union*, by the publishing association—the managers.

Q. How long before that had you appointed him on the Committee, before this conversation in regard to blackmail? A. I requested him to serve on the Committee on the 26th of June.

Q. Did he consent? A. Yes, Sir.

Q. Did he undertake to convince you it was blackmail? A. He never had any other opinion.

Q. Did he undertake to convince you it was blackmail? A. I don't remember that he ever made a set-to on me, but that was the constant tendency of his view and conversation.

Q. And that was before you made your statement to the Committee? A. Before I made my statement to the Committee.

Q. How did he learn the facts? A. In regard to it?

Q. Yes. A. He had other experiences beside mine.

Q. Had he learned them from you? A. He had learned from me the facts in regard to my raising the money.

Q. And one of this Committee who were sitting in judgment upon this case was trying, before you made your

statement before the Committee, to convince you that you had been blackmailed? A. Mr. Cleveland did not labor with me in any such sense as did Mr. Shearman and Mr. Raymond.

Q. I am not raising any question of the comparative labor they performed; I am only asking you whether he did labor more or less. I don't suppose he was as effective as the two lawyers. A. No; but all he did, as I remember, was to express emphatically his opinion that that was blackmail.

Q. And this was before your statement was given to the Committee? A. Before the statement was made to the Committee.

Q. Now, did any others of this Committee state that same thing to you? A. I cannot say that they did; I cannot recall it.

Q. Now, had you not stated the facts to Mr. Cleveland before the Committee was formed? A. What facts?

Q. In regard to the payment of this money. A. I presume I had, but I cannot say.

Q. Didn't he express the opinion that that was blackmail before he was appointed on the Committee? A. That I cannot say.

Q. What is your best recollection? A. I have no recollection.

Q. What opinion did he express about this statement you made to him before he was appointed on the Committee? A. I don't think I ever made a detailed statement to him.

Q. I didn't ask you for a detailed statement. A. I don't think I ever made a statement of the whole matter.

Q. I didn't ask you whether you made a statement of the whole matter. Did you make a statement to Mr. Cleveland before he was appointed on the Committee? A. $500.

Q. Well? A. On all sorts of subjects.

Mr. Fullerton—Well, that is an advantage now that you have gained.

Q. Did you make a statement of the facts connected with your difficulty with Mr. Tilton before he was appointed on that Committee? A. I did not make any full statement.

Q. I didn't ask you for a full statement. Did you make a statement, whether it was full or not? A. I made some statements of some facts connected with it.

Q. Now, did he express an opinion upon those facts which you thus stated? A. On some of them he did.

Q. And what opinion did he express? A. I don't recall it, Sir.

Q. Can you not tell us what it was? A. No, Sir.

Q. Was it favorable or unfavorable to you? A. Oh, it was probably favorable to me. He was a good, sensible man.

Q. Yes. Upon what subject did he express a favorable opinion? A. I don't recall the subjects that came up for conversation.

Q. The subject was this difficulty between you and Mr. Tilton? A. The subject was this difficulty—yes, Sir.

Q. Therefore you got the opinion and the judgment of one of the Committeemen before you appointed him on that Committee to investigate it? A. Not upon the whole case.

Q. Upon some part of it? A. Upon some facts in it.

Mr. Fullerton—That was a good thing to do, undoubtedly.

The Witness—I was too glad to get any idea or any remembrances.

Q. And were you too glad to get an opinion which characterized it beforehand? A. I was very glad to get a man who had an opinion worthy to be expressed.

Q. Was Mr. Sage upon this Committee? A. He was.

Q. Did you talk with him before he was appointed? A. I do not think I did before, Sir.

Q. Did you afterward? A. I did afterward.

Q. And before your statement was made? A. I think not.

Q. After your statement was made? A. I think it was after my statement was made, but I will not be definite about that.

Q. Did you talk with any other member of the Committee before he was appointed? A. I do not recollect that I did, Sir.

Q. Did you talk with any other member of the Committee after he was appointed, and before the evidence was given by you before the Committee? A. I do not recollect that I did, Sir.

Q. Did you see the report that the Committee read after it was made? A. I did not.

Q. You did not? A. I did not.

Q. Were you present in church when the report was made? A. I was not.

Q. Did they not read the report to you? A. They did not.

Q. Did you ever read it? A. I did not.

Q. You never have read the report of the Committee? A. I never have.

Q. Were the contents of that report ever stated to you? A. No, not that I recollect.

Q. Have you any idea to-day what is in it? A. I understood it was a triumphant acquittal.

Q. From whom did you understand that? A. I understood it from Mr. Rossiter Baymond, and I understood it from Mr. Raymond's friends, who gave me an account of all their doings there and various persons.

Q. Pray tell me did he tell you what was in that report in respect to blackmail? A. No, Sir; I don't recollect a word about it.

Q. Did he tell you what was in that report in respect to the pistol scene? A. I don't recollect a word about it.

Q. Never heard a word about that? A. No, Sir; I never read it, or heard it, or had it stated to me by analysis. I

can only—it satisfied my friends and the church, and that satisfied me.

Q. What relation did you bear to Mr. Sage, another member of the Committee? A. That of friendship.

Q. A member of the church, was he? A. Yes, Sir.

Q. No business relations with him? A. I had not.

Q. Well, will you be good enough to name the balance of the Committee? By the way, was not Mr. Sage a part owner of *The Christian Union*? A. He was a stockholder of *The Christian Union Publishing Association.* He held four shares in 100.

Q. Now what other members of the Committee were there; will you name them? A. Mr. Henry W. Sage, Mr. Horace B. Claflin, Mr. Augustus Storrs, Mr. Cleveland, Mr. S. V. White, and Mr. Winslow. A special Providence enables me to remember those six names.

Q. How? A. I say that it is a special Providence that helped me to remember those six names.

Mr. Fullerton—I wish Providence helped you before.

The Witness—That has been my wish before this thing broke out.

Mr. Fullerton—I hope He has not forgotten you.

MR. BEECHER'S SERMONS INTRODUCED.

Q. Now, Mr. Beecher, you have been in the habit of publishing your sermons, or having them published? A. Yes, Sir; in the habit of having them published.

Q. State whether that is a volume of your published sermons? [Handing book to witness.] A. Yes, Sir.

Q. Turn, if you please, and see whether you delivered a sermon upon "The Nobility of Confession?" A. Well, if it is here, I did, Sir.

Q. Well, is it there? A. There is a sermon of that kind—"Nobility of Confession." I didn't notice the headline.

Mr. Fullerton—Let me read a passage to you, and see whether you recognize it.

Mr. Evarts [To Mr. Fullerton]—You had better read the book.

Mr. Fullerton—I will one of those days, and preach to you.

The Witness—I would be very happy to see you in my pulpit.

Mr. Fullerton—Shearman will be all the audience I will want on that day.

The Witness [*sotto voce*]—And perhaps all you will have.

Mr. Fullerton—What?

The Witness—That was not meant for you, Sir.

Mr. Fullerton—If I should convert him I should have my hands full. [Reading:]

Nor are we commanded to confess every act before men. So little has there been taught, and so little discrimination has resulted from reflection, or from conduct, in this matter, that consciences which in the first place lay dormant through years and years, not noting sin, not holding back their possessors from transgression, when at last they become tremendously stimulated, are very apt to go to the other extreme. And having slept when they should have watched, they bark immensely when they should be silent. Conscience, therefore, frequently leads men to make the most injudicious confessions, and to make them to the most injudicious persons. I do not think we are bound to confess crimes in such a way that they will overtake us and fill us with dismay and confusion and destruction; and not only us, but those who are socially connected with us. If your conscience is aroused and you have committed a crime, your first step is to cleanse your hands and feet from all participation in any wrong. And before confessing the act itself you should take counsel, and find out wise counsel. It is often better that past crimes should slumber, so far as the community is concerned. And that which is true of crimes is equally true of vices. There be many things that are great sins, grievous and wounding, which, having been committed, the conscience of the actor leads him to feel that there is a kind of expiation, or, at any rate, a justice, which requires that he should, with open mouth, confess that which has hitherto been secret. Forsake, surely; to God confess; but it does not follow, especially when your confession would entail misery and suffering upon all that are connected with you, that you should make confession, merely for the sake of relieving your own conscience.

Do you recollect preaching a sermon of which that is a part? A. No, Sir; I regard it as sound doctrine.

Q. And will you tell me the date when that sermon was preached, if you please? A. Sunday morning, Oct. 4, is the date put here.

Q. Is the date correct? A. I have no reason to suppose it is not.

Q. What year? A. 1868.

Q. You believe that to be correct, do you not? A. I suppose it to be so, Sir; there is no reason why I should doubt it.

Mr. Fullerton [To Judge Neilson]—There is not generally much done, Sir, after the sermon but the benediction.

Judge Neilson [To the jurors]—Will the jury get ready to retire? [To the audience.] Gentlemen will keep their seats.

The Witness—There has been no collection taken up.

Judge Neilson [To the jurors]—Gentlemen of the jury, return at 11 o'clock to-morrow morning.

Mr. Mallison [the Clerk]—The Court stands adjourned until to-morrow morning at 11 o'clock.

The Court then adjourned until Wednesday at 11 o'clock.

SIXTY-NINTH DAY'S PROCEEDINGS.

LAST THREADS OF MR. BEECHER'S TESTIMONY.

CLOSE OF THE CROSS-EXAMINATION—MRS. WOODHULL'S LETTERS TO HIM—FEARS OF SUDDEN DEATH—AN INSURANCE POLICY—THE RE-DIRECT EXAMINATION—TESTIMONY OF S. D. PARTRIDGE, FORMERLY CASHIER OF WOODRUFF & ROBINSON—A MEMORANDUM IN MR. TILTON'S HANDWRITING THAT ACCOMPANIED MR. BOWEN'S CHECK FOR $7,000.

WEDNESDAY, April 21, 1875.

The cross-examination of Mr. Beecher was finished by Mr. Fullerton to-day about 12:30 p. m. The relations between Mr. Beecher and Mrs. Victoria C. Woodhull were the first subject of inquiry. Her letters of Nov. 19, 1871, and Dec. 30, 1871, to Mr. Beecher, were shown to him, and he said he presumed they were the letters which he had received from her, one asking for an interview with him in reference to matters in which she said he was as interested as herself, and the other requesting him to go to Washington and use his influence in favor of the passage of a declaratory act relating to Woman's Suffrage, introduced into Congress by Gen. Butler. The details of Mr. Moulton's advice in reference to answering these letters were all restated. Mr. Beecher said that he had told Mrs. Moulton, when she asked him about the propriety of her associating with Mrs. Woodhull, that he knew little about the latter except through the representations of Mr. Tilton and Mr. Moulton, who thought highly of her, and he did n't know but she might be "a diamond in the rough."

Another subject of inquiry was Mr. Beecher's health during the year 1873, and his fears of sudden death expressed at various times. When asked whether he anticipated sudden death in 1873, Mr. Beecher said that he could not answer by saying simply "yes," or "no," and he was finally allowed to answer, "In a certain sense, yes and no." He explained that his fears of death were consequent upon periods of depression. An application on the part of J. B. Ford & Co. for a policy of insurance on the life of Mr. Beecher in March, 1874, was introduced by Mr. Fullerton. A few questions were put in relation to it, and then, to the surprise of everybody, Mr. Fullerton announced that the cross-examination was finished.

Mr. Evarts at once began the redirect examination, promising to close before the hour of adjournment, but several minor objections to his questions being urged, it was $1\frac{1}{2}$ o'clock before the court adjourned. The redirect examination of Mr. Beecher was confined to a few questions about the application for life insurance just introduced by Mr. Fullerton, and fragmentary matters. The remainder of Mr. Beecher's memorandum of advice concerning Mrs. Tilton's separation from her husband was put in evidence by Mr. Evarts. The first part of this memorandum was introduced in the direct examination of Mr. Beecher, but the remainder was then ruled out. Mr. Beecher testified that no sister of his acted as housekeeper or resided in his family during the Winter of 1870 and '71, and that no additional superintendents were employed during Mrs. Beecher's absence in the South during that year. Mr. Beecher was allowed to explain on the redirect examination that the reason he had never read the report of the Investigating Committee was because of his absence in the White Mountains at the time it was made. He heard that it acquitted him, and that his church was satisfied, and that was all he cared about. He also said that on looking back more critically he did not think he had talked with Mr. Cleveland about his payment of $5,000 for Mr. Tilton, before the appointment of the Investigating Committee in 1874. The statement made before the Committee that he paid $5,000 for *The Golden Age* in one sum because he understood it would settle the whole difficulty, Mr. Beecher explained to mean that he thought it would settle Mr. Tilton's difficulties, by financially putting him on his feet again.

That the jurors are alive to the developments of the trial was shown yesterday, when one of them, Mr. Halstead, asked whether Mrs. Beecher had joined in the mortgage on Mr. Beecher's house, made to raise the $5,000 for *The Golden Age*. Mr. Beecher replied that she had done so.

A NEW WITNESS ON THE STAND.

There was some surprise in court when the defense introduced as their next witness not Mr. Cleveland, but an old, gray-haired man, tall and round-shouldered, wearing over his eyes a large green shade, and giving his name as Samuel Dwight Partridge. Mr. Partridge said he resided in Orange, N. J., where his home had been for the last 12 years. From the year 1849 up to Dec. 31, 1874, he said he had been employed by the firm of Woodruff & Robinson. With the exception of a period of about $2\frac{1}{2}$ years he was their cashier. He remembered re-

ceiving, in 1872, a deposit check of Henry C. Bowen for $7,000. It was handed to him, he thought, by Franklin Woodruff. Accompanying that check there was a slip of paper. When Mr. Evarts produced a piece of yellow paper about six inches long by two wide, torn near one end and creased from frequent folding and unfolding, and handed it to the witness, everybody leaned forward and fixed his eyes upon the witness. He identified it as the slip of paper that had accompanied Mr. Bowen's check for $7,000. The paper had been in his possession until April 16, 1875, when he delivered it to Mr. Shearman. The slip was handed to the plaintiff's counsel, who inspected it, and Mr. Evarts then offered to read it, but was checked by Judge Neilson, who asked what was the object of presenting the paper in evidence. Mr. Evarts replied that he wanted to show the character of the transaction connected with the check. Mr. Beach objected to its introduction, and Judge Neilson at first said that he could not understand how it was material, and for the present ruled it out. After a few more questions had been asked of the witness, Mr. Evarts again offered to read it as coming from the firm of Woodruff & Robinson to its agent; then, too, it had been written by Mr. Tilton. Mr. Beach said that for the sake of argument he would admit that the document was in Mr. Tilton's handwriting, but still he objected to its introduction. After some further sparring between counsel, Judge Neilson finally allowed the paper to be read in evidence. Turning toward the jury, raising his voice, and enunciating every syllable with the utmost distinctness and emphasis, Mr. Evarts read these words: "Spoils from *new* friends for the enrichment of *old*." Then Mr. Evarts handed both Mr. Bowen's check and the yellow paper to the jurymen, asking them to notice that the pin-holes in the two corresponded. Mr. Beach and Mr. Morris said that the pin-holes did not correspond, and humorously moved to strike them out. "Never mind," said Mr. Evarts, "the same ray of light will come through both papers, and through the four holes." Mr. Evarts then attempted to proceed with the examination of Mr. Partridge, but was again interrupted by an objection from the plaintiff's counsel. Long arguments ensued between Mr. Beach and Mr. Evarts, the former insisting that Mr. Partridge's testimony would be collateral, and inadmissible, and the latter strenuously endeavoring to have it admitted. Mr. Evarts said that he proposed to prove by this witness that the object of Messrs. Moulton and Tilton in their relations with Mrs. Woodhull was not to placate her, and persuade her to keep silent about the scandal, but that there was a kind of conspiracy between them, and that Mr. Moulton had told this witness that Mr. Tilton intended to place himself at the head of the Spiritualists of this country, who were far more numerous than the Congregationalists. Judge Neilson finally ruled that the witness could not testify. This ruling threw out the testimony that Mr. Evarts was most anxious to introduce. A few questions were then put to the witness in reference to his having entered the money, by Mr. Moulton's direction, to his credit, after which he was allowed to go. The time for adjournment having arrived, Mr. Cleveland was not sworn, although he was ready in court.

THE PROCEEDINGS—VERBATIM.

The Court met at 11 o'clock, a. m., pursuant to adjournment.

Mr. Beecher recalled and cross-examination resumed.

MR. BEECHER'S MEETING OF MRS. WOODHULL.

Mr. Fullerton—Mr. Beecher, when did you first see Victoria Woodhull? A. I think it was not far from the month of June of 1871, so far as I know now; I cannot be certain as to the date.

Q. And where did you first see her? A. At Mr. Moulton's.

Q. Did you have an interview with her? A. I did.

Q. Was it before or after the publication of her card in *The New-York World*? A. I think it was after, Sir.

Q. And how soon after? A. That is more than I could say, for I cannot fix the date; I have a general impression that it was after.

Q. Was it not immediately after? A. I could not say about that, Sir, because the date of the interview is uncertain in my mind.

Q. Was not that interview brought about in consequence, or by reason of the publication of that card? A. That very likely might be, but not with my knowledge.

Q. Had you an intimation that you were to see her before you were taken to the house? A. Almost within her reach.

Q. And how long an interview did you have with her? A. It might have been ten minutes; it might have been fifteen, but I think not much more than ten minutes.

Q. And when did you next see her after that? A. I think it was in the Autumn of 1871; I could determine it by—if I knew about the yacht sailing—the date.

Mr. Shearman—That was about the 20th of October.

The Witness—About the 20th of October, 1871.

Mr. Fullerton—Between those interviews did you receive any communication from her? A. I cannot say now, Sir.

Q. Have you any letters in your possession that you have received from her at any time? A. I don't think I have; I have none in my personal possession, and I am not aware that my counsel have any, but they may have, Sir.

Q. Look at the paper I now show you and say whether you received it from Victoria Woodhull. [Handing witness a paper.] A. I think that this is it, Sir. I am not familiar with the handwriting enough to identify, but that looks like—the tenor of the contents seems to me to be the same.

Mr. Evarts—Let me see that.

[Mr. Fullerton hands the letter to Mr. Evarts for inspection, and then reads it in evidence, as follows:]

15 EAST 38TH STREET, 19TH, 11TH, 1871.

REV. H. W. BEECHER:

DEAR SIR: For reasons in which *you* are deeply interested, as well as myself and the cause of truth, I desire to have an interview with you, without fail, at some hour to-morrow. Two of your sisters have gone out of their way to assail my character and purposes, both by the means of the public press, and by numerous private letters written to various persons with whom they seek to injure me, and thus to defeat the political ends at which I aim.

You doubtless know that it is in my power to strike back, and in ways more disastrous than anything that can come to me; but I do not desire to do this. I simply desire justice from those from whom I have a right to expect it; and a reasonable course on your part will assist me to it. I speak guardedly, but I think you will understand me. I repeat that I must have an interview to-morrow, since I am to speak to-morrow evening at Steinway Hall; and what I shall or shall not say will depend largely upon the result of the interview. Yours very truly, VICTORIA C. WOODHULL.

P. S.—Please return answer by bearer.

[Marked "Exhibit 119."]

Q. Did you answer that note? A. I did not, Sir.

Q. What did you do with the letter? A. I sent it to Mr. Moulton, or carried it; if I sent it I followed it soon after

Q. Was anything said between you two in regard to an answer to that letter? A. Yes, Sir; I proposed to write an answer and counseled him about it; he said that he—he declined; he dissuaded me from writing an answer, and said that he thought he could manage that matter himself.

Q. And how did he say he thought he could manage it? A. He said—how did he say it?

Q. How did he say that he thought he could manage it? A. Oh, he did not explain to me at all, Sir.

Q. Didn't he suggest to you how he could manage it? A. Oh, no, Sir; no, Sir; he did not; I understood that he was going to see her personally.

Q. Well, did you understand from him what he was going to urge upon her or say to her? A. My understanding was——

Q. No; did he say? A. No, he did not detail to me. I told him distinctly that I did not want to see her; that I did not want to have anything to do with her; and he said that he thought that an answer to that—I better not write one. I think there was some motion toward making an answer, but he said in substance that he thought that was a thing that he could manage himself, rather than my writing an answer.

Q. And thus took it off of your hands, did he? A. Took it off of my hands.

Q. Well, why did you consult Moulton in regard to it? A. I consulted him in regard to everything.

Q. Did you have an interview with Mrs. Woodhull soon after that? A. The next morning.

Q. Where? A. Mr. Moulton's house.

Q. How was that brought about? A. By him, I suppose, Sir. I went to see him in the morning to know how the affair stood, and he then was of a different mind from what he had been the day before. Of the day before he was of mind that I should write an answer; of that morning—that I should at first write an answer, then that I better not write an answer—that he could settle it; the next morning he said that he thought I better see Mrs. Woodhull; that that would settle it better than any other way.

Q. Where were you when he told you that? A. I don't recollect where.

Q. You were not at his house, were you? A. Yes, Sir.

Q. When he told you that? A. Yes, Sir.

Q. When he told you you had better see her, were you at his house? A. Yes, and she, too, I think.

Q. You had not learned from him then that his idea was that you should see her, before you went to his house? A. No, Sir.

Q. How long after that before you did see her? A. I don't know, Sir.

Q. About how long? A. Well, the whole thing did not take three-quarters of an hour, I don't think.

Q. Was she at Moulton's house at the time? A. I cannot say positively; she either was there or came in immediately, but my impressions are that she was there.

Q. Well, you did have an interview with her? A. I did.

Q. Where? A. In the second story front room.

Q. Any one present at that interview? A. No, Sir.

Q. How long did it last? A. Half an hour; may be a little more, may be a little less.

Q. After that interview where did you go? A. I don't know, Sir; I suppose I went home.

Q. Did you go to any other part of Mr. Moulton's house? A. Not that I recall, Sir.

Q. Do you recollect what you said upon your direct examination in that regard? A. Oh, yes, I was thinking whether I went into the other chamber—the back cham-

ber. I saw Mr. Moulton, and I think Mr. Tilton, both, down stairs, after the termination of that.

Q. Where did you see them? A. I think it was in the parlors, but I am not sure about that.

Q. Did you leave Mrs. Woodhull at the house when you left? A. My impression is that she took a carriage and went away.

Q. Look at that letter and say whether you received it from Mrs. Woodhull? [Handing witness a letter.] A. I cannot say as to this, Sir—this special document. I received a communication from Mrs. Woodhull in regard to this subject, and I presume this is it. It was accompanied by a letter from my sister.

Mr. Evarts—Let us look at that. [Taking the letter from Mr. Fullerton.]

Mr. Fullerton—While counsel are looking at that I will ask you if you did not relate the interview which you had with Mrs. Woodhull, of which you have last spoken, to Mr. Tilton and Mr. Moulton? A. I gave them some account of the interview.

Q. Where and when? A. Immediately subsequent, I think, Sir.

Q. Where? A. Below, my impression is, but I am not sure it was in the parlors; it is possible that they may have come up into the room after she left, but my impression is that I spoke to them in the parlors below, but I am not certain about that.

Mr. Fullerton then read the letter in evidence, as follows:

44 BROAD ST., NEW-YORK, 12th, 30th, 1871.

MY DEAR MR. BEECHER: Mrs. Stanton and I have just had a conference about who ought to be procured to speak at the Washington Convention, January 10, 11, 12.

You are aware that we intend to use every effort to persuade or force Congress to pass the Declaratory Act just introduced by Gen. Butler. No single person whom we could have would have so good and great an influence on Congress as yourself, and we hope that you may deem the occasion worthy of your attention and presence. We will give you either evening to yourself and arrange it just as you may desire.

Please reply, and do not let it be in the negative. Let me assure you you will never regret it.

Yours, faithfully,
VICTORIA C. WOODHULL.

[Marked "Exhibit 120."]

Q. Did you answer that letter? A. I have the impression that I did, Sir.

Q. Before answering did you communicate with Mr. Moulton? A. I think, Sir, I made my answer and showed it to him, or I had some conversation with him about it.

Q. Look at "Exhibit 42," and say whether that is the letter you wrote to Mr. Moulton after receiving the letter from Mrs. Woodhull which was last read? [Handing witness "Exhibit 42."] A. I presume this is mine, Sir; but I of course speak with such reservation as one would without the document before him.

. Beach—Well, we can show you the document.

The Witness—No matter; I presume that is it.

Mr. Fullerton—[Reading "Exhibit 42."]

BROOKLYN, TUESDAY EVENING, January 2, 1872.

MY DEAR MOULTON: 1. I send you V. W.'s letter to me, and a reply, which I submit to your judgment. Tell me what you think. Is it too long? Will she use it for publishing? I do not wish to have it so used. I do not mean to speak on the platform of *either* of the two suffrage societies. What influence I exert I prefer to do on my own hook, and I do not mean to *train* with either party, and it will not be fair to press me in where I do not wish to go. But I leave it for *you*. Judge for me. I have leaned on you hitherto, and never been sorry for it.

2. I was mistaken about *The Ch. Union* coming out so early that I could not get a notice of *G. Age* in it. It was *just the other way*, to be delayed, and I send you a rough proof of the first page and the Star article. In the paper to-morrow a line or so will be inserted to soften a little the touch about *The Lib. Christian*.

3. Do you think I ought to keep a *copy* of any letters to V. W.? Do you think it would be better to write it again and not say so much? Will you keep the letter to me and send the other, if you judge it wise?

4. Will you send a line *in the morning*, saying what you conclude?

I am full of company.

Yours, truly and affectionately,
(Signed,) H. W. B.

Q. Now, Mr. Beecher, did you at that time consult Mr. Moulton in regard to anything except this difficulty—this domestic difficulty? A. That was not—that was not, as I recollect now, consulted about at all.

Q. At that period; I do not mean on this occasion. A. Oh, yes, I talked with him about a good many subjects.

Q. My question, Mr. Beecher, was whether you consulted with him in regard to any matters pertaining to yourself, except that which related to the scandal? A. Yes, Sir; I consulted him about *The Christian Union* affairs.

Q. About how it should be managed? A. No, I wanted him to take some stock in it; I told him I should be glad, very glad, to have him one of the stockholders. I thought that his business habits would be a good deal of help to me.

Q. Well, do you regard that as a solicitation? A. I do not pretend to designate things so exactly; it was certainly a conversation, and a consultation I should call it; if I went to talk to a man about business, I should say in a general way that I consulted him about business.

Q. You solicited a man to subscribe to the stock of the paper in which you were interested, and you call it a consultation, or a solicitation? A. Well, Sir, if I was on the stand, probably I should say solicitation; if I was off it, I should probably say consultation.

Q. Well, please remember, Mr. Beecher, that you are on the stand. A. Well, I am not saying anything now about that.

Q. Well, I ask you whether you ever consulted Mr. Moulton, using the word "consultation" in its ordinary signification, in regard to anything except this scandal? A. Well, Sir, I consider when I say that on the stand I

should use the word—I should use it out of deference to your desire for accuracy; but if I were to use it off the stand I should say that solicitation and consultation, under the circumstances, were substantially the same thing, and that it was merely a play upon words to make the distinction.

Q. Well, we will get at it in another way, then.

Judge Neilson—Mr. Fullerton, read the clause in that letter to which your question really relates; that is the best way.

Mr. Fullerton—How, Sir?

Judge Neilson—The clause in the letter to which your question really relates. If you read that in connection with it or embody it in it.

Mr. Beach—The question does not refer to any clause in the letter; it was only to a previous declaration which the witness made that he consulted Mr. Moulton upon everything. We want to find out what the things were.

The Witness—Well, I would, in view of the sweep of that question, if you will allow me, change my answer, and say that I consulted Mr. Moulton about some things.

Q. Not relating to the scandal? A. Not relating to the scandal.

Q. What were they? A. I cannot tell you all of them, but I remember that for a single one.

Q. Tell us some of them? A. Well, I say I told you one but I do not now recall others.

Mr. Beach—Any others? A. No, I don't recall any others.

Mr. Fullerton—And you still adhere to the use of the word "consultation," with reference to the solicitation for him to take stock in *The Christian Union*, do you? A. I adhere to that.

Q. Well, then, I will put this question to you: Did you not write this letter to Mr. Moulton dated the 2d of January, 1872? A. The one which you have just read?

Q. Yes; in which you inclosed the letter of Victoria Woodhull, which I have just read, because in your judgment it related to the scandal. A. No; I don't think that I had in my mind the scandal at that time.

Q. It was after the publication of her card in 1871? A. 1871? Yes, Sir.

Q. Weren't you apprehensive at that time that she would say or do something in reference to that scandal? A. I was not specially so.

Q. Were you so, whether it was specially or generally? A. I don't think that I was at that time.

Q. Had you entirely lost sight of the fact that she was—that she professed to be in possession of some of the facts in regard to it? A. No, I did not; but I was under influences that disarmed those.

Q. Well, Sir, when you wrote this letter and said, "I send you V. W.'s letter to me, and a reply which I submit to your judgment," did you not wish his judgment in reference to that reply, with a view to determine its bearing upon her subsequent action in reference to the scandal? A. I think it is possible that that may have been in my mind, though I cannot now recall it; that which rests in my mind now is entirely another matter.

Q. Well, when I ask for that other matter, then I presume we will get it, but I am asking for another thing now. A. Yes. Well, I don't recall that that was in my mind.

Mr. Beach—He says he thinks it was possible.

Mr. Fullerton—Well, don't you think it was so? A. I cannot say, Sir.

Q. Was the receipt of a letter from Victoria Woodhull asking you to join a convention at Washington a matter of so much importance that you had to call in some one to consult as to the nature of your reply? A. A letter from Mrs. Woodhull accompanied by one from my sister urging me to attend Washington, not on the general woman suffrage question, but with reference to a special theory got up by Gen. Butler, was a matter for a considerable consideration.

Q. I ask you whether it was of sufficient importance to call in a third person to consult with? A. It was.

Q. And it had, you think, no reference to the scandal? A. I don't say that, Sir; I think it may have, but I cannot recall that that entered into my thought at that time.

Q. Wasn't your idea this, to placate that woman by fashioning an answer that would not give her offense, at the same time refusing her request? A. Quite possibly, but I don't recall that that entered into my thought at all at the time.

Q. Well, what did Mr. Moulton say in regard to your proposed reply? A. He said that he thought that my thinking it too long was—it was not too long; that the remarks which I made in favor of woman's suffrage in general were all very well, and, he thought, opportune, and that he regretted that the reasons for not going existed; he thought it would be a good thing for me to go, but if I had other engagements, lecture engagements and others, why it could not be helped, and that, under those circumstances, the letter was good enough.

Q. Did he give you any reason for saying he thought it would be a good thing for you to go? A. No, I don't remember that he did.

Q. Didn't he say that he thought it would be a good thing, because you would have an opportunity of exerting a kindly influence over that woman? A. I don't recollect that he did.

Q. Will you say that he did not? A. I can say, according to the best of my recollection, that he did not.

Q. But you will not swear positively that he did not? A. I will not swear that he did not, positively.

Q. When was it that Mrs. Moulton asked you in regard to the propriety of her associating with Mrs. Woodhull? A. That I cannot quite determine, Sir?

Q. As near as you can, please determine it? A. I think it was in the year—it was in the Fall of 1871 or in the Summer of 1872, or somewhere along there.

Q. Please state again what reply you made to Mrs. Moulton when she questioned you upon that subject. A. I said that I didn't know much about Mrs. Woodhull, except from the representations of her husband and Mr. Tilton; that they thought exceedingly highly of her, and that, if their thoughts were correct, I supposed that she was a rough diamond, perhaps; but, at any rate, so far as she was concerned, I did not think that her seeing her at her house would injure her.

Q. Had you the fullest confidence in Mrs. Woodhull at the time? A. No, Sir.

Q. Did you state that fact to Mrs. Moulton? A. I don't know that I had; I think I stated to her that my first feelings about Mrs. Woodhull had not been favorable.

Q. Yes. A. [Continuing.] And that the modification of them, and the suspended state that I was in, was the result of the very positive statements of Mr. Moulton and of Mr. Tilton to me.

Q. Well, were those positive statements of a character which induced you to be willing to associate with Mrs. Woodhull? A. No; I had no call; I am in a situation in which I cannot associate with ten thousand most worthy people.

Q. Now—— A. Well, letters in——

HIS REFUSAL TO PRESIDE AT STEINWAY HALL.

Q. But had you been asked at that time to preside at Steinway Hall? A. That is more than I can say to you, Sir; but I think not; I don't know about that, Sir; I cannot fix the date near enough.

Q. Well, you did not preside at Steinway Hall? A. No, Sir, I did not.

Q. And you have given us the reason, I believe? A. I think I have.

Q. That you did not believe in her doctrines? A. So far as I knew them; I never professed to know what they were.

Q. You knew them far enough to refuse, did you not? A. So far as that was concerned I said to Mrs. Woodhull that it was not my habit to preside at public meetings at all, and I saw no reason, in her case, why I should change my habit, and that as respects the appeal which she made; that I believed in her views, and therefore, as it was a forlorn hope struggling for existence, it would be in accordance with my life-long habit to fight on the weak side for the reform that was coming up. My reply was that that was not an argument to me, because I was not apprised of all her views; I had not read anything of hers, but that so far as I did know, as I presumed her social theories were, I was not in accord with them.

Q. Yes; and therefore that was a reason why you would not preside? A. That, in connection with the uniform habit of declining all such work; I declined it on this ground, that it was not convenient for me. And then, when she urged it on the ground that I was in sympathy with her, I said I was not, for I was not informed of her views, but in so far as I presumed to know what they were, I was not in accordance with them.

Q. Didn't you say you would not take a step in that direction? A. I don't recollect now; I might have used——

Q. Didn't you say, so far as you had become acquainted with her views, that you loathed and abhorred them? A. In so far as her views at that time were concerned, I don't think that I said that, though I may possibly, but I don't recall it, Sir.

Q. Very well. Why didn't you state to Mrs. Moulton, then, what your views were in regard to Mrs. Woodhull, when she asked your advice in regard to associating with her? A. That was not the question.

Q. How? A. That was not the question; the question that she proposed to me was, what I thought about Mrs. Moulton.

Q. Mrs. Woodhull? A. And that Frank wanted—Mrs. Woodhull—and that Frank wanted to have her in his house; and that at first she had been disinclined to do it, but that she wanted to do what Frank thought was best and right, and wanted to know what I thought of her. Well, I stated to her: "I don't know much about Mrs. Woodhull, and all that I do know I have derived from Frank and Mr. Tilton in regard to her;" but, at any rate, I said, I did not think her meeting her occasionally would be any damage to her. We did not go into the question of her social theories a particle.

Q. Now, at that time, didn't Mrs. Moulton tell you the object that her husband had in view in wishing her to associate with Mrs. Woodhull? A. Not at all, Sir.

Q. Wasn't it stated to you, in substance, that it was for the purpose of exercising a kindly influence over her? A. It was not, Sir.

Q. And controlling her action with reference to you? A. It was not, Sir.

Q. Nothing of that kind was said? A. No, Sir; nothing of that kind was said; no allusion to it.

CONVERSATIONS WITH MRS. WOODHULL.

Q. Now, will you state what other meetings you had with Mrs. Woodhull? A. Let me see; I believe one in 1871—one in Midsummer, 1871; then the one at the dinner at Mr. Moulton's. I do not, at this moment, Sir, recall except those two; they evidently made but little impression upon my mind; there may have been a third, but I do not at this moment recall it.

Q. How many times did you see her after the Steinway Hall lecture? A. I cannot say, Sir; I cannot say, Sir; I may have; by looking over my memoranda I may find it.

Q. Look at that letter, please, purporting to have been signed by you, and see whether it is the letter which you wrote to Victoria Woodhull in reply to the last one that I read in evidence. [Showing witness *Woodhull & Claflin's Weekly*, of the date of Jan. 27, 1871, in a bound vol-

ume.] A. I do not remember it, Sir; but it sounds—reads very much like mine, and I am willing to indorse it; I had an impression in recalling my letter that I made it much longer than that, and this is quite short. [Letter submitted to defendant's counsel.]

Mr. Evarts—We have no objection to having this read as if it were the original manuscript.

Mr. Fullerton—[Reading.]

BROOKLYN, Jan. 1, 1872.

MY DEAR MADAM: Your letter of Dec. 30, in which, after conference with Mrs. Stanton, you invite me to take part in the Washington Convention in behalf of Woman's Suffrage, is duly received. I am engaged during the whole week of the Convention, with lectures in Massachusetts and Maine. I cannot say that I am so sanguine of the immediate or new admission of women to the rights of suffrage, but of its ultimate accomplishment I have no doubt, since justice and expediency combine in requiring it. That method is on the whole made better and stronger by a direct participation in the duties and responsibilities of active citizenship, notwithstanding incidental evils, is becoming the sentiment of the civilized world.

The Witness—Will you excuse me one moment? Did you begin that sentence right? I misheard you, if you did; you read it "method," as I understood.

Mr. Fullerton—"Manhood."

The Witness—Well, I beg pardon; I did not so understand it.

Mr. Fullerton—Perhaps I misread it. [Reading again]:

That manhood is, on the whole, made better and stronger by a direct participation in the duties and responsibilities of active citizenship, notwithstanding incidental evils, is becoming the sentiment of the civilized world. Nor is there any reason to doubt that, in spite of temporary and incidental evils, the same advantages would accrue to womanhood. In every wise and Christian government for the education and enfranchisement of woman I hope always to be in sympathy.

The Witness—"Movement."

Mr. Fullerton—What did I call it?

The Witness—"Government."

Mr. Fullerton—Yes, it is "movement." [Resuming]:

I am respectfully yours,
HENRY WARD BEECHER.

Mrs. Victoria Woodhull.

Q. You say you think you wrote that letter much longer? A. The impression it left on my mind was that it was a longer letter.

Q. Well, is it not a fact that you wrote a much longer letter, and that a good deal of it was eliminated by Mr. Moulton? A. I doubt whether Mr. Moulton eliminated anything.

Q. Well, this was after the Steinway Hall meeting, wasn't it. A. What is the date of that letter?

Q. January 1, 1872? A. And the Steinway Hall was in November, 1871; wasn't it?

Q. I believe it was, Sir? A. Yes, Sir; it was after that.

Q. Mr. Beecher, do you recollect of receiving a letter from Mrs. Woodhull inclosing one from your sister? A. I had an impression that this letter was accompanied by one from my sister.

Q. Don't you recollect that that letter had reference to Steinway Hall? A. Yes, Sir.

Q. Now, do you recollect of receiving such a letter from her? A. I recollect—yes, I recollect either by message or by letter, and I think it was by letter that I received one from her—let me think about that a minute.

Q. I can recall your attention to it. Do you recollect the correction that you made one morning in your evidence on the direct?

[Some conversation here took place between counsel in reference to a letter to Mr. Steinway from Mr. Beecher, and the witness did not answer the question.]

Q. Now, Mr. Beecher, what was the condition of your health in the Summer of 1873?

Mr. Evarts—There is a dispute about this letter. This letter, as I understand it, Mr. Fullerton, which you are seeking for, and supposed we had, is a letter written by Mr. Beecher to Mr. Steinway?

Mr. Fullerton—Yes.

Mr. Evarts—Well, naturally we should not have it, of course.

Mr. Morris—No; but we understood that you had obtained it.

Mr. Evarts—No.

Mr. Fullerton—There may be a misapprehension about it, but I supposed that you intended to be understood that you had that letter and would produce it.

Mr. Evarts—No, I didn't intend anything about it; we haven't the letter.

Mr. Fullerton—Well, we will produce it hereafter, because it is in existence.

Mr. Evarts—We haven't it.

Mr. Fullerton—Well, I don't complain of it at all, it is a *misunderstanding*. [To the witness.]

THE CONDITION OF MR. BEECHER'S HEALTH IN 1873.

Q. What was the condition of your health in 1873, Mr. Beecher? A. My general health so far as I can recollect, Sir, was good.

Q. Did you at that time anticipate sudden death? A. In the same way——

Q. Never mind the way; just answer the question, please? A. I cannot answer it truly by yes or no.

Judge Neilson—Can't you say, in a certain sense, yes or no, and then he will ask you what sense?

The Witness—In a certain sense, yes, and no,

Judge Neilson—I thought I would try and help you.

The Witness—You always help me, Sir.

Mr. Fullerton—Did you state at that time, that you supposed that you entered the pulpit one hundred times when you never would leave it alive? A. I have often entered the pulpit——

Q. Did you state that? A. Did I state——

Q. Yes. A. As belonging to 1873?

Q. Yes. A. No, Sir, not as relating to that——

Q. Did you ever make that statement? A. I don't think I did.

Q. Relating to any period of time? A. I may have made it as relating to my life, or as relating to long periods of time; but, as it related to 1873, you should recollect, Sir, that that would take every time that I ever entered the pulpit, about.

Q. I can't help it if you made use of that language. A. Well, if I did it was very careless, and I should not be disposed to stand by it, Sir.

Q. Let me read, and see if it refreshes your recollection. [Reading:]

In my letter to Mrs. Tilton, I alluded to the fact that I did not expect, when I saw her last, to be alive many days. That statement stands connected with a series of symptoms which I first experienced in 1856. I went through the Fremont campaign, speaking in the open air, three hours at a time, three days in the week. On renewing my literary labors, I felt I must have given way; I very seriously thought that I was going to have apoplexy or paralysis, or something of the kind. On two or three occasions, while preaching, I should have fallen in the pulpit if I had not held on to the table. Very often I came near falling in the streets. During the last fifteen years I have gone into the pulpit, I suppose a hundred times, with a very strong impression that I should never come out of it alive. I have preached more sermons than any human being would believe, when I felt all the while that whatever I had got to say to my people I must say it then, or I never would have another chance to say it. If I had consulted a physician, his first advice would have been, "You must stop work." But I was in such a situation that I could not stop work.

Now did those symptoms continue through 1873? A. I do not recall, Sir, the fact that they did. The state of mind continued through that year.

Q. Now, Mr. Beecher, please talk about the symptoms, and not about the state of mind. A. I do not recall, Sir, about that.

Q. Didn't you connect those symptoms with the writing of the letter of June 1, 1873, in the statement which I have just read? A. I do not recollect, Sir, connecting them with the symptoms in that year.

Mr. Evarts—He asks you whether the statement does not connect them.

Mr. Fullerton [reading]:

That statement stands connected with a series of symptoms which I first experienced in 1856——

A. Yes.

Q. Now the statement is this—— A. I have no recollection of the statement.

Q. [Reading:]

In my letter to Mrs. Tilton I alluded to the fact that I did not expect, when I saw her last, to be alive many days.

A. Yes.

Q. Now, what period did that refer to, this statement: In my letter to Mrs. Tilton I alluded to the fact that I did not expect, when I saw her last, to be alive many days.

Mr. Evarts—That is the letter of February, 1871.

Mr. Fullerton—I am asking him when it referred to.

The Witness—Well, Sir, I don't take your question exactly.

Q. I will put it again. [Reading.]

In my letter to Mrs. Tilton I alluded to the fact that I did not expect, when I saw her last, to be alive many days.

Now, what letter did you allude to? A. I do not now recall the letter.

Q. Was it not the letter of February 7, 1871?

Mr. Evarts—Certainly.

A. If it was, it was; but I am not now apprised that it was.

Q. Don't you recollect the language of the letter of Feb. 7, 1871? A. Oh, yes; but this is a question about that statement.

Q. Is not that very statement in it? Does not the letter open with that statement? A. Well, I can't—if it does, it does; but I don't remember the letter except in a very general way.

Mr. Fullerton—Please produce it, and let us show it to him.

Mr. Beach—Give him that book.

The Witness—I can save you the trouble of looking those papers over by taking my own, if you please; what is the date?

Mr. Fullerton—Feb. 7, 1871.

The Witness—The letter is?

Mr. Fullerton—Yes.

Mr. Evarts—Show it to him in connection with the letter which he has before him. You call his attention to a written statement; put that in his hand and let him see it.

Q. I ask you again now, whether the letter of Feb. 7, 1871, was not referred to when you used this language: "In my letter to Mrs. Tilton I alluded to the fact that I did not expect, when I saw her last, to be alive many days?" A. I presume it was, Sir. Will you allow me to see the statement?

Q. Yes. [Handing witness a book.] A. Yes, Sir; that is evidently the reference made.

Q. To that letter? A. To that letter.

Q. And did you not intend to connect those symptoms, forewarning you of apoplexy, with the period when you wrote that letter? A. I do—I hardly think that would be fair, to say that I did, or that I did not, in that categorical way.

Q. Had those symptoms all disappeared in February, 1871? A. In 1871?

Q. Yes; when you wrote the letter of Feb. 7, 1871? A. I don't recall now those urgent symptoms.

Q. I don't care whether they were urgent or not; I am speaking of symptoms of which you have already

spoken. [A pause.] What is your answer? A. Well, my trouble is this, that if I say they did I don't express the truth; if I say they did not, I don't express the truth.

Q. Well, try to express the truth in some way. A. Well, I will if you will allow me to make the general statement.

ILLUSIVE SYMPTOMS OF APOPLEXY.

Q. I surely don't interfere with you? A. I had for a long period violent symptoms which I misinterpreted, but which afterward I knew to be illusive, or rather illusions. That I had and have to this day periods in which I think that I am going to die, *upward*, and others of depression in which I feel that I have come to about the end of my life, *downward*, is true. I have presentiments on one side, and I have periods of depression in which I think I have come to the end on the other.

Q. Are they not founded upon some symptoms of apoplexy? A. No.

Q. You think not? A. Not now.

Q. Didn't you put forth those symptons of apoplexy as an excuse or as a reason for writing that letter? A. In the early period I did think so.

Q. At that time, February, 1871, or rather at the time when you wrote that statement? A. I——

Q. One moment. Didn't you put forth those symptoms then as an excuse or reason for, or as an explanation of, that letter? A. I don't think I did, Sir.

Q. Let me read it to you, and see whether that is so. [Reading:]

In my letter to Mrs. Tilton (which you say was the letter of Feb. 7, 1871) I alluded to the fact that I did not expect when I saw her last to be alive many days. That statement stands connected with a series of symptoms which I first experienced in 1856. I went through the Fremont campaign, speaking in the open air three hours at a time, three days in a week. On renewing my literary labors I felt I must have given way; I very seriously thought that I was going to have apoplexy or paralysis or something of that kind.

Now, I put the question to you again. Didn't you, in that statement, put forth those symptoms as an explanation of the letter of Feb. 7, 1871? A. I don't think I did, in the broad sense of the term.

Q. And when, pray, did you come to the conclusion that this apprehension of apoplexy was illusive? A. I cannot state to you any precise time, Sir.

Q. Can't you get at the time? A. No, I don't think I can; I only know that in conversation with physicians I talked about what were the symptoms of apoplexy, and what were the symptoms of paralysis, and what were the symptoms of simply nervous over-action, without going into it in reference to my own case, but to get information, and I became satisfied that what in the earlier stages I supposed was apoplexy, or paralysis, was nothing in the world but the result of excessive cerebral activity and fatigue—over-action of mind.

Q. Don't you know that that is the superinducing cause of apoplexy? A. In many persons it is, and in many persons it is not.

Q. Were you told distinctly that you need not apprehend apoplexy, by your physician? A. Well, I don't think that I ever had but one conversation with any physician.

Q. Were you told distinctly by any physician that you need not apprehend apoplexy? A. I don't recall that.

Q. Was every fear removed from your mind that you would fall by that disease? A. No; when I was in depression I thought likely I should—in periods of depression.

Q. Does that still continue? A. Yes——

Q, It does? Very well—— A. Not that I suppose now in periods of depression that I certainly shall, but I think that I am going to die by everything in creation when I am in those down periods.

Q. If you will be good enough to leave out everything in creation but apoplexy, Mr. Beecher, I shall be satisfied with your answer. I ask you whether you have now any apprehension of apoplexy at any time? A. I do not, Sir.

Q. Not the slightest? A. I am liable to it, but I don't apprehend it.

Q. Not in the slightest degree? A. I don't apprehen it in the slightest degree; though it may befall me as it may befall any other person.

Q. Now, when was this apprehension removed from your mind? A. Well, it was early; I got over the supposition that there was really any seriousness in that symptom; I don't know the time.

Q. About when? A. I don't know how long ago; but several years—many years ago.

Q. How long ago? A. I cannot say definitely, because I never made it a matter of record or of consideration.

Q. Was it as long ago as 1872? A. Oh, I think it was before that.

Q. Was it in 1871? A. I think it was before that.

Q. Before that? A. I think so, Sir.

Q. Then this premonition of death of which you speak in your letter of Feb. 7, 1871, did not relate to any apoplectic symptoms, did it? A. I beg your pardon, Sir; will you be good enough to have the answer read?

Q. I cannot read the *answer* until you give it. A. I mean the question.

Judge Neilson—The stenographer will read the question.

The Tribune stenographer read the question as follows:

"Then this apprehension of death of which you speak in your letter of Feb. 7, 1871, did not relate to any apoplectic symptoms, did it?"

A. It did not, as I recollect.

Q What was the answer? A. As I recollect, I say it did not.

Q. It did not? Well, in your letter on the 1st of June, 1873, in which you say:

I have a strong feeling upon me, and it brings great

peace that I am spending my last Sunday, and preaching my last sermon.

A. [Interrupting.] Yes, Sir; I had that very strong.

Q. How? A. I had that feeling very strong.

Q. What did you think was going to be the cause of your departure at that time? A. Well, the sovereign and releasing hand of God.

Q. Through what instrumentality? A. I did not know.

Q. You hadn't made up your mind? A. It was merely a strong spiritual presentiment, that I was near the borders of Heaven.

Q. You did not think, then, that it was to be effected by apoplexy? A. No, Sir.

Q. You had no such thought? A. No, Sir; no, Sir.

Q. Nor by any specific disease? A. Nor by any specific disease.

Q. Well, did you look for translation? A. Yes.

Q. As Elijah was translated? A. No; but as Henry Ward Beecher would be, if God should take him.

Q. You had no apprehension of apoplexy at that time? A. No, Sir.

Q. And you did not speak with reference to those symptoms which you had felt for years prior to that time? A. No, Sir, I spoke then as I speak often in the pulpit, and feel oftener than I speak, that I am near the end; sometimes in sadness, sometimes in gladness.

Q. Now, let me call your attention to this, Mr. Beecher. On the 1st of June, 1873, you wrote a letter to Mr. Moulton which has been put in evidence, and which is marked Exhibit No. 26, and I read to see if this refreshes your recollection. [Reading.]:

There are intimations in the beginning and at the end of this letter that I felt the approach of death. In regard to that I merely refer to my previous statement concerning my bodily symptoms, and add that on this day I felt symptoms upon me.

Now, what symptoms had you reference to, except those which were engendered in the Fremont campaign, when you apprehended paralysis and apoplexy? A. What have you read to me, Sir?

Q. I have read to you something to refresh your recollection. A. Yes, Sir; but I would like to see what it is.

[Mr. Fullerton handed the book to the witness.]

The Witness—I do not see it, Mr. Fullerton.

Mr. Fullerton—It is right at the bottom of the small type; the first sentence following the initials, "H. W. B."

The Witness—It is the same type, only it is leaded. Will you be kind enough to read the sentence following?

Mr. Fullerton—No, Sir.

The Witness—All right.

Mr. Fullerton—Will *you* be kind enough to answer my question?

The Witness—What is the question?

Mr. Fullerton—Will the stenographer please read it?

The Tribune stenographer read the question as follows:

"Q. Now, let me call your attention to this, Mr. Beecher. On the 1st of June, 1873, you wrote a letter to Mr. Moulton, which has been put in evidence, and which is marked Exhibit No. 26, and I read to see if this refreshes your recollection:

There are intimations in the beginning and at the end of this letter that I felt the approach of death. In regard to that I merely refer to my previous statement concerning my bodily symptoms, and add that on this day I felt the symptoms upon me.

Now, what symptoms had you reference to except those which were engendered in the Fremont campaign, when you apprehended paralysis and apoplexy?"

A. I included in that term the general designation of all those states of mind which were premonitory, or which were—which impressed me with the sense of being about to die.

Q. You say: "It merely refers to my previous statement concerning my bodily symptoms?" A. Yes, Sir.

Q. What previous statement did you refer to? A. I do not recall what it was; I am not in a situation to say.

Q. Was it not the statement already read in evidence in respect of those symptoms which grew out of the labors in the Fremont campaign? A. I presume it was, that general class of symptoms, that general state of mind.

Q. Where you enumerated apoplexy or paralysis as the natural consequence of that labor? A. As I then, in the early stage, felt.

Q. Mr. Beecher, did you, after this apprehension of death from those causes, get your life insured? A. I do not recall, Sir, whether I did or not.

LIFE INSURANCE POLICIES ON HIS LIFE.

Q. Perhaps the paper that I now show you will enable you to recall it. [Handing witness a paper.] A. What date is this, Sir.

Q. It speaks for itself, I believe. A. I dare say, but I cannot find the date.

Mr. Fullerton—It is some place there.

Mr. Morris—It is March, 1874.

The Witness—I have made no insurance. My life has been insured in the interest of others, and I presume this is one of them; I don't recollect that I have insured my life since 1870, at all.

Q. Is that your signature to that paper? A. Yes, Sir, that is my signature.

Q. Was it an application for life insurance? A. I presume it was.

Q. And when was the application made? A. I don't know where to look for the date.

Q. Look at the bottom, near the signature. A. March, 1874.

Q. You made application then for a life insurance? A. No, Sir, I did not.

Q. You did not?

Mr. Evarts—Well, it is not his application.

Mr. Morris—Yes, it is; he signs it.

The Witness—The application was made by J. B. Ford & Co.

Mr. Evarts—In their interest—another interest.

Mr. Fullerton—Were you not interrogated then by an agent and a physician? A. I presume I was.

Q. And gave answers? A. I presume I did.

Mr. Evarts—There is a difference between the paper being his statement and being his application.

Mr. Fullerton—I know there is, and it is that difference that I mean to develop. [To the Witness]—Does not that paper contain the questions and answers put to you personally relative to your health at that period, with a view to effect that insurance? A. I don't recollect answering them, but I suppose it is so; I don't recollect going through the examination.

Q. That is your signature? A. That is my signature; and I presume on account of it, that I did go through the examination, unless the officers took it without, which I hardly think they would.

Q. How many times has your life been insured? A. I don't know but three times that I have ever, of my own wish——

Q. Now, please state the dates of those respective insurances? A. I cannot.

Q. As near as you can recollect? A. Well, I could find out, I suppose, from my son, who is here, exactly the dates.

Q Well, an approximate statement? A. I don't know in the least; I may be liable to come three or four years out of the way. One of them was very early, when I insured in the—— I think about the year 1851 or '2, or somewhere along there; then there was a second, I think about 1856, or somewhere along there I should say; and a third that must have come somewhere in the last of the 50s, or in '60, or somewhere along, but I cannot come within years of it, accurately.

Q. In any of those applications did you state these premonitions of apoplexy? A. I did not, Sir.

Mr. Evarts—That is his statement, but it is not an application for life insurance in his interest.

Mr Fullerton—I did not say it was in his interest.

Mr. Evarts—Well, I don't mean that you miscalled it, but you spoke of it as his application.

Mr. Beach—That is not the point of the inquiry at all.

Mr. Fullerton—It is his application for life insurance.

Mr. Evarts—It is an application, as he stated, in another's interest, for life insurance, in which he, as the party whose life is to be insured, answers certain questions.

Mr. Fullerton—Very well; that is all I pretended it was.

Mr. Evarts—Well, you miscalled it; you spoke of it as *his application.*

Mr. Fullerton—I did not; it is an application for an insurance on his life.

Mr. Evarts—Yes, somebody else's application, and his statement concerning his own health.

Mr. Fullerton—That is the point, Sir; I only read a part of this in evidence.

Mr. Evarts—You will put the whole paper in.

Mr. Fullerton—Put the whole paper in; certainly.

Judge Neilson—You had better agree that a copy may be made and substituted for the original. The insurance company require that returned, don't they?

Mr. Fullerton—Yes, Sir; Mr. Shearman will make a copy, I suppose.

Judge Neilson—I hardly think he will.

The Witness—Then it will be well done, Sir.

Mr. Fullerton—Of course it will; he writes the only hand that can be read among us all, I guess.

Mr. Evarts—There is a question of evidence here which ought to be considered, I think, by your Honor. The inquiry put to Mr. Beecher concerning his own life, his own feelings or views or opinions or symptoms of his own health, is collateral, and they take his answers on that. Now they bring in other statements of his—extra-judicial statements of his—outside of this trial; and so they establish, first, on a collateral point, a present statement, under oath—which ends the matter usually—and then they seek to disturb that by extra-judicial statements, not under oath. Now that is, perhaps, a somewhat new form of the question of what is called collateral impeachment. The general proposition is, that collateral impeachment ends with the judicial inquiry, and does not allow the importation of extraneous evidence, or extra-judicial statements. If that be the rule of evidence applicable here, this paper would be excluded. Now the question may rise on our side, whether that state of things can be produced by counsel, of a judicial statement, a statement in court on a collateral subject, and then an introduction by the same party that introduces that statement in court on a collateral subject, of extra-judicial statements supposed to be at variance with it. This is a matter that I attach no importance to whatever; but it is a proposition which your Honor will dispose of as a question of principle, and which will apply to our case as well as to the other.

Judge Neilson—I think the counsel, in examining the witness, can use this paper; and although there might be some reason for objection, as stated, to reading it in evidence, I think he has a right to examine the witness upon that paper, and upon each statement contained in it, by way of assisting the witness, or qualifying what he has said.

Mr. Evarts—Well, I should agree to that. He has a right to ask him any questions whatever about the symptoms, or of his statements concerning them.

Judge Neilson—Or his statements contained there.

Mr. Evarts—Well, if it is understood that it is admitted because it is lawfully admitted, and after we have raised the question, we are satisfied.

Judge Neilson—Well. Go on, Mr. Fullerton.

Mr. Fullerton—Some of the questions and answers in this paper are as follows:

Has the party been afflicted since childhood with rupture, fits, dropsy, liver complaint, bilious colic, rheumatism, gout, habitual cough, bronchitis, asthma, spitting of blood, consumption, paralysis, apoplexy, insanity, fistula, or disease of the kidneys or bladder; if so, which? A. No.

Has the party been afflicted with the disease of the heart or disease of any of the vital organs; if so, which? A. No.

Has the party been afflicted, during the last ten years, with any severe or constitutional disease; if so, what? A. No.

Is the party now afflicted with any disease or disorder; if so, what?

Mr. Fullerton—And then says, written across here:

No sickness except "hay fever," and not that the last three years.

And then, below:

It is hereby declared that the age of the person whose life is to be insured is correctly stated; that he is now and does ordinarily enjoy good health; and that in the above proposal there has been nothing withheld touching the past or present state of health or habits of said person with which the New-Jersey Mutual Life Insurance Company ought to be made acquainted in order to effect this insurance. And that the undersigned has an insurable interest in the life of the person proposed to be insured to the full amount of the sum specified above.

Also, that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned, that the above statements shall form the basis of the contract for assurance, and also, that any untrue and fraudulent answers, any suppression of facts in regard to the person's health, or neglect to pay the premium on or before the day it shall become due, will render the policy null and void, and forfeit all payments made thereon, except as provided in the policy; and it is also understood and agreed, that under no circumstances shall the policy be in force until the actual payment to and acceptance of the premium by the company or its authorized agent.

It is signed H. W. Beecher, and J. B. Ford & Co., and witnessed by some person who, if he has a name, has not written it plain enough for me to read it.

The Witness [Having the paper in his hand]—Do you offer it for marking, Mr. Fullerton?

Mr. Fullerton—Yes.

Judge Neilson—The copy that is to be made will be marked as a substitute for that. Mr. Fullerton will make that copy.

Mr. Fullerton—I will, but I will require the certificate of the Court that it is a copy, if I write it.

Mr. Beecher—I will write it for you and sign it.

Mr. Fullerton—You cannot certify to it. [To Judge Neilson.] If your Honor please, that closes the cross-examination.

The paper was marked Exhibit No. 131.

THE RE-DIRECT EXAMINATION.

Mr. Evarts—If your Honor please, I do not expect that the re-direct will take very long; it may not exhaust the half hour between now and the time of adjournment. But when I am through I shall ask for an adjournment because the next witness is Mr. Cleveland, and we don't wish to bring him here—as he is not in good health—a few moments before recess, when there will be no prolonged examination. I do not wish to be obliged to protract this examination in order to cover the time.

Judge Neilson—No. When you close we will take our recess, whether it is time or not.

Mr. Evarts—This statement, if your Honor please, has, among its requirements, the name and residence of the party, the usual medical attendants or the medical attendant of his family, to be referred to for information as to his health. "Dr. Jewett, Brooklyn," is Mr. Beecher's answer; the name, residence and occupation of the party in whose favor the insurance is proposed, and relationship, if any, to the party whose life is proposed to be insured. The answer to which is: "J. B. Ford & Co., publishers, 27 Park-place, New-York." In the body of the paper is the physician's report of an examination of Mr. Beecher:

Does oscultation and percussion of the chest indicate any disease of the heart or respiratory organs? No.

Is the respiratory murmur clear and distinct over both lungs? Yes.

Is the character of the respiration full, easy and regular? Yes.

Are there any indications of disease in the organs of respiration? No.

Is the character of the heart's action uniform, free and steady? Yes.

Are its sounds and rhythms regular and normal? Yes.

Are there any indications of disease in this organ, or of the blood vessels? No.

State the rate and other qualities of the party's pulse. Eighty; soft and regular.

Does it intermit, become irregular or unsteady? No.

Are the functions of the brain and nervous system in a healthy state? Yes.

Has the party any predisposition, either hereditary or acquired, to any constitutional disease? No.

Has the party ever had any severe injury or illness? No.

Has the medical examiner carefully read the application, and questioned the party thereon? Yes.

Do you consider the applicant's life to be safely insurable, and do you recommend that a policy be granted? Yes; I do.

Signed by the examiner and physician of the New-Jersey Mutual life Insurance Company.

Judge Neilson—What is the date?

Mr. Evarts—The date of it? The date of this examination of the examined is:

Examined at Brooklyn, New-York, this 14th day of March, 1874.

And it precedes the signature of Mr. Beecher. That is dated at New-York, the 17th day of March, 1874.

Q. Now, Mr. Beecher, had you any interest in this subject of the insurance desired and entered into upon your life? A. Not the slightest.

Q. What was the relation of J. B. Ford & Co. to you, or any work of yours, that gave them an insurable interest in your life? A. My "Life of Christ," I presume, was the thing then in their mind as an unfinished work. That was in 1874, and my general relations—they are my publishers, and they have my works in hand.

Q. That is the only relation? A. That is the only relation.

Q. They are not creditors otherwise than in the sense of having an interest in your future life and labors? A. That is all, Sir.

Q. Now, Sir, in regard to the facts or symptoms concerning your health in the past, or opinions and apprehensions concerning your health in the past—under which head do your feelings, as heretofore held or expressed on that subject, fall? Are they opinions and fears, or have you knowledge of any facts concerning your heart, your circulation, or your brain, on which you formed expectations of shortly terminating life? A. Not for years. There was a period in which I thought that the constitutional tendencies to despondency which I have on reactionary days, that there were developed upon that certain symptoms, by reason of excessive work, which I in my ignorance supposed, perhaps, to be paralysis or apoplexy. Besides that, I am short-necked; and I am admonished by my friends that when I preach I do get very red in the face, and I am liable to go; and it was very general, and at those times I was under the impression that those very likely were; but that passed away, and I became subsequently quite satisfied that there was no such tendency as that; and only in hours of despondency did it ever come back again, as probably it was so.

Q. Well, now, when these apprehensions of death formed a part of periods of despondency, you actually at the time had impressions that your life was precarious, and would come to an end, had you not? A. Very strong.

Q. Now, did you ascertain that those impressions were the symptoms and came from nervous exhaustion, and were not supported by any facts concerning your health A. I did, Sir, thoroughly.

Q. But, I suppose, nevertheless, in periods of depression you still had fears? A. I had.

Mr. Beach—Well, that is a matter of argument. You had better argue the matter than be putting questions.

Mr. Evarts—It is bringing the matter to a point.

Mr. Beach—Yes.

The Witness—As a matter of fact.

Mr. Evarts—I suppose there is nothing unfamiliar in that to the experience of counsel.

Q. Now, Mr. Beecher, what can you now say as to whether any sister of yours was housekeeper, or otherwise resident in your family, during the Winter of 1871—that is, 1870-'71? A. There was none.

Q. When did Mrs. Beecher leave for the South that year? A. In March, I think; I am informed by credible authority.

Q. You have made such examination as you had the means of making? A. Yes, Sir; I have an authority that I do not dispute.

Q. Who had charge of your family after she left? A. Well, the household arrangements which she made herself and supervised by correspondence from Florida; there was no head person but Mary, who was the cook, and a girl that had long lived with us and took care of everything—she had the management of affairs.

Q. And you had no additional superintendence? A. No, Sir.

Mr. Evarts—If your Honor please, on the cross-examination of our learned friends, we have a right now to put in the rest of this memorandum of Mr. Beecher's advice and opinion concerning Mrs. Tilton's separation from her husband.

Judge Neilson—They put in a clause of that—the first clause.

Mr. Evarts—We were allowed to put in a clause of it, and the only clause; and now we say on cross-examination we think we are entitled to put in the rest.

Judge Neilson—Yes.

Mr. Fullerton—It was objected to and ruled out, Sir.

Mr. Evarts—I mean there is no impropriety in that. We didn't except. I don't know how that is.

Mr. Fullerton—The question was up and discussed, and your Honor passed upon it.

Mr. Evarts—I say, on your cross-examination, we say we think we have a right to put in the rest.

Mr. Fullerton—I am only telling the history of the case.

Mr. Evarts—If you don't object we will go on.

Mr. Beach—It is objected to, of course.

Mr. Evarts—Now, this is the point: he is asked this question by Mr Fullerton——

"Well, what was the upshot of the interview?" that is, the interview that his wife and he had with Mrs. Tilton and Mrs. Morse.

Mr. Beach—I think he gave the substance of it.

Mr. Evarts—[Reading.]:

"That we would go home and talk over the matter, and let them know what decision or what advice we should give them." Then Mr. Fullerton proceeds: "Yes, you did let them know afterward? A. Yes, Sir; my wife went over there again.

Q. What did you say to her before she left to go there? A. We talked the matter over more or less, I holding it was not best to break up the family relations, and she inclining, from what had been told her, and which I did not hear, to believe Mrs. Tilton ought not to continue living with her husband. It was a matter of some considerable interchange of views between us, but in the last moment, as she had got on her things to go, the room having company in it, and she asking me what my last word was—what I concluded about it—I wrote on a little

scrap of paper and handed it to her. Mr. Fullerton says: "This is what you wrote, I believe," and begins to read, or it is read: "I incline to think your view is right, and that a separation and settlement of support will be wisest." Then the witness proceeds to speak——

Mr. Beach—I withdraw the objection.

Mr. Evarts—I now read the whole memorandum.

I incline to think that your view is right, that a separation and settlement of support will be wisest——

Thus far we read before:

And that in his present desperate state her presence near him is far more likely to produce hatred than her absence.

Memorandum marked "Exhibit 133."

MRS. TILTON AND THE CHARGE OF UNDUE AFFECTION.

Q. Mr. Beecher, I want to call your attention to a point in the cross-examination and ask you a single question. Now, the general subject seems to be the charges that had been made against you. The learned counsel asked you this. To avoid reading too much, I will come down to this:

Theodore Tilton was the only person who had ever declared that such a thing was a fact—the only person I recall; that is, undue affection.

Q. And Mrs. Tilton had denied it orally and in writing to you? A. She had.

Q. Did you believe it after that? A. I have stated to you already that I was more in a state of perplexity than of belief.

Now, had Mrs. Tilton denied the undue affection orally and in writing to you? A. No, I think not, Sir. No, she had not denied the undue affection.

Q. The writing that you had from her was that retraction, was it not? A. That was all.

Q. You had no other writing of retraction or denial from her? A. No other.

Q. From her at all? A. No other.

Mr. Evarts—That, of course, will speak for itself.

Q. Now, you had an interview in which, as a part of the conversation between you and her, you mentioned to her her husband's imputations or statement to you that you had withdrawn her affections, or unduly engaged her affections? A. Yes, Sir.

Q. Now, did she deny that? A. As I recollect it, Sir, she simply cried——

Mr. Fullerton—One moment.

The Witness [continuing]—Without any denial.

Mr. Fullerton—One moment. That is not a proper mode of examination, either upon the direct or the re-direct. The conversation between these two persons has been given in evidence in detail, and whether it amounts to a denial, or not, will appear from an inspection of the language used there. It is not for the witness to determine that question.

Mr. Evarts—Well, the difficulty is this, if your Honor please. The witness has been brought, in the course of the examination, to a question: "Mrs. Tilton had denied it orally and in writing to you? A. She had." Then, by running the matter back, you may see that that may mean she denied the undue affection.

Judge Neilson—Then you might naturally ask him how she had denied it.

Mr. Evarts—Yes, I want to know whether——

Judge Neilson—That will stand.

Mr. Evarts—I want to know whether this present answer I am calling his attention to correctly states what is the fact, as he understands it, that he ever had received either an oral or a written denial of the engagement of affections. They have disposed of the written part of it by saying the only one is this written paper. That, of course, will speak for itself; but an oral one might be in this or that form or shape. I know nothing about that. I have proved what passed between the witness and Mrs. Tilton on the night of the 30th; that is quite true, and I don't propose to vary or add to that. That stands. I am only asking him whether this statement that he makes, "Had denied it orally and in writing to you," covers the fact, or alleged fact, of the engagement of affection.

Mr. Fullerton—If anything that was said upon that occasion has been withheld, then it can be given, and when the gentleman gets through he can ask the question whether that was all that was said; and then the jury will determine whether there was or was not a denial of the charge; but to give all that was said, and then ask the witness's interpretation of it, whether there was a denial of the charge, is certainly violating a very familiar and frequently-applied rule of evidence.

Mr. Evarts—I have no occasion or desire to vary or add to this witness's narative of the actual scene of the 30th; that is not what I am interfering with, but my view is this, that in the witness's examination he has been speaking, or supposed he was speaking, concerning both the written and oral denial of improper advances; and yet, in a reading of the testimony, it may seem, or may be so properly understood, perhaps, if you take the mere letter of the examination, that the witness has said he had received an oral and a written denial from her of the engagement of affection. He certainly had no written denial of it unless this letter is a written denial, and, if it is, why, of course it is. The point of inquiry, therefore, is whether he had received any oral denial of the engagement of affection.

Judge Neilson—Other than that recited in this evidence?

Mr. Evarts—Other than that recited in his direct examination, if it be here.

Judge Neilson—Well.

Mr. Evarts—That is all.

The Witness—No, I had received no oral denial.

Q. Of the engagement of affection? A. Of the undue affection of her for me.

Mr. Evarts—Now, a reference to the narrative of that night will show us what was said and done.

Judge Neilson—Yes.

Mr. Beach—Now, you have just got the improper evidence which we have objected to, but I don't think it of much importance.

Mr. Evarts—I agree that your objection has been taken, and the Court decided against you.

Mr. Fullerton—The Court decided the objection was well taken, and you went on and took a wrong answer.

Mr. Beach—Never mind, let it go.

Mr. Fullerton—You have got it now, and make the best of it you can.

Judge Neilson [to Mr. Fullerton]—Was there any oral denial of the engaged affections except what he has recited in his testimony?

Mr. Beach—He has given an absolute and full answer, but we don't care anything about it. Let it stand.

Mr. Evarts—That would carry the impression that there was some denial in that, and we don't think there is. We don't wish to repeat that.

Q. During these years, Mr. Beecher, that are under inquiry here, 1871, 1872, and 1873, how many letters on an average, or as a usual occurrence, did you receive? Did you receive many letters every day? A. Do you mean from these parties?

Mr. Evarts—Oh! no.

The Witness—Or my general letters?

Mr. Evarts—In general.

The Witness—Oh! I cannot state that correctly, because they varied some days; but I should think I got from 15 to 25 letters a day.

Judge Neilson—I have received that many anonymous letters some days in regard to this case.

The Witness [to Judge Neilson]—You are a much more conspicuous figure in the case than I am.

Mr. Evarts—There is one advantage, if your Honor please, in anonymous letters, that any number of them may be written by the same person.

MR. BEECHER'S HABITS.

Q. Now, when yourself and your wife were absent, what was done with these letters that arrived? A. The servants always laid them on my writing table in the back parlor, or library parlor, as we call it.

Q. Now, in opening these letters, what was your habit as to reading or disposing of them? A. Well, my habit was—of course they were opened in my absence by my wife very largely, but, as to my own self, I most generally opened letters, and, if they were anonymous, I threw them into the fire, and if they were letters on lectures, I merely saw it was a lecture letter and threw it right over to her. If they were letters on business of any kind, on glancing over them I generally threw them over to her care. Now and then there would be letters from women, the character of which I thought she had better means of knowing than I, and I put them in her hands, and the other letters I laid aside to answer and forget.

Q. As a general rule? A. As a general rule, yes, Sir.

Q. Now, Sir, in relation to your church, or its committees, or its business, or its business meetings, what was your habit in regard to participation in them? A. A few of the important meetings occasionally I attended, but my custom was not to attend them. My custom was to put onto my church everything that concerned itself, and obliged them to take care of it without any suggestion from me, never refusing to give advice whenever asked, but never going there to influence them; but as to their records, I don't think I ever read a line of any record, of any committee, or of any meeting, or in the church books—I don't think I ever did, a single line.

Q. And as to any papers or documents relating to the business or duties of any committees of the church, or of the church, had you any participation or habit in them? A. No, Sir; no, Sir. The only instance in which I took any active participation was in the correspondence between the church and the sister churches that impleached it. I did in connection with those letters—those documents—but I think that is probably the solitary instance.

Q. In regard to any proceedings of the Examining Committee on the West charges, what course did you take in regard to participation in, or getting up, any knowledge of those proceedings? A. I had nothing; I never attended a meeting of the Examining Committee of Deacons, from the time they were first suggested to this day, I think, except with the one solitary function which belongs to the Examining Committee—namely, examining persons as candidates for membership in the church; but in their executive and judicial capacity I think I never attended a single sitting; I told them I would not.

Q. Now, Sir, you have stated on the cross-examination that you did not read the Investigating Committee's report. By that we mean the Investigating Committee of last Summer, and the report that they made upon their inquiries. Now, Sir, was there any reason why you did not read that report? A. Well, it was because I didn't read any of the documents that concerned this scandal, that I recollect, to any extent, as it is not my habit to read such things.

Judge Neilson [to the Witness]—The counsel means any special reason of restraint.

The Witness—No, Sir; I was absent in the White Mountains and it came to me only as news, and I was satisfied with knowing that they had reported favorably, and that the church was happy. I didn't care what the report was; I never read it, nor did I anterior to that read the documents that appeared from time to time.

Q. What is your habit as to seeking out or paying attention to publications concerning yourself? A. When I first came to Brooklyn I thought it meet, being younger and having also my standing to make here, to pay some attention to things that were said; but after a few years I declined to read either the complimentary criticisms or to read the other thing, but I don't think I ever have

chased a story for twenty years that was told to me, because I very soon saw that I should have nothing else to do.

Q. I call your attention now to a point in the cross-examination:

Q. Well, did Mr. Moulton propose any counter-operation when the Bacon letter was published? A. No satisfying—nothing.

Q. Did he propose no counter-operation? A. I don't know that he did, Sir.

Q. Did he propose no document? A. By document there, I did not——

Mr. Beach—No.

Mr. Fullerton—No; did he propose no document? A. Yes, he proposed a paper.

Mr. Fullerton—Well, that is an answer.

The Witness—A document.

Q. Did he propose no help? A. Yes, he proposed what he considered help.

Q. Now, Sir, what did occur as matter of fact concerning any counter-operation or any proposition of publication, or otherwise, in respect to the Bacon letter, after the publication of the Bacon letter on Mr. Moulton's part? A. He made many suggestions of a settlement that he thought could be effected—several—but I think I don't recall that he furnished any. He made suggestions and sketches of papers.

Mr. Shearman—Wait a moment.

Mr. Evarts—Well, how was this in respect to the immediate period after the Bacon letter came out as distinguished from a later period? A. Well, he made some drafts of papers and submitted me to them——

Q. Submitted them to you? A. Suggested them to me, and presented them to me for my consideration, and also made suggestions orally to me for—that might be called help; but later—if that is included also in your question—when I wished to draw up my statement, and appealed to him for a sight—a copy or sight of the originals——

Mr. Fullerton—That is not in answer to the question.

The Witness—I understood it to be to Mr. Evarts's question.

Mr. Beach—No.

Mr. Fullerton—No, it is not.

Mr. Evarts [to Mr. Beach]—Number 34. Have you got it?

Mr. Beach—It is in that book underneath.

Q. Look at Exhibit 34. Did he propose or present any other paper or document than that—I mean at that time, after the publication of the Bacon letter [handing Exhibit 34 to the witness].

Mr. Beach—He said yes; he proposed several sketches.

Mr. Evarts—I now call his attention to that one.

The Witness—I cannot say, Sir, that there was any other but this, or whether there was.

Mr. Evarts—You cannot say that there was, or whether there was? A. No, Sir, not definitely.

Mr. Evarts—Very well; that is an end of it.

The Witness—I have no very distinct recollection; there were conversations, but I cannot distinguish in my memory between conversations and documents of that kind.

Mr. Evarts—Now, later than that, but in reference to the situation produced by the publication of the Bacon letter, when you had informed Mr. Moulton of your purpose of an investigation, what did Mr. Moulton then have to say or do about any plans or expedients? A. That was the time, I think, he wanted me to write a card admitting an offense, and saying that it had been apologized for and accepted, and that if I would do that, Mr. Tilton had promised, in the presence of witnesses, to be satisfied in the matter, and that he would burn every document that there was in the matter.

Q. The interview which you have given in detail here? A. Yes, Sir.

Q. But between the time of the publication of the Bacon letter and the time of your formed and announced determination to have an investigation, were there any plans or expedients of Mr. Moulton except this one? A. No, Sir, there was not a word passed between him and me until I had determined the Committee in its crude form in conference with Mr. Cleveland at my house.

Q. Now, Mr. Beecher, was Mr. Cleveland in the year 1874 in the employment of Ford & Co., or in any way connected with you? A. No, Sir; I have ascertained since I spoke to you yesterday that he left in December of 1873.

Q. December, 1873, terminated it? A. If I recollect rightly.

Q. That is as easily ascertained, I suppose? A. Yes, Sir.

Q. And that is your view now? A. Yes, Sir, as I am credibly informed and believe.

Q. What, in 1874, was his business, and in what connection? A. He was a partner in the paper-house of Hurlburt & Co.

Q. Not connected with you and your interest in any way? A. Yes, Sir, he owned one share in the stock.

Q. In the business of Hurlburt & Co.? A. No, business other than that he and I were members of a publishing house.

Q. But he did own one share in your newspaper? A. One share—not in the newspaper.

Q. But in the house? A. In *The Christian Union Publishing Association*, which is very distinct from the firm of J. B. Ford & Co.—entirely distinct.

CONVERSATIONS WITH MEMBERS OF THE INVESTIGATING COMMITTEE.

Q. Now, Mr. Beecher, you were asked something about your having talked with Mr. Cleveland before his appointment as one of your Investigating Committee. Did you, in fact, talk with him concerning the money, the $2,000 or the $5,000, or either of them, before that appointment? A. Before the Committee was appointed.

Q. Before the Committee was appointed? A. I was very much at a loss to know whom I talked with, or who it was that got me into the condition of believing the matter yesterday, but I should not be willing to say with certainty that I did talk with Mr. Cleveland at that time. I noticed that I made several statements of persons that turned out not to be so, in regard to who it was that suggested this or that to me, but I made the general declaration; and I think I am correct yesterday in answer to Mr. Fullerton of who led me to believe in the blackmailing, that I could not say who it was, but my impression was that I talked with Mr. Cleveland and with Mr. Shearman. I am this morning, I think, better qualified to say that the person who talked with me first and influentially was Mr. Bartlett and that my impressions—I should say now that I did not talk with Mr. Cleveland, probably.

Q. I want your best statement, of course, Mr. Beecher, from your recollection this morning as to whether you talked with Mr. Cleveland before his appointment on this Committee in reference to any of those money matters between you and——. A. I don't think this morning—I don't think that I did; on looking back more critically.

MEETINGS WITH MR. TILTON.

Q. You were asked, Mr. Beecher, quite a number of questions, I think, concerning the interviews, or conversations and meetings, between Mrs. Tilton and yourself after January, 1871, on the point of whether you did or did not talk with her concerning this matter in any of its forms—the trouble, or the condition of the family, &c. That is probably a sufficient reference to the matter and its announcement indirectly. Now, what was the course and the motives and your feelings in regard to intercourse or interviews with Mrs. Tilton after that time by which that intercourse was regulated?

Mr. Fullerton—That I object to. It is scarcely necessary to state the ground of objection.

Judge Neilson—It is broader than your cross was—much broader.

Mr. Evarts—I think if you look more carefully at the evidence in order to reach the point——

Mr. Fullerton—I propose to look at the clock before I look at that.

Judge Neilson—No, we will close this before we adjourn. We will take our hour's adjournment then. [To Mr. Evarts.] I think your question is a little broader than the cross.

Mr. Evarts—Now, Mr. Beecher, you remember in general the examination that was proposed to you yesterday, and which you answered. A. Yes, Sir.

Q. Now, what was the intercourse between you and Mrs. Tilton after this period of 1871, at all?

Mr. Fullerton—That is objected to, Sir.

Mr. Evarts—Very well.

Mr. Fullerton—There is nothing in the cross-examination which makes that proper.

Mr. Evarts—We will see.

Judge Neilson—He means in respect to a reference to the proposed securing of her affections.

Mr. Evarts—I will read a question and answer, if your Honor please, which will perhaps satisfy you it is right:

Q. In these walks with Mrs. Tilton of which you have spoken, or in these conversations with Mrs. Tilton of which you have spoken, did you admonish her against permitting her affections to be enlisted to any further extent than they had been already? A. I did not, Sir.

Q. Was there anything upon that subject said? A. Not a word.

Q. And you at the same time, as I understand you, was laboring under the strong conviction that she had given her affections to you? A. I was, Sir.

Q. Well, were you not in fear that they would be still to a greater extent enlisted in you than they had been? A. No, Sir; not to a greater extent.

Q. You thought that no evil or difficulty would result from this communication with her? A. I thought that some good might.

Q. Although you did not warn her against going any further in that direction? A. Not by warning her, but by bringing to bear upon her mind moral influences that would lift her above it.

Judge Neilson—Don't that cover the whole subject?

Mr. Evarts—I think I have a right to ask him what was the intercourse between Mrs. Tilton and himself at the period to which this inquiry relates.

Judge Neilson—In respect to that matter.

Mr. Fullerton—If your Honor please, in respect to what matter?

Mr. Evarts—The matter covered by that inquiry.

Mr. Fullerton—There was nothing occurred in respect to that matter. I proved indisputably that nothing on that subject transpired at all.

Judge Neilson—And the witness asssigned a reason why not.

Mr. Fullerton—That was not read by the counsel on the other side.

Mr. Evarts—Yes.

Mr. Fullerton—Can it be possible, when I prove in a conversation between two people that a certain thing was not said or referred to, that counsel can go on, therefore, and prove what was said, and what was referred to? I don't think he can. I never heard of such a rule.

Judge Neilson—He didn't ask what was said.

Mr. Fullerton—No, Sir; he is not entitled to prove what was said; your Honor will perceive I have not proved any part of a conversation between Mr. Beecher and Mrs. Tilton. I have only proved a certain subject was not referred to; that certain things were not said; and that was the object I had in view.

Judge Neilson—He don't propose to give the conversation.

Mr. Beach—He asks what was the intercourse and motive and reason.

Mr. Evarts—In the same general form you inquired.

Judge Neilson [to Mr. Evarts]—You mean the character of the intercourse?

Mr. Evarts—Yes.

Judge Neilson—I think he may answer so far as the character of the intercourse is concerned.

Mr. Fullerton—I don't understand by what right they can prove what occurred between Mr. Beecher and Mrs. Tilton when we have not proved any part of it.

Judge Neilson—They cannot give the conversation.

Mr. Fullerton—Well.

Judge Neilson—The inquiry is as to the character of the intercourse—in that respect.

The Witness—Well, Sir, my intercourse with her was, in the first place, as little personal as possible, because I was afraid——

Mr. Fullerton—No.

Mr. Beach—Now stop.

The Witness—Well, in that intercourse I never made any allusion with her to past difficulties, and I wholly confined myself—that is, wholly, I mainly, and almost exclusively, confined myself to bringing to bear upon her mind influences that would cheer her, and encourage her, and excite in her her religious feelings, as the best mode of curing her of any lapse of affection or any discouragement in her household.

THE PAYMENT OF $5,000.

Q. Now, Sir, you were asked some questions on the cross-examination concerning this payment of $5,000, and this statement—this passage in your statement—to wit, your answer:

Q. Under what circumstances did you come to pay the $5,000 in one sum? A. Because it was represented to me that the whole difficulty could now be settled by that amount of money, which would put *The Golden Age* on a secure footing; that they would be able to go right on, and that, with the going on of them, the safety of Tilton would be assured, and that would be the settlement of the whole thing; it was to save Tilton pecuniarily.

What whole thing—what difficulty, and in what way was the $5,000 settled?

Mr. Fullerton—That is objected to.

Mr. Evarts—I have asked that question.

Mr. Fullerton—I have a right to object to it.

Judge Neilson—I think he may answer it.

Mr. Fullerton—Does your Honor permit that?

Judge Neilson—Yes.

The Witness—I understood the normal avocation and means of connection between him and his profession and the public was imperatively needful to *The Golden Age* and *The Golden Age* was that—and whatever would keep *The Golden Age* afloat and give it a fair voyage would be a direct help to him, and would finish his difficulties—his pecuniary and other difficulties of that kind—and it was with reference to that that I made, as I supposed, one among others, the contribution of the $5,000.

Mr. Evarts—That is all, Sir.

Judge Neilson—Will the audience keep their seats? [To the jurors.] Our adjournment will be, gentlemen, to an hour from this time.

Mr. Evarts—If your Honor please, one of the jurymen desires a question to be asked.

Judge Neilson—Yes.

Mr. Evarts—One of the jurymen, Mr. Halsted, suggests this question: Whether in raising the $5,000 on mortgage on your property, Mrs. Beecher joined in the mortgage? A. She did—that is, I think I recollect it; I think I recollect some questions she ought never to have asked me.

Mr. Evarts—Whatever you do recollect on the subject, the record of course will show.

The Witness—Yes, Sir.

Q. You think she did? A. Yes, I told her it was a business operation.

Mr. Beach—One moment. I understood you to say, in the latter part of your answer, you told your wife it was a business operation? A. I said I chatted about it.

Q. Didn't you say that? A. Not in any strict——

Q. Didn't you just say that—that you told her it was a business operation?

Mr. Evarts—We will read the record.

Mr. Beach—I ask him whether he didn't say that.

The Witness—Yes, Sir, I said it substantially.

Judge Neilson [to the stenographer]—Read those questions and answers.

The Tribune stenographer read the following questions and answers:

Q. One of the jurymen (Mr. Halsted) suggests this question: Whether in raising the $5,000 on mortgage on your property Mrs. Beecher joined in the mortgage? A. She did; that is, I think I recollect it; I think I recollect some questions she ought never to have asked me.

Q. Whatever you do recollect on the subject, the record of course will show? A. Yes, Sir.

Q. You think she did? A. Yes, I told her it was a business operation.

The Witness—I should like to state still further that this was a jocose conversation between my wife and me. She said she didn't understand what it was for, and I said, "Well, women don't understand about business operations; this is a business operation;" or something like that; but it was simply——

Mr. Beach—What it was. That is all.

The Witness—It was a little social jocose remark between my wife and me.

Mr. Evarts—That is all.

Mr. Mallison—The Court will now take a recess until 2½ o'clock.

THE AFTERNOON SESSION.

The Court met at 2:30 p. m., pursuant to adjournment.

EXAMINATION OF SAMUEL D. PARTRIDGE.

Samuel Dwight Partridge, a witness, called and sworn on behalf of the defendant, testified as follows:

Mr. Evarts—Mr. Partridge, where do you reside? A. I reside in Orange, N. J.

Q. How long have you lived there? A. I have been there about twelve years.

Q. Up to January last in what mercantile firm's employment were you? A. With Woodruff & Robinson.

Q. When did your connection with that firm's employment cease? A. On the 31st day of last December.

Q. How long had you been in that employment before that time? A. I went there in September, 1849, and I was there from that time until I left, with the exception of a little more than one year.

Q. At what period was that absence of a year? A. It was from April 1, 1869, to April 11, 1870.

Q. And in the year 1872, in what capacity were you in that firm's employment? A. I was their cashier.

Q. How long had you been their cashier? A. I had been their cashier the whole time, with the exception of the year that I was out, and about a year and a half that I attended to the city collections.

Q. From the time you went there? A. From the time I went there; yes, Sir.

Q. And did checks and moneys for deposit pass through your hands? A. They did, Sir.

Q. Do you remember in the year 1872 receiving a check for deposit of Mr. Bowen's for $7,000? A. I do, Sir.

Q. Did you with that check receive any slip of paper at the same time? A. There was a slip of paper came with it at the same time.

Q. Where has that slip of paper been since you received it until now? A. It has been in my possession, until very recently.

Q. Have you ever seen the check since until it was shown you five minutes ago? A. I never have, Sir.

Q. Is that the check, Sir? [Handing witness a check.] Your eyesight is, I believe, very imperfect? A. My eyesight is very poor. [Examining the check.] That is the check.

Q. Look at that, Sir, and say if it is the slip of paper that was with it. [Handing witness a paper.] A. That is, Sir.

Q. When did that pass out of your hands? A. Last Friday, I think.

Q. To whom did you deliver it? A. To Mr. Shearman, if I recollect right.

Mr. Evarts here turned to Mr. Shearman.

Mr. Shearman—That's me.

Mr. Evarts—Now, Sir, the check was deposited? A. The check was deposited, Sir.

Q. And where, when you received the two papers together, did you put them? A. I put them both, I think, in the drawer, but I think that I put that strip of paper in the back side. I think it lay there a while before I put it in my pocket.

Mr. Evarts—I now offer to read this paper.

[Mr. Evarts hands the paper to plaintiff's counsel for inspection.]

Mr. Beach—We object to that, Sir.

Judge Neilson—What is the object, Mr. Evarts?

Mr. Evarts—The object is to show the character of the transaction of this check to which this memorandum refers, and which we shall prove, if it is not now admitted, to be in Mr. Tilton's handwriting.

Mr. Beach—You better prove that first.

Mr. Evarts—I don't know that. We have proved the fact of the delivery of the check as coming through Mr. Tilton to this firm for deposit, and we have proved that the cashier receives it in his capacity for deposit, with this slip handed at the same time.

Judge Neilson—And, for aught we know, they may have come to the outer office, the check alone, and some person in the outer office appended this memorandum to it, and sent it in to the private office to this gentleman, in which case it would not be receivable.

Mr. Evarts—Well, Sir, we don't know everything in advance, but I have proved that they came together.

Judge Neilson—Yes, came together to his hands.

Mr. Evarts—To this man, and I prove that the check came from Mr. Tilton to the firm.

Judge Neilson—That appears before.

Mr. Evarts—That appears before.

Judge Neilson—If it appears that this check came to the firm with the memorandum, the memorandum would be admissible, because the two papers go together and come together; but some subordinate clerk might have appended this to the check before sending it in.

Mr. Evarts—We cannot imagine that, if your Honor please. The fact is that the two came together to the cashier of the firm, and the check is deposited.

Judge Neilson—Well, my trouble is, I cannot see how it is material.

Mr. Evarts—Well, that depends upon what there is in it.

Mr. Beach—There is another consideration, if your Honor please, connected with this paper, and that is that it relates entirely to a transaction as between Mr. Tilton and Mr. Bowen. It is Mr. Bowen's check for the arrearages due to Mr. Tilton under the contracts between Mr. Bowen and Mr. Tilton; and the inquiries into that matter, I submit to your Honor, have been hitherto collateral, and that it is totally immaterial what may have been that transaction, so far as the receipt and the deposit of this check is concerned. It relates to Mr. Beecher

in no degree. Mr. Beecher had no connection with it, and by what right we could pursue into these collateral and immaterial details, the affair as between Mr. Tilton and Mr. Bowen does not appear to me to be important. But it is a sufficient objection to this paper now, that which is suggested by your Honor, that neither Tilton, nor Moulton, nor Beecher, nor anyone else connected with this suit, had any relation or connection with this paper.

Mr. Evarts—Why, if your Honor please, the whole transaction has been proved in all its details, so far as those details have been brought to light. I now add this single detail, to wit: That this deposit came from Mr. Tilton, and we have traced it in its origin, in the circumstances that led to its coming into his hands, and have given evidence about what is called the operation, the influence that was brought about to get it from Mr. Bowen, and that it was deposited; and now I propose to show that the cashier of that firm, of which Mr. Moulton was a partner, is the recipient of this check, with this paper, and then I shall show, as will be very apparent, when the papers are compared, that they were appended together.

Judge Neilson—I cannot see that it is material, Sir.

Mr. Evarts—That, if your Honor please, I think must depend upon what is on this paper.

Judge Neilson—I must see that a thing is material before I admit it, objection being made.

Mr. Evarts—Your Honor can look at the paper, of course.

Judge Neilson—If I looked I couldn't tell who wrote it.

Mr. Evarts—Couldn't tell what?

Judge Neilson—I couldn't tell who wrote it.

Mr. Evarts—I propose to prove that it was written by Mr. Tilton.

Judge Neilson—That don't appear yet.

Mr. Evarts—Well, it is a mere question of handwriting.

Mr. Beach—It is a very important preliminary, Sir.

Mr. Evarts—This witness is not acquainted with Mr. Tilton's handwriting; but no matter whose handwriting it is, if it comes to this firm with the deposit, which comes from Mr. Tilton, it is a communication from him, presumptively.

Judge Neilson—It don't appear that it came to the firm with that memorandum; it came to this gentleman.

Mr. Evarts—It came to the cashier of the firm, who is agent of the firm, for the deposit; now, Mr. Partridge, how did this check and this paper come to your hands? A. They came together, Sir, handed me by the same individual.

Q. Yes, handed you by the same person together? A. Yes, Sir.

Q. Now, Sir, by which member of the firm was it handed to you? A. Well, I couldn't—I don't remember distinctly, Sir, who gave it to me.

Q. What is the best of your recollection upon that point? A. Well, I have an indistinct recollection that Mr. Woodruff gave it to me.

Q. Mr. Franklin Woodruff? A. Yes; but I don't recollect distinctly, Sir.

Q. A member of the firm? A. Yes, Sir.

Q. Did you receive it from the firm in some form and for deposit? A. Well, Sir, if I—I don't recollect distinctly whom I did receive it from; I think that I received it from Mr. Woodruff.

Q. Yes; did you receive it from any person outside the firm? A. Not that I know of, Sir.

Q. No recollection, no idea of that kind? A. No, Sir.

Mr. Evarts—Now, I submit, Sir, that I have proved that it was handed to him by some member of that firm.

Judge Neilson—Can't receive it, Sir.

Mr. Evarts—What does your Honor say, Sir?

Judge Neilson—That does not alter the relation of it.

Mr. Evarts [To the Witness.]—Is this in the handwriting of any member of the firm? A. No, Sir.

Q. Or of anybody in their employment? A. No, Sir; not that I know of.

Mr. Evarts—Now, Sir, I offer to read it.

Judge Neilson—I think it is immaterial.

Mr. Evarts—As coming to this firm with the check.

Judge Neilson—It is immaterial.

Mr. Evarts—Well, I submit to your Honor that the question of its materiality is in dispute. The payment to the firm of this check, its receipt and its deposit, has been proved and is in proof, and is material, therefore. Now, I offer to prove that this paper accompanied it.

Judge Neilson—It has been proved that Mr. Tilton set up a claim against Mr. Bowen, partly founded on contract; that that was the subject of negotiation and finally of arbitration, and that in pursuance of the determination of the arbitration, Mr. —— [Here the Judge was interrupted by a slamming of windows, long continued and annoying. When it was over, he resumed as follows:] I was about to say that it already appears, in painful detail, that after an arbitration this check was given, and given as claimed by Mr. Tilton, as if it were due—awarded by the arbitrators as if it were due to him; paid by Mr. Bowen on the same theory; and that Mr. Tilton deposited it with Woodruff & Robinson, and that in due time the funds were drawn and used.

Mr. Evarts—And this paper came with it.

Judge Neilson—It don't appear.

Mr. Evarts—This gentleman has said so.

Judge Neilson—No, Sir. Mr. Tilton, we are to assume, sends that check to Woodruff & Robinson. Now, it is not material what instructions he sent, but, at any rate, it don't appear that he sent this.

Mr. Evarts—It does appear that this was received by the firm of Woodruff & Robinson, with this paper added.

A LEGAL POINT AS TO ADMISSIBILITY.

Judge Neilson—Well, that presents this question, whether the particular suggestions or instructions which the firm of Woodruff & Robinson may make

to one of their employés in sending in a check to be entered are to be received against anybody except themselves; that is all there is about it.

Mr. Evarts—If your Honor please, I have shown expressly that it is not their handwriting, nor does it proceed from them.

Judge Neilson—It does not appear that it don't proceed from them. They received the check from the hands of somebody, and passed it to the hands of this clerk, or cashier.

Mr. Evarts—They received it from Mr. Tilton; that has been proved; they received the check from Mr. Tilton.

Judge Neilson—Yes, but it nowhere appears that they received it with this memorandum.

Mr. Evarts—And they put it in the course of deposit.

Judge Neilson—Yes.

Mr. Evarts—And the channel of deposit received it from one of the firm with this paper with it. It attends the check; it describes the check in the character that it gives to the money transaction; that is what it does.

Judge Neilson—And for aught we know it originated after the check had been in the hands of Woodruff & Robinson.

Mr. Evarts—We think not.

Judge Neilson—For aught we know it appears so.

Mr. Evarts—If your Honor means absolute verity, incapable of contradiction——

Judge Neilson—No, I don't; I mean for all that now appears.

Mr. Evarts—By all that now appears; if your Honor please, I respectfully submit that it appears that it came to the firm of Woodruff & Robinson——

Judge Neilson—No.

Mr. Pryor—Your Honor will please bear in mind that our objection does not hinge exclusively upon the fact that Mr. Tilton is not connected with this memorandum. Our objection—the strenuousness of our objection, the one upon which we rely—is that this thing, even if properly proved and connected with Mr. Tilton, is wholly immaterial to this issue.

Judge Neilson—So I understood Mr. Beach, and so I understand you.

Mr. Pryor—Yes, Sir.

Mr. Evarts—Well, they may think the check is immaterial for aught I know, but that question we have passed. Now, Sir, Mr. Tilton's handwriting is not a——

Judge Neilson—Now, when Mr. Tilton received a check for $7,000 from Mr. Bowen, he had a right to do with it precisely what he pleased, and he chose to deposit it with this firm. If he gave any instructions whatever, that is immaterial; it has no effect upon this defendant.

Mr. Evarts—I don't know that; it is not a question of effect on the defendant; it is a question of effect on the plaintiff. I am proving it against the plaintiff.

Judge Neilson—I do not see how that is proof.

Mr. Evarts—That would depend, I think, very much on what is here. If your Honor places it on the ground which my learned friends apparently do not wish to stand upon, that it is not Mr. Tilton's handwriting——

Judge Neilson—No, I don't. I say merely I don't know and that for aught that appears——

Mr. Evarts—I say if your Honor puts it upon that ground, upon which apparently my learned friends do not wish to stand, that it is not Mr. Tilton's handwriting, as yet, that is one thing.

Judge Neilson—I have not assumed anything about it. I simply spoke with reference to the materiality of the proof before me.

Mr. Evarts—Your Honor properly assumes that point, that it is not proved. I agree that it is not proved.

Mr. Beach—My learned friend suggests that we do not care apparently to stand upon the principal objection which we have hitherto made to your Honor against this paper. I am very free to admit to the counsel, for the purpose of discussion, that the paper is in the handwriting of Mr. Tilton.

Judge Neilson—Well, then, the question is whether we shall not receive it until we hear whether it is material; that is the point.

Mr. Beach—I do not admit, Sir, that that paper was transferred by Mr. Tilton to this firm in company with this check, or that this memorandum relates to this check, or the transaction indicated by this check, by any means, and that is a defect in the proof upon the other side which at present is insuperable. But yet we mean to insist to your Honor that, even if it should appear that this paper was delivered by Mr. Tilton in company with this check, it nevertheless is immaterial and incompetent evidence; that whatever Mr. Tilton chose to do with this check, or however he might choose to characterize that instrument, or to vindicate the nature, quality, source, or object of the money which was represented by that check, is totally immaterial to this controversy; and when that question shall arise, why, we may perhaps desire to be heard further upon it. But sufficient for the day, Sir, is the evil thereof. Until they connect this paper memorandum with this check in its transfer by Mr. Tilton to this firm, it is totally incompetent evidence.

Mr. Evarts—I cannot imagine an objection to my right to prove this, when it is admitted to be in Mr. Tilton's handwriting. It then comes from him; the check comes from him, as he has testified, and the check and the paper are in the hands of the firm and handed to the cashier at the same time. Now, how material and what the moral connection between this paper and that check is, must appear and be judged of by the jury when the paper itself is read, and when the internal evidence of the two papers shows that they were attached together.

Mr. Beach—It by no means follows, your Honor, because Mr. Tilton may have said or written anything upon any subject, that it is admissible as evidence in this case.

The counsel says he cannot imagine an objection to this paper when it is admitted that it was written by Mr. Tilton.

Mr. Evarts—I cannot imagine, after you have seen it.

Mr. Beach—I am quite willing the Court should see it.

Mr. Evarts—It does not relate to a horse race; counsel know that.

Mr. Beach—No, Sir, I know it does not relate to a horse race.

Mr. Evarts—You know it relates to this matter.

Mr. Beach—Well, that would be rather a violent assertion. I think it is in connection with my learned friend—the suggestion coming from him that we are not dealing with horse races. This paper, Sir, relates, I suppose, from what I see of it, to an indefinite thing designated by a single word. Whether it relates to money or to a material thing, whether it relates to a check or a bank bill, or any other article, is not apparent from the paper. True, I grant that if there was anything in the paper itself, as connected with the general evidence in this case, from which a jury might be allowed to infer a certain association between it and any material transaction in the case, why then I would consider that it would be very proper to be admitted by your Honor to pass to the jury. But your Honor is the primary judge of the competency and admissibility of evidence, and when an objection is raised to a species of evidence it is the prerogative and the duty of your Honor to see that it has material connection with the essential issues in the case. Now, here is a scrap of paper having no definite connection, so far as the evidence goes, with any particular transaction—having no possible relation, so far as its terms indicate, with any transaction between Mr. Tilton and Mr. Bowen, a declaration in writing which may relate to a thousand immaterial things not at all connected with this issue or with the parties to it, which they offer in evidence, to go to the jury, to be construed and applied as the jury may incline. Now, I submit, Sir, that it becomes the duty of your Honor, before this instrument shall be permitted to pass to the jury, to be satisfied yourself, from the complexion of the paper, its contents, its subject, and the evidence in the case, whether it is material and competent.

Judge Neilson—That is doubtless so. There is no question about that. I suppose this examination covers all you wish with this witness.

Mr. Evarts—I don't know that, Sir.

Judge Neilson—If something else is proved by some one else, then you will, perhaps, be in a position to offer the paper.

Mr. Evarts—They do not object on the score of handwriting.

Judge Neilson—No, I am not speaking about that; I am speaking of the last objection.

Mr. Evarts—Now, then, it stands that this is Mr. Tilton's handwriting, and it came with a check that bears Mr. Tilton's indorsement, the whole history of which has been given. But if your Honor will remember how Mr. Wilkeson introduced the subject of the threat of Mr. Tilton, what he would publish if justice were not done him——

Judge Neilson—Mr. Pryor, I will look at it.

[Paper handed to the Court.]

Mr. Evarts [continuing]—And all the other evidence that bears upon the question of whether this was an extraction from Mr. Bowen by the pressure of this influence. And now, Mr. Tilton, having got his money and sending it to his coadjutor, Mr. Moulton, sends that characterization of the source and the quality of the fund.

Judge Neilson—Well, Sir, you may read it in evidence.

Mr. Evarts—[Reading:]

"Spoils from 'new friends' for the enrichment of old."

[Marked Exhibit D, 134.]

Judge Neilson—Proceed, Sir.

Mr. Evarts—Now, gentlemen of the jury, you will see that the pin-holes of those two papers completely correspond.

Judge Neilson—That is generally the case when two papers are pinned together.

Mr. Evarts—Nothing has been said about their being pinned together, if your Honor please, as yet.

Mr. Beach—I think there was. When you say the pin-holes correspond, it is a strong intimation that they were pinned together.

Judge Neilson—Yes; well, no matter whether they were or not. I think in the end I can instruct the jury what this means. We will proceed now. It is one of those remote things—collateral things. We have gone over the Woodruff & Robinson account——

Mr. Evarts—Your Honor's instructions are not to be given now.

Judge Neilson [continuing]—And over the arbitration and over the award, until my very soul is wearied with them.

Mr. Evarts—I do not wish to argue this evidence with your Honor or to the jury.

Judge Neilson—No, Sir.

Mr. Evarts—Nor can I now except to your Honor's instructions to the jury, because they are not given.

Judge Neilson—Very well; I do not give them. Anything more with this witness, Sir?

Mr. Evarts—Yes, Sir.

Judge Neilson—Well, proceed.

Mr. Evarts—Before you received this check and memorandum, Mr. Partridge, had you known or heard anything of what Mr. Tilton was going to do if Mr. Bowen did not pay him?

Mr. Beach—From whom? Wait a minute.

Mr. Evarts—I ask him whether he had heard it in any way.

Mr. Beach—I object, then.

Judge Neilson—Say yes or no, Mr. Partridge.

The Witness—Yes, Sir.

Mr. Evarts—You had. Now, Mr. Partridge, you did not connect these papers together in any way yourself, did you? A. Pin them together, do you mean?

Q. Pin them together or otherwise connect them together? A. No, Sir.

Q. And do you remember whether when they came to you they were connected by a pin, or in a common envelope, or in a common fold? A. I do not remember how they came.

Q. Mr. Partridge, do you remember the fact of the publication of Mrs. Woodhull's life by Mr. Tilton? A. Yes, Sir.

Q. And do you remember conversing with Mr. Moulton on that subject? A. I remember his speaking to me about it—in my view I spoke to him, though, in the first place.

Q. What do you say? A. I believe I spoke to him in the first place, I think.

Q. What did Mr. Moulton say to you——

Mr. Morris—That is objected to.

Mr. Evarts—Well, wait, won't you?

Mr. Morris—No; I object to that.

Mr. Evarts—As far as it goes?

Mr. Morris—I do.

Mr. Beach—I don't think these pin-holes correspond.

Judge Neilson—Well, I guess that is not the turning point in the case.

Mr. Beach [to Mr. Evarts]—Well, I only wanted to dissent from your remark to the jury.

Mr. Evarts—They don't correspond if you don't put them together. If you do put them together, they will correspond.

Mr. Morris—If your Honor please, I don't think they do correspond. I move to strike out the pin-holes.

Mr. Evarts—Well, there is no trouble about it.

Judge Neilson—This question, how is it material?

Mr. Evarts—No trouble about it. The same ray of light will come through both papers and through the four holes.

Judge Neilson—The question now objected to is "What did Mr. Moulton say?"

Mr. Evarts—Yes, Sir; I haven't asked the question yet. [To the Witness.] Did Mr. Moulton say anything to you on the subject of Mr. Tilton's object and motives in writing that "Life?" A. He did.

Mr. Morris—Objected to.

Judge Neilson—We will take that.

Mr. Evarts—Take the answer, "He did." What did he say?

Mr. Morris—Objected to.

Judge Neilson—We will take that. Go on, Sir.

The Witness—He said that he wrote——

Mr. Morris—What Moulton said in Mr. Tilton's absence?

Judge Neilson—Yes; we have the theory by Mr. Tilton and Mr. Moulton both—a certain theory why Mr. Tilton wrote, or rewrote rather, the Woodhull biography.

Mr. Beach—But surely, your Honor, before they can show the declarations of Mr. Moulton upon that——

Judge Neilson—It is not with a view to impeach.

Mr. Beach—Sir?

Judge Neilson—It don't come in as a matter of impeachment.

Mr. Beach—As matter of impeachment? It cannot come in as evidence at all—the declarations of Mr. Moulton against Mr. Tilton. I beg your Honor to consider.

Judge Neilson—Well, I see it.

Mr. Beach—I submit that, until they call the attention of Mr. Moulton to the alleged conversation with this witness, it is not competent.

Judge Neilson—Well, that is the objection, is it?

Mr. Beach—Yes, Sir.

Judge Neilson—That would seem to be good.

Mr. Evarts—It is not collateral.

Judge Neilson—Oh, of course not.

Mr. Evarts—Well, if your Honor please, we have a bit of proof here on the subject of the intercourse established by these two men in concert, Mr. Tilton and Mr. Moulton, out of which it is alleged as the sole origin and motive, by both of them, the "Life of Mrs. Woodhull," by Mr. Tilton, sprang, and we now offer to prove by Mr. Partridge what Mr. Moulton said to him (Mr. Partridge) at the time when the publication was fresh and was the subject of conversation between them—what Mr. Tilton's motive was—to wit, not that it was a motive in reference to Mr. Beecher, or the scandal, or in his interest or for his objects, but for certain other objects of his own. If the testimony is believed, as it certainly will be when it is free from any question of the infirmity of memory, it strikes at the foundation of all the pretenses of these two concurring witnesses that the object of that publication was the covering of this scandal and the humoring of this woman.

Judge Neilson—Well, the point suggested by counsel remains to be answered—to wit, that it is collateral.

Mr. Evarts—Well, it is not collateral.

Judge Neilson—It is collateral; that I have decided.

Mr. Evarts—A part of the issue against Mr. Beecher in this cause is to prove his guilt: his guilt in the nature of tacit confession, or confession by action; that those men dealt with the Wooodhulls under this motive and for this object, and that alone, and that Mr. Beecher authorized, approved and applauded it. Now I propose to prove what one of these men says of the other man's object and motive in writing that "Life," and that it had no connection with Mr. Beecher and no connection with humoring this woman, but for objects of his (Mr. Tilton's) own, and I am unable to understand the force of my learned friend's suggestion that this is a collateral fact. It may be subordinate; it may not be the head and front of the evidence to prove

Mr. Beecher guilty, but its sole place here, as introduced by them, has been to prove a part, a makeweight, an influence from which guilt is to be imputed to Mr. Beecher on the principal fact by this conduct of his, authorizing, ratifying their conduct. Therefore it seems to me that the objection of collateral has no place, and of course we cannot discuss the question of the absolute or comparative weight of items of testimony that bear on the main issue. It bears on the main issue, or it bears nowhere.

Mr. Beach—Will your Honor permit me to answer a word of the argument? Admitting, Sir, for the moment, that Mr. Tilton and Mr. Moulton have agreed in the declaration of the purpose for which their intimacy with Mrs. Woodhull was instituted and prosecuted, I then submit to your Honor that the declarations of Mr. Moulton, he not being a party to this action, or in any degree interested in its result, except collaterally as a witness, his declarations as against the interested party, Mr. Tilton, are not receivable upon any principle of law or logic or justice. It is an invariable and general rule of evidence that the declarations of a third party cannot be received against the party to the suit unless they are given for the purpose of impeachment, and then only when his attention has been directed to those declarations, and he has either affirmed or repudiated them. But does the principal assumption of the counsel upon the other side arise from this evidence? Where does he learn in this case that Mr. Moulton ever counseled the writing of the "Life of Mrs. Woodhull," by Mr. Tilton, was privy to it in any degree, and, least of all, advised or concurred in any such proceeding for the purpose of conciliating and placating that lady? Why, the evidence in this case is, Sir, that Mr. Moulton had no connection with or knowledge of that "Life," except when it was written and nearly completed, and then condemned and disapproved it, entered his protest against it, advised Mr. Tilton not to write it and not to publish it. And yet, Sir, when he thus discountenanced it and disclaimed it, the counsel offers to prove his declarations as if he was a party to this transaction, as if he was a party to this action, whose rights were to be adjudged by the verdict of this jury and the judgment of your Honor, and he asks to do this as against Mr. Tilton; it being plain from the evidence that Mr. Tilton and Mr. Moulton were not in accord with reference to this very transaction about which he asks the declaration of a stranger to the action. But again, Sir, the counsel says that this theory of the plaintiff in regard to the motive of the action, the combined action, as between Mr. Tilton and Mr. Moulton, is to throw discredit and to attach crime to Mr. Beecher.

Mr. Evarts—To prove the principal issue, I said.

Mr. Beach—No, Sir; you said to impute crime or wrong to Mr. Beecher. To prove the principal issue, Sir! How and in what degree?

Mr. Evarts—As confession tacitly, and by action.

Mr. Beach—And how came this, Sir, to be introduced, and why is it not collateral? Did we, on the part of the plaintiff, produce evidence in regard to the connection between Mr. Tilton and Mrs. Woodhull?

Mr. Evarts—Oh, yes, Sir.

Mr. Beach—No, Sir. I beg your pardon. May it please the counsel, we objected to that issue, Sir; we endeavor to rule out the intercourse between Mr. Tilton and Mrs. Woodhull, and it was upon their proposition that that issue was opened and the evidence in regard to that transaction primarily introduced.

Mr. Evarts—Turn to page 413.

Mr. Beach—I may be mistaken. Page what, Sir?

Mr. Evarts—413, examination of Mr. Tilton.

Mr. Beach—That was in regard to keeping down the threatened publication. I admit that, Sir; but what has that——

Mr. Morris—Of the scandal.

Mr. Beach—The threatened publication of the scandal which was intimated by the card published in *The World* in May, 1871; that then, for the purpose of preventing the publication of that threatened scandal, Mr. Tilton and Mr. Moulton, with the concurrence of Mr. Beecher, entered upon a course of conciliation with this woman. What has that to do, Sir, with the publication of "The Life of Mrs. Woodhull?" That was proven by them, and your Honor recollects with what stringency we opposed the introduction of the extracts from that "Life," which your Honor subsequently admitted. Now, if your Honor please, I submit with great confidence that, even if Mr. Moulton had been interrogated as regards his declarations to this gentleman concerning the writing and the publication of that "Life," contradictory evidence would not be received, because it is collateral. That was not one of the transactions in which Mr. Moulton coöperated with Mr. Tilton. It was contrary to the sense and the judgment of that gentleman, and is not one of the matters in regard to which the concurrence of Mr. Beecher in the action of these two gentlemen is alleged. It is altogether an independent and a separate transaction, entered upon at the volition alone of Mr. Tilton, and prosecuted by him against the advice of Mr. Moulton, and against the concurrence of Mr. Beecher, as it is to be inferred from the evidence. Now, whatever Mr. Moulton may have said in regard to that "Life," or the purposes of Mr. Tilton in writing that "Life," under these circumstances, cannot but be collateral and immaterial; and, in any view, I submit to your Honor it is inadmissible.

Judge Neilson—A matter that would not be collateral as against Mr. Tilton——

Mr. Beach—No, Sir.

Judge Neilson—A matter that would not be collateral as against Mr. Tilton if the inquiry were as to his conversation——

Mr. Beach—Ah, yes, Sir.

Judge Neilson [continuing]—Is collateral as against Mr. Moulton, a witness, and his conversations and declarations are not evidence in any point of view against the plaintiff, in his absence, unless he has been interrogated in regard to them, and then, simply for the purpose of impeaching and contradicting; and that is not the attitude in which this question stands now.

Mr. Beach—Yes, Sir; and if it did come to that attitude, if your Honor please, then, it being collateral, contradiction would not be admissible.

Judge Neilson—I am not prepared to say how that is now. I rule this out for the present.

ARGUMENT AND OFFER OF PROOF BY MR. EVARTS.

Mr. Evarts—If your Honor please, perhaps this evidence should be referred to. It was a principal and direct part of the plaintiff's evidence to introduce his relations to the Woodhulls in all its parts, as evidence against Mr. Beecher—to wit, to show from that the efforts being made for the purpose of suppressing the scandal. The question asked by the counsel of the witness is:

I want to know what successive steps you took, and also what suggestions Mr. Beecher made, if any, from time to time, with regard to that apprehended danger? [Which was the publication by the Woodhulls.]

Mr. Evarts—Those steps which Mr. Beecher did not know we will dispense with.

Mr. Tilton—There were no steps in the business with which Mr. Beecher was not as much connected as either Mr. Moulton or myself, from the beginning to the end.

Then they go on and state various things that were done by Mr. Tilton in pursuance of this confederacy for the object in view, alleged as against our client, to exist between himself and Mr. Moulton and Mr. Tilton as acting together. Mr. Tilton has authenticated Mr. Moulton's relations to him, in all that passed in reference to this matter of the controversy between him, Mr. Tilton and Mr. Beecher, as being the depository of his confidence, the agent of his action; and they go on and prove affirmatively how the Woodhull biography was written, and give it the characterization of being one of the steps that Mr. Beecher knew of, under the motive, and in accomplishing the object, of the suppression. Now, I point my offer (in order that there may be no passing upon this question without relation to the very evidence that I propose) to the question of whether this action of Mr. Tilton and Mr. Moulton upon the Woodhulls *was* in the interest of Mr. Beecher, and for the suppression of the scandal; for cause Mr. Moulton gives it as the true reason of Mr. Tilton, and thereby makes himself a party to it—as the true reason of the common action—that it had no relation to Mr. Beecher; no relation to humoring this woman, but to the purposes of Mr. Tilton. Now I offer to prove by this witness that Mr. Moulton told him, when the matter was fresh and the "Life" was just published, that Mr. Tilton's motive and object were to put himself at the head of the Spiritualists of this country, and that they were more numerous than the Congregationalists.

Judge Neilson—One moment. I would like very much if the counsel would give me a specific reference to the evidence given by Mr. Moulton, because if he has given evidence of that character you may contradict it by this witness; but that is not met by a general argument, or an illustration even.

Mr. Evarts—But, if your Honor please, Mr. Tilton has given this publication as one of the steps by Mr. Moulton and himself—not that Moulton approved the prudence of the particular step, but that the writing of "The Life" was a step under the motive that covered the action, whether erroneous and mistaken or not. It did not remove the action—the purpose of action, the motive or character of the writing, that Mr. Moulton thought it was injudicious, and would rather that that particular form of carrying out a common purpose had not been adopted or pursued. But the point is by this testimony that Mr. Tilton assigns a reason, which Mr. Moulton asseverates and delivers as the true reason. Indeed, I don't know even that it rests necessarily upon the formal words or statement of Mr. Tilton, but Mr. Moulton delivers it as the motive of Mr. Tilton in this step that is carried to the account of Mr. Beecher and his interests; and so it is given here under this statement that I have read in the direct examination that there was not any step that Mr. Beecher was not as much connected with as any of them; and under the final statement of Mr. Tilton, on redirect examination, that, "before God," Mr. Beecher was as responsible for everything done with the Woodhulls as he was.

Judge Neilson—If you can show me anything that Mr. Moulton said in his examination upon that subject, you are at liberty to contradict that by this witness.

Mr. Evarts—I will look, if your Honor please.

Judge Neilson—Of course, I am obliged to rule with reference to certain settled principles of the law of evidence; but if Mr. Moulton has said anything upon that subject which this witness can contradict, you are at liberty to go on.

Mr. Evarts—I do not call him for the purpose of contradicting Mr. Moulton.

Judge Neilson—Then I rule it out.

Mr. Evarts—I call him for the purpose of delivering the truth, as stated by Mr. Moulton and Mr. Tilton, that the personal objects of Mr. Tilton were the source and the motive of the writing of that letter. Mr. Moulton said [referring to the book]——

Judge Neilson—Is that on the direct or the cross-examination?

Mr. Evarts—The passage that I now call your Honor's attention to is on the cross-examination, at page 227. This is what Mr. Moulton says about Mr. Tilton's statement, his report of it to Mr. Beecher:

That it was simply a revision of the manuscript of her husband [that is, Mrs. Woodhull's husband]; that he thought that people would detect his handiwork in it, and therefore he thought he would put his name to it; and I told him that I did not think that that was a very good reason. He said he would take the responsibility of it. And that was the sum and substance of it, with the exception—and he said it was a friendly act; he said it was a friendly act, and right, in the interest of the repression of the scandal against Mr. Beecher, his wife, and himself; it was in the interest of his family and Mr. Beecher that he had done it, and if he had made a mistake, why, that was all there was of it.

Now, my proposition is this, and I say it is not in the sense of impeachment, it is not what we call a collateral impeachment on independent matter. The whole matter is a part of the plaintiff's case for proving the principal crime against Mr. Beecher, to wit: the arg umentative confession from his conduct in suppressing—in maintaining relations with these women by themselves (and by himself, if you please, whatever there is on that subject)—as coming to the point that that is insisted upon as a confession, and that these acts were done by them in that motive, in that character; and they both concur in it. Now, there was a difference of judgment, if the Court please, about whether it was judicious for the common end in view to write "The Life"—in other words, whether it was not giving more than it was worth as a step toward the common object. That is a question of judgment; and, as Mr. Tilton said, if there was a mistake, why he could not help it. Now, my proposition goes to the point that Mr. Moulton assigns as a reason for the writing of this "Life," not a reason connected with Mr. Beecher or the suppression of the scandal, but connected with Mr. Tilton's ambitions, to put himself *per saltum* by this great transaction at the head of the Spiritualists of the United States, and that they were more numerous than the Congegationalists. Now, if that is true, it strikes through both of these witnesses who have undertaken to say here upon oath that the objects were of a kind to inculpate Mr. Beecher as responsible for them and as in his interest. And now I propose to show, not hearsay of a stranger, but the action, the statement of Mr. Moulton identified by his own evidence, identified by Mr. Tilton's evidence, identified by every argument by which admissions of evidence in a hundred cases have been maintained and defended here by our learned opponents, that it is a common action; and then we have their words for this being the motive. Now, when I find one of them representing as the motive of this common action one wholly independent of that assigned in the evidence, that is contradiction; but beyond that, if he had not so assigned it, personally himself, it would have been a rebuttal, it would have been a traverse of the alleged motive and character of the act in writing the "Life," without which motive and character, as assigned by him and Mr. Tilton, the act itself would have been immaterial, and could not have been introduced by them into this case. They brought it in as a part of the live, direct issue. Why? Because Mr. Beecher authorized it; Mr. Beecher approved it; Mr. Beecher advised it; it was a part of the policy of the suppression of the knowledge of the guilty fact. [At this point Mr. Abbott directed Mr. Evarts's attention to a point in the evidence, and handed him the book.]

Mr. Evarts—Mr. Moulton on the direct examination said, at page 88. [Reading:]

Mr. Tilton came to me and said that he had been sent for by Victoria Woodhull; that he had gone to see her, and that she had poured out upon him stories derogatory to the character of Mr. Beecher, and had connected his (Mr. Tilton's) wife's name with Mr. Beecher as it was connected in this article. I saw Mr. Beecher about it.

And then he goes on to say:

I told him that I thought it would be necessary in some way to influence that woman against the publication of the stories. * * * I told him I had worked a fair influence upon the woman; that I had undertaken to show her how wrong it would be to be vindictive; there was nothing to be gained by that.

ARGUMENT BY MR. BEACH.

Mr. Beach—If your Honor please, and I can comprehend the argument of my learned friend, it rests upon this assumption, that Mr. Tilton and Mr. Moulton and Mr. Beecher entered upon a common operation, for a certain assigned motive; that they were in league and association for a common object, to be pursued by common and understood means; that, in other words, they were in a confederacy which, applied to an unlawful transaction, might be termed a conspiracy; and the counsel seeks to assimilate the rules of evidence which apply to a league of that character, to this association between these three gentlemen. Now, if that premise was assumed, I might with great propriety admit that the declarations of the parties engaged in the common transaction, with a common purpose, might be admissible; though I do not believe it, Sir—I do not think they would be. I do not think that an arrangement of this character, with reference to a lawful and a private purpose, under any circumstances, makes the declaration of one of the parties to that transaction admissible as against the other, when the private business interests of one of them are raised and involved in a collateral matter. They are not partners, Sir. They are not conspirators. They are coactors for a common purpose, in regard to an admissible and a legal object; but does that make the declarations of either evidence as against the other in a collateral and independent transaction? Mr. Tilton prosecutes Mr. Beecher upon an alleged cause of seduction. It transpires in the course of the revelation of the affair that attempts were made by the two parties to the alleged offense and action, and a friend who acted in the interests of both,

that certain steps were taken for the purpose of suppressing the publication of the accusation, or the circumstances upon which the accusation rested. Now, I submit to your Honor that it would not follow that in the action of seduction the evidence of the declarations of these various parties, on the side of the immediate parties to the action, in relation to the cause and motives which governed their transaction in the attempt to suppress the scandal, would be evidence as against the others; although I might admit it, Sir, for the purpose of argument. The last phrase which the gentleman read from the testimony of Mr. Moulton shows exactly what the arrangement was with Mr. Beecher by Mr. Moulton in regard to the influences and the manner in which those influences were to be exerted upon Mrs. Woodhull to prevent the notoriety of this scandal.

Q. After the publication of that card, [that is, the Woodhull card], what occurred with reference to yourself, Mr. Tilton and Mr. Beecher? A. Mr. Tilton came to me and said that he had been sent for by Victoria Woodhull, that he had gone to see her, and that she had poured out upon him stories derogatory to the character of Mr. Beecher, and had connected his [Tilton's] wife's name with Mr. Beecher, as it was connected in this article. I saw Mr. Beecher about it. I told him that it would be necessary in some way to influence that woman against the publication of the stories, that I thought I ought to see her, and he said he hoped I would, and I did see her, in consequence of my consultation with Mr. Beecher.

In the course of the evidence, various steps have been narrated with reference to the intercourse as between Moulton and Tilton and Mrs. Woodhull; and those two gentlemen have said that these steps were taken in consequence of this arrangement; and I am giving the largest scope, Sir, to the application of this testimony of Mr. Moulton. Then we come to a particular transaction, that is, the publication of the "Life of Mrs. Woodhull." Now, according to the admission which I have made in the outset of this argument, Sir, if it should appear that the publication of that "Life" was a concurrent act, as between these three parties—to wit, Tilton and Moulton and Beecher, and that Tilton and Moulton had assigned that act to the same motive, of influencing this lady, and suppressing the publication of this scandal, why, then, my admission would cover that evidence, and make it possibly material, in this particular aspect of the argument. But refer again, Sir, to the first extract which the counsel read from the testimony of Mr. Moulton. The question was asked on cross-examination [reading]:

Q. Has he ever talked with you [that is, Tilton] on the subject of the effect that the publication of that Life had upon the prosperity of *The Golden Age*? A. I talked with him about it; he didn't with me at the time.

Q. You talked with him, but he did not with you? A. Yes, Sir.

Q. Tell us what you talked to him? A. I told him that I thought he ought not to have published it.

Q. Well, why? A. Well, I told him that it seemed—so many statements in it seemed extravagant to me—many statements in it seemed extravagant; I did not think it was a necessary work to do; and his reply to that—his reply to that—when I say that he didn't talk to me, I mean that he didn't open the subject; I opened the subject of the conversation; his reply to me was, that he did it as a friendly act to Mrs. Woodhull from the manuscripts furnished by her husband," &c.

Now, Sir, that disengages that transaction entirely from the coöperation of Mr. Moulton and Mr. Tilton. It was an independent act, upon his own responsibility, adopted by Mr. Tilton, and without any reference or concurrence to or with Mr. Moulton or Mr. Beecher. There is no allegation in this evidence that Mr. Beecher ever approved of the act, that he was ever consulted in regard to it. There is no evidence that Mr. Moulton ever approved of this act as one of the means which were to be taken for the purpose of accomplishing the common object of the three parties—to wit, the conciliation of Mrs. Woodhull. Then, Sir, there was no concurrent purpose, there was no unity of action in regard to the publication of this "Life," as between Tilton and Moulton and Mr. Beecher. There is no room to argue on our part that Mr. Beecher acceded to or approved this publication, or countenanced it as a justifiable act, for the purpose of repressing this slander. It expressly appears that Mr. Moulton discountenanced and disapproved it, and there is not a particle of evidence in this case to show that in any of the stages of its production it was ever brought to the knowledge of Mr. Moulton that he did not condemn it. And now, what is offered, Sir? With this perfect disintegration of these two parties, with this perfect independence of action upon the part of Tilton in regard to this publication, with this express and emphatic discountenance on the part of Moulton in this publication, *they* ask to prove the declaration of Mr. Moulton as against Mr. Tilton for the purpose of concluding *his* rights, for the purpose of imputing a motive to *his* action, and enabling the counsel to relieve themselves from the consequences of the arrangement, so far as it was made, and was carried out, for a specific purpose, as between these three parties. And now, Sir, upon what principle are the declarations of Mr. Moulton, under these circumstances, to be received against Mr. Tilton? The arrangement, the connection, the league between the parties in regard to this particular act, being dissolved, there being this discountenance on the part of Moulton, and this hostility of purpose, of policy, as between Tilton and Moulton, by what principle shall Tilton be concluded by inimical, adverse declarations of Mr. Moulton in regard to that act? I submit, if your Honor please, that there is no justice or principle in the admission of such evidence; and it is a very grave question, Sir, whether the great interests of a party in a litigation are to be thus assailed and destroyed by the declaration of an antagonist party in regard to the particular event about which the inquiry is made.

Mr. Evarts—Mr. Moulton an antagonist party?

Mr. Beach—Mr. Moulton in regard to that transaction was an antagonist party.

Mr. Pryor—Yes, Sir.

Mr. Beach—And, although in regard to other matters, Sir, in matters of friendship and amity, and coöperation in regard to this scandal, there may have been friendly intimacy, yet that by no means justifies the declarations of Moulton, made in the absence of Mr. Tilton. There must be some closer, more intimate legal connection between the parties to justify those declarations; and your Honor is asked, under these circumstances, to permit the declarations of Mr. Moulton, even without an inquiry from him in regard to them, to be produced in hostility to Mr. Tilton. I submit to your Honor that there is no principle of evidence, so far as I can perceive, and no sentiment of justice, in the admission of such declarations. We are to be judged, Sir, by legal evidence, by our own acts, and by our own declarations; and no man, unless authorized by us, speaking in our interest and by our authentication, can confess or declare away our rights. If these declarations may be given in this instance, there is no conceivable instance where parties may have been connected in relation to any matter in litigation, where these outside declarations of strangers in legal interest may not be received to corrupt a righteous and a just cause of action.

Judge Neilson—I have already intimated that it is very clear to me that the examination of this witness must be confined to contradictions of any statements which it appears that Mr. Moulton made when under examination. That is the extent to which you can go with this witness. If Mr. Moulton has said anything, you are at liberty to contradict it by this witness.

Mr. Evarts—Your Honor has our offer, and overrules it, as I understand?

Judge Neilson—Yes.

Mr. Evarts—And we except. That is all I have to ask of this witness.

Mr. Beach—No questions.

CONCLUSION OF MR. PARTRIDGE'S TESTIMONY.

Judge Neilson—That is all, Mr. Partridge.

Mr. Evarts—One moment, Mr. Partridge. There is one question. Mr. Partridge, do you remember making an entry of this $5,000 in the book and receiving any——

Mr. Beach—What $5,000?

Mr. Evarts—$7,000. [Consulting with Mr. Shearman.] I am wrong. Do you remember the payment into the firm's account of the $5,000 that came from Mr. Beecher? A. I do, Sir.

Q. You knew at the time that it came from Mr. Beecher, did you? A. No, Sir; I didn't know who it came from.

Q. Well, you remember a $5,000? A. Yes, Sir; it was in May; I think in May—the early part of May; the 2d of May, I think, 1873.

Q. Very well; there is no dispute; the facts are all proven. Now, Mr. Partridge, did you make an entry in the books of the firm, under Mr. Moulton's direction, respecting that $5,000? A. I must have made it under his direction, because——

Mr. Beach—Wait! wait!

Mr. Morris—That is a matter of reasoning.

Mr. Beach—I move to strike that out, Sir.

Judge Neilson—Yes.

The Witness—I credited it to Mr. Moulton.

Mr. Evarts—Yes.

The Witness—I cannot remember the precise language that he used in giving the direction.

Q. That is not necessary. A. But I know I did that by his direction.

Q. You entered it to his credit? A. To his credit.

Q. By Mr. Moulton's direction? A. There were $5,300, if I recollect right, that I entered. The $300 was a check that I had made for him a good while before, and I suggested—he didn't want to use it then, and I had kept the check, and I destroyed the check at that time, and put it to his credit.

Q. That is—— A. Making $5,300.

Q. That is, that $5,000 and this $300—— A. All were together.

Q. Which you had charged him? A. It had been credited to him.

Q. And that was by his direction? A. The $300—I suggested that myself.

Q. Well, it came from him? A. Yes, Sir; he authorized me to do that.

Q. When the money which thus went into Mr. Moulton's account, this $5,000, was paid out, did you receive instructions as to—to whom it should be charged? A. He told me the next day to make a check for $1,000 and charge it to him as "Paid T. T."

Q. And so afterward for other payments? A. And afterward "T. T."

Q. Yes, for other payments. Very well. That is all.

Mr. Morris—That is all.

Mr. Evarts—Our next witness is Mr. Cleveland, if your Honor please, and perhaps he might be sworn, but we really have no other time than that.

Judge Neilson—There will be no object in that unless you think you can proceed with him. Do you prefer not to proceed to-day, Sir?

Mr. Evarts—I suppose not.

Mr. Beach [to Mr. Evarts]—Do you want to work any longer?

Mr. Evarts—I don't. The jury say they don't want to stay. Mr. Cleveland would rather prefer it, but the jury do not.

Judge Neilson—Gentlemen please keep their seats until the jury retire. Get ready to retire. To-morrow morning at 11, gentlemen.

The Court then adjourned until Thursday morning at 11 o'clock.

SEVENTIETH DAY'S PROCEEDINGS.

THREE NEW WITNESSES.

TESTIMONY OF H. O. ARMOUR, HENRY M. CLEVELAND, AND JAMES L. LITTLE, M. D.—MR. MOULTON'S ALLEGED THREATS AGAINST A WITNESS—ANOTHER LINK IN THE ALIBI CHAIN—MR. BEECHER AND MR. CLEVELAND TOGETHER BETWEEN ELEVEN AND TWELVE O'CLOCK ON THE MORNING OF JUNE 2, 1873—A PROTRACTED CROSS-EXAMINATION.

THURSDAY, April 22, 1875.

H. O. Armour, a produce merchant of New-York; Henry M. Cleveland, a member of the Investigating Committee, and James L. Little, M. D., of New-York, were examined to-day. Harmon O. Armour, an old gentleman with very firm-set features, stated that he had resided in Brooklyn and done business at No. 129 Broad-st., New-York, as a produce merchant, for the last 10 years. He had known Mr. Moulton in a business way for 8 or 10 years. Last November he had conversed with Mr. Moulton in reference to this suit. In the course of the conversation, which related to the papers in this case, he told Mr. Moulton that he would not believe him under oath, and Mr. Moulton replied that he would "make it hotter than h—l for him, or anybody else that testified against him." Mr. Moulton, on his cross-examination, had testified that he had never threatened any person who might testify in behalf of the defendant; that he had not threatened to crush Mr. Armour if the latter should testify against him, and that he did not think he had had any conversation with Mr. Armour about his testimony. The plaintiff's counsel moved to strike out Mr. Armour's testimony. Judge Neilson ruled out any additional testimony, but allowed his statement about what Mr. Moulton had told him to stand. Mr. Evarts excepted to the first ruling of the Court, and the witness was dismissed without being cross-examined.

Henry M. Cleveland, having sufficiently recovered from his illness to be able to take the stand, was the second witness. He looked quite emaciated and was very nervous. He carried a cane, upon which he leant while sitting in the witness chair, and several times drank from a small bottle of medicine placed near him. Several times, when closely pressed with questions on the cross-examination, his nervous prostration became painfully apparent; he pressed his hand to his brow, and was only able to answer by a strong effort of the will. The direct examination was conducted by Mr. Shearman.

Mr. Cleveland stated that he was now connected with the paper firm of H. C. Hurlbut & Co. of No 13 Beekman-st., New-York. His business connection with *The Christian Union* and Mr. Beecher ceased after Jan. 1, 1874. He had known Mr. Tilton 10 or 12 years, and Mr. Beecher 15 years. He became a member of Plymouth Church in 1860. He was intimately acquainted with Mr. Beecher. The main element of Mr. Cleveland's testimony was a direct contradiction of the alleged interview between Mrs. Moulton and Mr. Beecher on June 2, 1873. He swore that on that day he had an interview with Mr. Beecher between 11 and 12 o'clock in the morning at *The Christian Union* office in New-York, and that Mr. Beecher directed him to address letters to him in care of Bigelow & Kennard in Boston. The same afternoon on returning to Brooklyn he purchased an *Eagle* containing Mr. Beecher's card of that date. He did not see Mr. Beecher again until the next week at the Friday evening prayer-meeting. The Rev. W. H. H. Murray of Boston preached in Plymouth Church on the Sunday following June 2, and Mr. Beecher was not present.

The cross-examination of Mr. Cleveland was conducted in a very deliberate manner by Mr. Morris. Mr. Morris held in his hands a copy of the testimony of Mr. Cleveland taken several days ago at his house in anticipation of his being unable to attend as a witness in court. The witness was questioned very closely about his knowledge of the tripartite covenant. He said that he told Mr. Carpenter, when, at Mr. Beecher's request, he took him to a conference with Mr. Bowen in relation to the scandals current in 1873, that if stories affecting Mr. Beecher's moral character were circulated the tripartite covenant would be published. The circumstances of Mr. Cleveland's taking the covenant to a newspaper office on May 29, 1873, were exhaustively considered. The names of the persons spoken of as members of the Investigating Committee in 1874 were stated and restated by the witness, who had great difficulty in recollecting them all. Mr. Cleveland testified positively that prior to the afternoon of June 26, when he was named as a member of the Committee, Mr. Beecher had not addressed him with reference to the subject of the investigation. On that afternoon he did speak to him about it. The work of the Investigating Committee was also a subject of inquiry, Mr. Morris

saying that he proposed to show that there was a conspiracy to induce Mrs. Tilton to leave her home.

In reference to Mr. Cleveland's visit to Boston in the Fall of 1874 some new facts were brought out. It appeared that he had carried with him a document signed by Mr. Beecher giving him full authority to hear and determine in his behalf all matters whatsoever relating to the scandals about Mr. Beecher. This document was introduced in evidence by Mr. Morris. Mr. Cleveland said it was his credentials to Mr. Redpath of Boston to hear anything that he might have to say about the scandal. Some telegrams, part of them in Latin, relating to this visit of Mr. Cleveland to Boston as Mr. Beecher's agent, were introduced but not identified, as Mr. Cleveland was taken from the stand a few minutes before the hour of adjournment in order to allow the defense to introduce another witness—James L. Little, a physician, of No. 266 West Forty-second-st., New-York. The substance of his testimony was that he had seen Theodore Tilton riding in a carriage in a Communistic procession in New-York; with a lady who was pointed out to him as Miss Claflin. Mrs. Woodhull walked ahead of the carriage carrying a flag.

THE PROCEEDINGS—VERBATIM.

The Court met at 11 a. m., pursuant to adournment.

TESTIMONY OF HERMAN O. ARMOUR.

Herman O. Armour, a witness, called and sworn on behalf of the defendant, testified as follows:

Mr. Evarts—Mr. Armour, where do you reside? A. In this city.

Q. And where do you carry on business? A. In New-York.

Q. What place? A. Do you want my entire business?

Q. No, I don't want anything except your place of business. A. 129 Broad-st.

Q. What line of business are you in? A. I am a merchant.

Q. In any particular line? A. Well, I am a packer of beef and pork in the Western country.

Q. Connected with the produce trade? A. I am a packer of beef and pork in the Western country; that is my main business.

Q. And how long have you been a resident here, and how long in business in New-York? A. About ten years.

Q. Do you know Mr. Francis D. Moulton? A. I do.

Q. How long have you known him? A. From eight to ten years.

Q. In the way of business or personal intercourse, or both? A. In the way of business.

Q. Have you in that time become acquainted with him? A. Somewhat.

Q. Now, Sir, do you remember the fact of the publication of what is called the Woodhull scandal? A. Yes, Sir.

Q. Did you have a conversation with Mr. Moulton about last November? A. Yes, Sir.

Q. In reference to this subject, or this suit? A. Yes, Sir.

Q. What was that conversation? A. I don't know that I could relate it in whole.

Q. Give the substance of what you can narrate? A. Mr. Moulton met me as I was going into my dinner, wanting me to go to his house to examine the papers that he had in this suit.

Mr. Morris—One moment. Mr. Evarts, what do you refer to?

Mr. Evarts—Page 281 of the pamphlet. Do you wish us to wait?

Mr. Pryor—Yes, Sir.

[Plaintiff's counsel having examined the testimony of Mr. Moulton, Mr. Evarts proceeded.]

Q. You say he wanted you to look at some papers. A. He wanted me to go with him to his residence and examine the papers in this case, to show me that he was right in his general position.

Q. Very well; now what passed between you? A. Well, I declined to go, and he insisted upon bringing the papers to my house to show me what there was of the case, and I declined then, and said I didn't know and didn't care anything about it.

Q. Well, what came along in the conversation—what did you finally come to? A. Well, he kept pressing the point of my examining the papers to such an extent that finally I told him I wouldn't believe him under oath.

Q. What did he then say to you? A. He said he would make it hotter than hell for me, or anybody else that testified against him.

Mr. Morris—One moment.

Mr. Evarts—Did you have some further remarks? A. He asked me if I thought that he had blackmailed Mr. Beecher; and I told him no, nor nobody else that knew him thought so, but that I thought he had got money out of Beecher for Mr. Tilton.

Q. What did he say to that? A. Well, I could not say what his reply was.

Q. Was there any reply as to what the Produce Exchange—— A. Yes, he asked me about the opinions of people there.

Q. Opinions of the Produce Exchange people? A. Yes, Sir.

Q. What did you tell him about it?

Mr. Beach—There was no inquiry of Mr. Moulton, Sir, in regard to declarations of this character.

Mr. Evarts—This last?

Mr. Beach—Yes, or the other.

Mr. Morris—The other, too—all.

Mr. Evarts—Threats "hotter than hell" and "threats" are the same.

Mr. Beach—Oh, no.

Judge Neilson—I think counsel will have to turn to Mr. Moulton's examination to observe what he said.

Mr. Evarts—Yes, Sir, we have it; we have looked at it.

Mr. Morris—We have looked at it too, and there is no foundation for the testimony that they have given already.

Judge Neilson—It is understood now that the inquiry will be directed to what Mr. Moulton may have said on being interrogated.

Mr. Evarts—He denied having any conversation.

Mr. Morris—No, no; you are mistaken.

Mr. Evarts—"Have you had any conversation with him about his being a witness on this trial?"

Mr. Shearman—"On the subject of his testimony."

Mr. Evarts—"On the subject of his testimony." Well, Sir, I will ask the question, and if my friends think it transcends the rule, they will raise the objection, I suppose. [To the witness.] Did he, in this conversation, ask you anything as to what the opinion of the Produce Exchange in regard to him and in regard to his position in the matter was?

Mr. Morris—Objected to.

The Witness—He did.

Mr. Morris—Don't answer; we object to it.

Mr. Evarts—He answers to the fact that there was a conversation. He says there was a conversation. Now, I offer to give what passed between Mr. Moulton and this witness on that subject.

Judge Neilson—You can give that if Mr. Moulton has been interrogated. I don't think he was.

Mr. Evarts—He has had the general interrogation as to whether he had a conversation with this gentleman, which he substantially ignores.

Mr. Beach—Well, this is the evidence, if your Honor please, and all of it, as I understand. [Reading.]

Mr. Tracy—Have you ever threatened persons with danger to themselves if they should testify on behalf of the defendant? A. No, I have not threatened persons if they should testify on behalf of the defendant.

Q. Have you threatened any person? A. No, I have not threatened any person.

Q. Did you threaten Mr. Armour that you would crush him if he should testify against you on this trial? A. No, I did not threaten Mr. Armour that I would crush him.

Q. Do you know him? A. Yes; he is not the man to be crushed easily.

Q. Have you had any conversation with him on the subject of his testimony? A. I don't recollect having any conversation with him on the subject of his testimony. I had a conversation with him in regard to an interview that purported to come from him in the paper.

Q. Yes; did you state to him that you would crush him? A. No.

Q. Did you ever threaten to crush him for anything? A. No.

Q. Did you have any talk with him about his being a witness on this trial? A. I don't think I said anything to him about his being a witness; no, I don't think I did; he is not a man I would use such language to, Mr. Tracy."

Nothing said about the Produce Exchange, Sir, or the opinions of the Produce Exchange.

Mr. Morris—Now, having read that, I move that the testimony that he has given be stricken out.

Mr. Evarts—Let us dispose of this present question.

Judge Neilson—I think you cannot give it.

Mr. Morris—I move that it be stricken out.

Judge Neilson—A part of what has been received would be proper.

Mr. Evarts—It has not been objected to, is one reason.

Mr. Pryor—Well, we didn't know.

Mr. Evarts—I think making it "hotter than hell" is the same thing.

Judge Neilson—No, I don't know whether it is the same thing or not; that will stand, however, in the sense that it reaches some portion of what Mr. Moulton said, and agrees with his statement as to other portions.

Mr. Evarts—I admit that this present question is somewhat different from that which is past, and which, I suppose, is correctly admitted.

Mr. Morris—Does your Honor allow the evidence to stand, the expression that this witness has said Mr. Moulton made to him, when your Honor sees now there is no foundation whatever laid for it?

Judge Neilson—A part of it.

Mr. Morris—There is no foundation whatever laid for the testimony that has already been given on that subject, not a particle of evidence; not interrogated upon the point at all; wholly improper, I submit, and ought to be stricken out.

Mr. Evarts—Well, we won't have two questions up at once. We are now talking about the further testimony. Your Honor excludes this?

Judge Neilson—Yes, Sir.

Mr. Evarts—Be so good as to note our exception.

Mr. Beach—The point, Sir, of the motion to strike out is——

Mr. Evarts—Well, I am going to ask him.

Mr. Morris—We want to dispose of the other.

Mr. Beach—The point, if I understand it, is that Mr. Moulton was asked, upon the stand, whether he threatened to crush any one who should testify on behalf of the defendant. The evidence of this witness is that Mr. Moulton told him—after asking him whether he believed that he was a blackmailer, &c.—told him that any one who testified against him (Moulton) he would make it "hotter than hell" for. There is no relation whatever to any person who was a witness on behalf of the defendant.

Mr. Morris—He means that if they testified that he was

blackamailer. It is evident what that meant—the remark of Mr. Moulton.

Mr. Beach—I do not conceive it to be of any importance.

Mr. Evarts—Well, there is no motion to strike out.

Mr. Beach—Why, yes, there is a motion.

Judge Neilson—I think I will let it stand, gentlemen. In part it agrees with Mr. Moulton, and in part it departs from and goes beyond it.

Mr. Pryor—Your Honor will please observe that Mr. Moulton never denied having made the statement now imputed to him. Now it is a fundamental principle——

Judge Neilson—He denied making quite other and different statements.

Mr. Prior—Exactly. *Non constat*, but he would admit making this statement if questioned in regard to it. Now then, by admitting this testimony, you put Mr. Moulton in the position before the jury of having made a false statement.

Judge Neilson—No.

Mr. Pryor—They will claim it is relevant and admissible. If it be the declaration of a third party out of court it is not competent evidence against this plaintiff. It can be made competent only as a declaration out of court contradictory to something he has deposed to in court. Now, then, it does not contradict anything that he has said in court; it is wholly an independent and unconnected declaration, if declaration it be, with anything that he has testified to in court, and it puts Mr. Moulton in a false position, I respectfully submit to your Honor. We don't object to our learned friends calling Mr. Moulton again and asking him if he said that thing now. We wil raise no objection to that. Then, if he denies having said it, they may ask Mr. Armour, the witness on the stand, if he did. But as it stands it plainly places Mr. Moulton in a false and embarrassing position before the jury.

Judge Neilson—I will let it stand, gentlemen.

Mr. Evarts—At the conclusion of this conversation was anything said by Mr. Moulton as to what you would advise him to do? A. Yes, Sir.

Mr. Beach—That I object to.

Mr. Evarts—Well, let us hear if there was; then I will ask what that was.

Judge Neilson—Well, was Mr. Moulton interrogated on that subject? You ought to take the book.

Mr. Beach—No, Sir.

Mr. Evarts—I don't think he was precisely on this point. It comes under the general proposition about his having had conversations with people.

Mr. Beach—Mr. Moulton admitted a conversation.

Judge Neilson—Well, is that all with this witness.

Mr. Evarts—That is all.

EXAMINATION OF HENRY M. CLEVELAND.

Henry M. Cleveland was then called by the defendant and sworn.

Judge Neilson—I am glad to see you are in better health.

The Witness—I thank you, Judge.

Judge Neilson—Gentlemen, couldn't you allow to be read what Mr. Cleveland has already testified to, and then supplement it on either side?

Mr. Shearman—I take it, your Honor, that we shall make the examination even shorter than by doing so. We propose to make it very short on account of Mr. Cleveland's health. [To the witness.] Mr. Cleveland, where do you reside? A. My legal residence is in Brooklyn, Conn.; I spend my time in New-York in business.

Q. Do you board in Brooklyn? A. I board in Brooklyn in the Summer.

Q. Where do you carry on business? A. No. 13 Beekman-st., New-York.

Q. And are you a partner with any one? A. H. C. Hulbert & Co.

Q. What business? A. Paper manufacturers and importers.

Q. How long have you been in partnership with them? A. Since the 1st of January, 1874.

Q. Previous to the 1st of January, 1874, how were you engaged? A. I was two years business manager of *The Christian Union*.

Q. Did you terminate your entire connection as manager of *The Christian Union* on the 1st of January, 1874? A. I did.

Q. Since that time what business relations, directly or indirectly, have you had with Mr. Beecher? A. None whatever.

Q. What relations have you had with *The Christian Union*? A. None whatever.

Q. Are you not the owner of some stock? A. One share of stock.

Q. There are a hundred shares, I believe? A. 250, Sir.

Q. How long have you known the plaintiff and defendant in this case respectively? A. I have known Mr. Tilton ten or twelve years; I have known Mr. Beecher fifteen years.

Q. I ought to ask you how long have you been a resident of Connecticut before coming to New-York? A. Connecticut is my native State, Sir.

Q. Resided there all your life? A. Yes, Sir.

Q. Did you occupy any public position in Connecticut part of that time? A. I was in the Legislature one session, 1867; the next year I was elected to the State Board of Education and served four years, term expiring in 1871-1872.

Q. You are a member of Plymouth Church? A. I am.

Q. How long have you been a member? A. Since 1860.

Q. Do you recollect any incidents which occurred on

the second day—on Monday, the second day of June, 1873? A. I do.

Q. Will you state where you were on that day? A. At my office in *The Christian Union*.

Q. Do you recollect seeing Henry Ward Beecher on that day? A. I do.

Q. Where did you see him? A. At my office.

Q. About what time of day? A. Between 11 and 12 o'clock.

Q. How long an interview did you have with him? A. I should say from 30 to 40 minutes.

Q. Did you have much conversation with him? A. I did.

Q. Can you recollect on that day whether he gave you any directions as to addressing letters to him? A. He did.

Q. What directions did he give you about his letters?

Mr. Beach—That is objected to.

Judge Neilson—We will take it, regarding it as a mere act.

Q. What directions did he give you about his letters? A. He requested me to send his—all his mail matter to the care of Bigelow & Kennard, in Boston.

Q. Now, Sir, do you recollect going over to Brooklyn in the afternoon of that day? A. I do, Sir.

Q. Do you recollect purchasing a newspaper that afternoon? A. I do.

Q. What newspaper was it? A. *The Brooklyn Eagle.*

Q. Did you cut a piece out of that paper that day? A. I did.

Q. And what did you do with it? A. I sent it to Connecticut.

Q. Look at this slip which I now give you and say whether that is the identical slip which you cut from the paper which you purchased on that 2d day of June, 1873? A. It is, Sir; that is my mark at the time.

Mr. Shearman—I offer this in evidence. It is a paper that is already in evidence, but I offer it simply for the purpose of fixing the date and identifying the transaction; it is the same article that is already in evidence.

Judge Neilson—Well, you may refer to it as the paper numbered by a certain number to identify it. What was the number when it was put in?

A NEWSPAPER IN EVIDENCE.

Mr. Shearman—The whole thing is in evidence—the whole newspaper.

Mr. Beach—Oh, no.

Mr. Shearman—It is not perhaps necessary to put this identical piece in if we can come to some agreement about it. If it is agreed that this slip is identical with the paper already in evidence of June 2, 1873 (Exhibit D, 130), it is not necessary to put this piece in.

Mr. Morris—The card is in evidence, of June 2; that is all.

Mr. Beach—Why, Sir, there is a very great misunderstanding between the gentleman and ourselves. He contends that the whole newspaper containing this card is in evidence in this case as legitimate evidence. Certainly we have no such understanding. The newspaper containing the card was offered in evidence for the purpose of showing what the card itself proved.

Mr. Shearman—No, no; a great deal more than that, your Honor; it was given in evidence for the purpose of showing the time when that particular newspaper was published, because that was the 2 o'clock edition, and it was not the 4 o'clock edition; the whole newspaper was put in evidence.

Mr. Beach—Certainly, Sir; but the whole newspaper was not put in evidence for the purpose of carrying the whole contents of the newspaper in evidence.

Judge Neilson—Oh, no, Sir, *The Eagle* is wont to contain a good deal that would not be received as evidence.

Mr. Shearman—We should not read the advertising matter.

Mr. Beach—Nor the editorial neither. The gentleman shall not, unless your Honor so rules, read the article which contains this card in evidence. That has never been offered in evidence except through the medium of the general newspaper, which was received for the purpose of identifying the card and the time of its publication.

Judge Neilson—Well, this, then, is the same paper that was identified by a certain number, and if that is put down now, that will answer the purpose.

Mr. Beach—I presume that is so, if Mr. Shearman says so.

Mr. Morris—That is so, and the evidence upon that point stands; the card was in evidence which was published in the paper of that day, your Honor; it was published at 2 o'clock; that is in evidence.

Mr. Shearman—I do not wish to be understood as acceding to that proposition, because I shall certainly claim that the whole of this article is in evidence.

Mr. Beach—The editorial comments of *The Eagle* in evidence?

Mr. Shearman—I shall certainly so claim. They are put in for the purpose of showing by the comments of the editorial article the time when this card was received.

Judge Neilson—That is proved by the date of the paper, and the fact that he bought it.

Mr. Shearman—Proved by the date of the paper, and by this article, which shows where it was incorporated and when it was received.

Mr. Beach—Well, we don't propose to be caught by any such trap as that. I understand the gentleman now to say that he insists upon the editorial portion of this paper, containing this card, to be in evidence and legitimately to be used by him, through the declarations of the editor in that article, to show at what time that card was published.

Judge Neilson—Well, we should not receive it as evi-

dence of the time of the publication, but that it is the same that this gentleman cut out—the date of the paper—that it was the same day, may be taken.

Mr. Beach—Certainly.

Judge Neilson—But the sentiments of the editor, as expressed in that editorial, we could not take.

Mr. Beach—Not the sentiments, the counsel says; the declarations, Sir.

Judge Neilson—Well, whatever. I have great confidence in *The Eagle*, but still we could not take the editorials.

Mr. Morris—Well, *we* haven't great confidence, if your Honor please.

Judge Neilson—We could not take the editorials, even if we had. Go on, Mr. Shearman; that is identified by the number.

Mr. Shearman—Of course, I don't offer in evidence this piece of paper for anything that it shows, but simply as an identification of the time. For that purpose it may as well be marked.

Mr. Beach—Well, I object to that.

Mr. Shearman—I shall not offer this in evidence, not even for the contents of the card, but simply have it marked for the purpose of showing the identity of the paper already in evidence.

Judge Neilson—Yes—the question being the question of time.

Mr. Shearman—That is all. As far as this slip is concerned, I do not offer it for any other purpose.

Mr. Beach—This slip shows nothing in regard to the time, except the declaration is admitted in the editorial part of the slip.

Judge Neilson—Well, we don't take that but in connection with the declarations of the witness to fix the date.

Mr. Shearman—For that single purpose; I do not offer this for the purpose of showing a word that it contains, but to fix the time when Mr. Cleveland purchased it, by comparing it with another paper.

Judge Neilson—Then it comes to this; it is the same as though Mr. Cleveland referred to any other incident or thing occurring that afternoon.

Mr. Shearman—Certainly; this is all I offer this present statement for.

Mr. Beach—In the handwriting of the witness, as he says, there is an indorsement on this slip—"June 2, 1873." There is a card in it signed "Henry Ward Beecher." So far as those two items of proof are concerned, we do not object to this article. We object to the remainder of it.

Judge Neilson—Well, I think that will do.

Mr. Shearman—As far as this is concerned. This will be marked——

Mr. Morris—Hadn't we better have the whole question definitely settled now? The counsel says so far as this particular paper is concerned; that is all they claim now. Now, is it understood that that editorial is in evidence?

Judge Neilson—No, Sir.

Mr. Morris—The whole paper, they say, is in.

Judge Neilson—Well, neither is in except as it tends to show the time.

Mr. Beach—I hope your Honor will not permit the editorial part of that slip of paper to be marked, and put in evidence here so as to become a part of the record to be published as a portion of the evidence given in this case?

Judge Neilson—Certainly not.

Mr. Shearman—This particular slip is not to be used. As to the other matter, that is past, and there is no use discussing it while Mr. Cleveland is on the stand. I do not understand the Court to rule because the Court has not heard.

[Paper marked "Ex. D, 135."]

Mr. Shearman—Mr. Cleveland, can you say when you next saw Mr. Beecher after this Monday, the 2d of June, 1873? A. The next week, on Friday evening, the prayer-meeting.

Q. Did you spend all that week, beginning with the 2d of June, in Brooklyn—New-York and Brooklyn? A. I did.

Q. Were you in the habit at that time of seeing Mr. Beecher frequently and intimately? A. I saw him frequently.

Q. Were you on intimate terms with Mr. Beecher? A. I was.

Q. And you didn't, during that week beginning with the 2d of June, see him after that Monday, did you? A. I did not.

Q. Did you attend Plymouth Church on the Sunday following the 2d of June? A. I did.

Q. Can you tell who preached there on that day? A. Rev. William H. H. Murray of Boston.

Q. And Mr. Beecher was not in the church at all? A. He was not, to my knowledge.

Q. Did you address any papers or letters to the care—for Mr. Beecher—to the care of Bigelow & Kennard, during that week? A. I did.

Q. Where was *The Christian Union* office at that time? A. No. 27 Park-place, New-York City.

Q. Corner of Church-st.? A. Corner of Church-st.

Q. Where did Mr. Beecher reside at that time? A. No. 124 Columbia Hights.

Q. Brooklyn? A. Brooklyn.

Q. Do you recollect the publication of the card signed by Mr. Beecher on the 30th of June, 1873? A. I do.

Q. Did you have any interview with Mr. Beecher with respect to that card prior to its publication? A. I did.

Q. Where did that interview occur? A. In the house of Moses S. Beach, Columbia Hights, No. 90—I forget the number.

Q. Columbia Hights, Brooklyn, No. 96. When did that interview occur? A. On the morning of the 25th of June

Q. Do you know who suggested the preparation of a card like that to Mr. Beecher at that time? A. I know that I did.

Q. About what time in the day was that? A. About 9½ o'clock in the morning.

Q. Of the 25th of June, 1873? A. Of the 25th of June, 1873.

Q. As you went out of the house, what did Mr. Beecher do after you made that suggestion? A. Went into Mr. Beecher's library.

Q. As you went out of the house, did you meet any person? A. I did.

Q. Who was it? A. Edward L. Ford of J. B. Ford & Co.

Q. Was he going into Mr. Beecher's house? A. He was.

Mr. Shearman—That is all.

MR. CLEVELAND'S CROSS-EXAMINATION.

Cross-examination by Mr. Morris.

Q. Mr. Cleveland, you were examined at your house a week or two ago in this case, were you not? A. Partially, yes, Sir.

Q. What? A. I was.

Q. Well, you were wholly examined so far as the direct examination was concerned, were you not? A. I suppose I was, Sir.

Q. The counsel for the defendant had completed their examination, and the cross-examination was commenced? A. As I understood it, Sir.

Q. Now, your attention was called at that time, was it not, to the time of day that Mr. Beecher called at the office of *The Christian Union*, and what did you state? A. That he called between 11 and 12; that my interview with him was between 11 and 12 o'clock.

Q. And did you state it in your testimony there as you have here? A. I think I did.

Q. Have you, since you gave your testimony there read it over? A. I have not.

Q. Has it been read over to you? A. It has not.

Q. Now, are you quite sure that you have given that interview, or the time that you saw Mr. Beecher, there as you have given it to-day? A. I am.

HIS INTERVIEW WITH MR. BEECHER ON JUNE 2, 1873.

Q. Now let me read this question to you and see if this question was asked and the answer following was given by you? [Reading]:

Q. Please state the time of day when he came and when he left, as nearly as you can? A. I should say that the interview that we had on that day was between 11 and 12 o'clock in the morning.

Did you make that answer to the question that I have read in just the precise language that I have read it? A. I cannot recollect that, Sir.

Q. I will read it again.

Q. Please state the time of day when he came and when he left, as nearly as you can?

Now, did you not make this answer to that question in the precise words I read:

A. I should say that the interview that we had on that day was between 11 and 12 o'clock in the morning.

Did you not make that precise answer? A. I will accept that answer; I do not recollect whether I made it.

Mr. Beach—He says he will accept it.

Q. Very well. Now, Mr. Cleveland, how long, about, does it take to go from Mr. Beecher's house to the office of *The Christian Union*, where it was at that time? A. That depends entirely upon the boats—from 20 to 40 minutes.

Q. Now, you were questioned by counsel with reference to that, were you not? A. I was.

Q. And how did you state the time then? A. I said 20 minutes, more or less—less or more—depending upon the boats, I think.

Q. How do you state it now? A. I say from 20 to 40 minutes, depending upon the boats.

Q. Well, did not you say from 15 to 20 minutes? A. I think I did not.

Q. Are you sure of that? A. If I did I desire to make the correction.

Q. Well, you had been frequently from Mr. Beecher's to *The Christian Union* office? A. I had.

Q. And was quite familiar with the time that it took? A. I never measured the time.

Q. In answer to the question put by the counsel as to how long would it take, did you not make this answer:

A. Well, I think, as an average time, you could go from his house to the office in 20 minutes—sometimes shorter?

A. If I said that, I desire to make the correction.

Mr. Beach—Read the question and answer.

Mr. Morris [reading]:

Q. Just describe the trip which you make to get from his house to his office. A. Well, I think, as an average time, you could go from his house to the office in 20 minutes—sometimes shorter and sometimes longer, depending on the boats.

A. If "shorter," I think it was a misreport.

Q. Do you mean to say that you did not give that answer, in those precise words that I have read? A. I mean to say that if I said 15 minutes, I desire to correct the answer.

Q. No. "Sometimes 20 minutes—sometimes shorter."

Mr. Shearman—He said so.

Q. Did you use that language? A. I don't recollect that I did.

Mr. Beach—Mr. Shearman says he did; if he wants to correct it now——

Mr. Shearman [to the witness]—You are not asked whether what you said then was correct, but what you said then.

The Witness—I desire merely to say that I meant to say then 20 minutes or longer, depending on the boats.

Q. You were asked also on that examination, with reference to the time you saw Mr. Beecher there, this question, were you not:

Q. I will ask you if you are absolutely certain that this interview which you mentioned occurred upon the 2d of June, between 11 and 12 o'clock?

Do you recollect that question being put to you. A. I do.

Q. And what was your answer? A. I do not recall it.

Q. "I think I am;" was that the answer made by you? A. I do not deny it.

Q. And that was all that was said by you in that examination upon the subject, wasn't it? A. I do not recall.

Q. Where were you residing at that time? A. At the Mansion House.

MR. BEECHER SENDS FOR MR. CARPENTER.

Q. Do you know Mr. Carpenter? A. I do.

Q; When did you make his acquaintance? A. On Sunday, the 25th of May, 1873.

Q. And where—— A. In the City of New-York.

Q. ——did you make his acquaintance? A. In the City of New-York.

Q. That was on a Sunday, I believe? A. That was on Sunday afternoon.

Q. And how came you to go to New-York to see him? A. I went at the request of Mr. Beecher.

Q. And how did you go? With what conveyance? A. With a horse and carriage.

Q. Whose? A. Mr. Beecher's.

Q. What time in the afternoon was that? A. Three or four o'clock that I left Brooklyn.

Q. Were you requested to bring Mr. Carpenter to Brooklyn, if you could find him? A. I was.

Q. And where were you to bring him? A. Mr. Moulton's.

Q. And did you take him to Mr. Moulton's? A. I did.

Q. And did you leave him there? A. I did not.

Q. Where did you leave him? A. I do not recollect; he left the carriage after we drove away from Mr. Moulton's—where, I cannot say.

Q. Do you know the object of Mr. Carpenter's being brought to Brooklyn on the 25th of May? A. I do.

Mr. Shearman—Wait a moment.

Mr. Morris—What was the purpose of bringing him here?

Mr. Shearman—Wait a moment; I object to that, your Honor, unless Mr. Beecher is connected with it; it appears not.

Mr. Morris—Oh, yes; Mr. Beecher sent for him.

Mr. Shearman—Well, that is what was the object, but whose object—Mr. Carpenter's object, or Mr. Cleveland's object, or Mr. Beecher's object?

Judge Neilson—That should appear.

Q. Did Mr. Beecher express to you any reason, state or give to you any reason, why he wanted Mr. Carpenter here? A. He did.

Q. And what was it? A. To have him come and see Mr. Bowen with some other gentlemen.

Q. And for what purpose did he want him to come and see Mr. Bowen?

Mr. Shearman—We object to that, of course. He should ask what Mr. Beecher expressed; that is the proper question.

Judge Neilson—I think that is implied in the question. "For what purpose did he want?" it implies that he said it.

Q. Now, answer the question, if you please?

The Witness—Will the stenographer please read the question?

The Tribune stenographer read the question as follows:

"And for what purpose did he want him to go and see Mr. Bowen?"

Mr. Shearman—I object to that. That does not identify Mr. Beecher with the purpose. The question is very easily modified, I suppose; but still, we should confine ourselves within the rule, for the witness would feel bound to answer——

Mr. Morris—Did Mr. Beecher state to you why he wanted Mr. Carpenter to see Mr. Bowen? A. He did.

Q. Why did he want him to see Mr. Bowen—for what purpose? A. In relation to stories that he had heard that Mr. Bowen was reporting, reviving.

Q. Give Mr. Beecher's language as near as you can. A. That is the substance, as near as I can give it.

Mr. Beach—When was this?

Mr. Morris—The 25th of May, 1873. [To the witness.] Now give Mr. Beecher's language—what he said upon that subject, as near as you can? A. That is as near as I can give it.

Q. Just repeat that again, if you please? Just repeat what Mr. Beecher said? A. That he desired Mr. Carpenter to go to Mr. Bowen's with some other gentlemen, to confer with him in regard to reports that he had heard from Mr. Bowen. That is the substance of it.

Q. With reference to Mr. Beecher? A. With reference to Mr. Beecher.

Q. Did he say what those reports were? A. He did not.

THE PUBLICATION OF THE "TRIPARTITE COVENANT."

Q. Was anything said about the covenant, the "Tripartite Covenant?" A. Nothing.

Q. Between you and Mr. Carpenter? A. Yes, Sir.

Q. What was said between you and Mr. Carpenter?

Mr. Shearman—I don't think that is competent, unless it is still further connected with Mr. Beecher.

Mr. Morris [to the witness]—On that subject?

Mr. Shearman—Mr. Beecher does not appear to have instructed Mr. Cleveland to have any conversation at all with Mr. Carpenter, or to do anything; certainly not

about the "Tripartite Covenant." So far as appears, he simply requested him to bring Mr. Carpenter over to see Mr. Bowen.

Mr. Morris—I propose to show that the purpose, which will appear, I think, in the examination of this witness—that he was sent over by Mr. Beecher to bring Mr. Carpenter here to go and see Mr. Bowen, in company with Mr. Claflin and Mr. Moulton, and that if Mr. Bowen still continued to repeat the stories, or adhered to them, then the Covenant was to be published; and that that was the object Mr. Beecher had in view in sending Mr. Cleveland over after Mr. Carpenter on that Sunday.

Mr. Shearman—Very well——

Mr. Morris—I submit that we have a right to show the object of Mr. Carpenter's being sent for, and the purpose of his interview with Mr. Bowen.

Judge Neilson—You have not laid a foundation for that—so far as that goes.

Mr. Morris—Does your Honor think that that is not a proper question?

Judge Neilson—I don't think you have laid the foundation for a conversation in regard to the "Tripartite Covenant."

Mr. Morris—I propose to show the fact that I have stated by this witness, and I can only show it by successive steps; I cannot show it by a single question.

Judge Neilson—Do you propose to connect it with Mr. Beecher?

Mr. Morris—Yes, Sir.

Judge Neilson—Very well; go on.

Mr. Morris—Now, Mr. Cleveland, what was said upon the subject of a publication of that Covenant between you and Mr. Carpenter at that time? A. I don't recall the words. My best recollection is that I said to Mr. Carpenter that if it should be true that Mr. Bowen was reviving the stories, the old stories that had been reported against Mr. Beecher, that then the Covenant would be published.

Q. Now, what stories were you referring to? A. Stories that had been settled by the Covenant.

Q. What were they? A. I do not recollect them, Sir.

Q. You had never heard what they were? A. I had heard in general terms—the scandal.

Q. What were they in general terms? A. The scandal.

Q. Which scandal? A. The whole scandal.

Q. What do you mean by the whole scandal? Was there more than one scandal? A. Well, that is simply the reports that had been circulated.

Q. Reports of what? A. Affecting the character of Mr. Beecher.

Q. In what respect? A. Any.

Q. And is that as definite as you can be on the subject? A. That is as definite as I can be.

Q. You have no idea as to any particular scandal that was included in that matter? A. I did not know at that time what the particulars of the scandal were.

Q. You had never heard? A. I had not.

Q. And you had no idea? A. I had no idea of the details.

Q. And you entered into conversation with Mr. Carpenter upon the scandals against Mr. Beecher without having any knowledge whatever of what the scandals consisted of? A. I knew that there had been a settlement by the Covenant, and that it had been violated by Mr. Bowen.

Q. What had been settled? A. All the matters between Mr.——

Q. What were all the matters?

Mr. Beach—Oh, let him finish. Between whom?

The Witness—Any matters of difference between Mr. Bowen and Mr. Tilton and Mr. Beecher, as I understood it.

Mr. Morris—What matters? A. That is all I can say.

Q. Do you mean to say now that you have no idea as to what the slanders were? A. I mean to say——

Mr. Evarts—That he has no idea now, or that he had at that conversation.

Mr. Morris—Well, had you at that conversation? I am talking about that period when you were conversing with Mr. Carpenter in reference to the scandals that had been settled by the Covenant; had you no idea then as to what the slanders were? A. I had not in detail.

Q. In general? A. I had not in general, except that they affected the character of Mr. Beecher.

Q. In what respect? A. His moral character.

Q. How? A. By being in——

Q. How was he involved—his moral character; how was it involved? A. As any man's would be who had slanders in circulation against him.

Q. I want to find out what those slanders were? A. I can't tell you.

Q. You had no idea at that time, when you were conversing about that? A. I had the idea that slanders were in circulation about Mr. Beecher.

Q. You had been acquainted with Mr. Beecher how many years? A. Fifteen.

Q. And had been on intimate terms with him, hadn't you? A. I had, for five.

Q. Very intimate terms? Had you not considered yourself so? A. I was on intimate terms with him.

Q. And a visitor at his house? A. I was.

Q. And you were then connected with the—you were the publisher of *The Christian Union*? A. I was.

Q. Of which paper Mr. Beecher was editor? A. He was one of them.

Q. And you used to come in contact with him very frequently? A. I did.

Q. And used to converse with him about matters? A. About matters, yes, Sir.

Q. Did you ever have any conversation with him in regard to any of these slanders? A. Not a word, in detail.

Q. In general? A. Not in general, except on one occasion.

Q. When was that? A. The 1st day of November, 1872.

Q. The 1st day of November? A. 1872.

Q. 1872. What scandals did you talk about then? A. The Woodhull publication.

Judge Neilson [to the witness]—Beyond that, you barely knew that Mr. Bowen was understood to have circulated some kind of scandal unfavorable to Mr. Beecher? A. I simply knew, Sir, that there were reports in the air affecting the moral character of Mr. Beecher——

Judge Neilson—And ascribed to Mr. Bowen?

The Witness—Ascribed to Mr. Bowen; and that in April, 1872, their matters were settled by that Covenant.

Judge Neilson—Well.

Mr. Morris—Then you were referring to the scandals that you understood that Mr. Bowen had circulated against Mr. Beecher? A. I do not understand your question.

Q. Then you were referring, in your conversation with Mr. Carpenter, to the scandals that you understood that Mr. Bowen had circulated against Mr. Beecher? A. That is what I referred to.

Q. And were the names of any ladies connected with that scandal—I do not ask for any names, but did you understand them as referring to Mr. Beecher's relations—immoral relations, with women? A. I did not.

Q. Then if they affected his moral character, in what respect did they affect it? A. I understood you to ask if they related to particular persons.

Q. No; my question was whether you understood that those scandals which Mr. Bowen had circulated related to Mr. Beecher's intercourse with women? A. They did.

Q. Immoral intercourse? A. They did.

Q. You were not present at that interview? A. I was not.

Q. The Covenant was published shortly after that, was it not? A. It was.

Q. On the 30th? A. On the 30th of May.

Q. Do you know what it was published from? A. It was published from manuscript in the hands of Sam Wilkeson.

Q. The scandals that Mr. Bowen had circulated against Mr. Beecher, I understand you to say, had never been the subject of conversation between you and Mr. Beecher prior to that time? A. They had not, at that time.

Q. They never had been referred to? A. Not except in general terms.

Q. Well, state how they were referred to in general terms? A. I understood from Mr. Beecher that Mr. Bowen had circulated false reports relating to his moral character.

Q. Was that all that was ever said upon the subject? A. That is all, in substance.

Q. Prior to the publication of that Covenant did you have an interview with Mr. Carpenter at the office of *The Christian Union*? A. Quite likely, Sir; I don't recall it.

Q. Do you recollect showing him a copy of the Covenant in manuscript, at the office of *The Christian Union*, on the 29th of May?

Mr. Shearman—I object to this, your Honor. I do not see that it has anything to do with Mr. Beecher.

Mr. Morris—We will see.

Judge Neilson—We might take that simple fact. I don't know that it has any——

Mr. Shearman—Very well.

The Witness—I do not recall that occurrence.

Q. Did you take the Covenant to a morning newspaper office for the purpose of having it published, on the evening of the 29th?

Mr. Shearman—I object to it.

Judge Neilson—We will take it. It shows the attitude of the witness.

Mr. Shearman—Oh, if it is for that purpose——

The Witness—I do not think I did, upon my latest and best recollection, *in the evening*.

Q. You were at a newspaper office? A. Not I think in the evening.

Q. Didn't you testify at your house that you went to a newspaper office in the evening in company with either Mr. Howard or Mr. Ford? A. I testified that possibly I did; I had a faint recollection of that.

Q. Didn't you testify positively that you did? I don't recollect that I testified positively that I did; my latest recollection is that I went to the office in the middle of the day on the 29th of May.

Q. Very well, you think it was about the middle of the day? A. Some time in the middle of the day.

Q. Before or after 12, do you think? A. I cannot recall.

Q. You cannot recall that fact? A. I cannot.

Q. Whom did you go with to the office at that time? A. I went alone.

Q. You went alone? A. I did.

Q. Was it in connection with the publication of the Covenant that you went? A. The publication of the Covenant was my occasion for going.

Q. Was it in connection with the publication of the Covenant that you went to that office? A. That was the occasion of my going.

Q. During the middle of the day?

Mr. Shearman—He says that was the occasion of his going.

Mr. Morris—Yes. [To the witness.] Did you take the Covenant with you then? A. I did.

Q. And did you deliver it to the editor for the purpose of publication? A. I did not, in that sense.

Q. Did you deliver it to him in any sense? A. I showed it to him—left it with him.

Q. You showed it to him and left it with him? A. I did.

Q. Why did you leave it with him? A. Because I wanted to make an explanation to him of his—in regard

to his misunderstanding of an allusion in one of Mr. Beecher's sermons to the disclosures about the Tweed Ring. I knew he was laboring under that misunderstanding, and I took that occasion to have an interview with the publisher.

Q. Was that subject explained in the Covenant? A. That subject was explained in the interview.

Q. Was the interview with the publisher? A. It was.

Q. And you left the Covenant with him for the purpose of explaining an illusion in one of Mr. Beecher's sermons concerning the Tweed Ring? A. I said to him that——

Q. No, no; answer the question. Was that the object of leaving it? A. The object of that—the interview—the object——

Mr. Morris—One moment.

The Witness—State your question.

Mr. Tracy—He has answered the question.

Mr. Morris—He has not. [To the witness.] Was or was not the object of leaving the Covenant with him that it might explain an allusion in one of Mr. Beecher's sermons concerning the Tweed Ring? Yes, or no.

Mr. Tracy—I submit that he is not obliged to answer yes or no.

Mr. Morris—He can explain afterward.

Judge Neilson [to the witness]—Give the best answer you can.

The Witness—I cannot answer by yes or no.

Mr. Morris—I submit that it is a very simple question.

Judge Neilson [to the witness]—Give the best answer you can, Sir?

Mr. Morris—One moment, your Honor. I submit that I am entitled to a correct answer.

Judge Neilson—You are entitled to an affirmative or a negative answer. The exact terms of the answer are for the witness.

Mr. Morris—That is all I ask. [To the witness.] Now, did you or did you not leave that Covenant with him in order that it might explain this allusion in Mr. Beecher's sermon to the Tweed Ring? A. Not in that sense at all.

Q. Very well, that answers it. Then why did you leave it with him? A. I made—I knew that the Covenant was going from Sam Wilkeson that night to all the New-York papers the next morning, and I knew a New-York paper was laboring under a misapprehension in regard to one of Mr. Beecher's sermons, in which he alluded to the Tweed Ring, and I went with that in my hand, to say to the publisher that——

Q. I don't care about that? A. I ask the chance to make an explanation.

Mr. Evarts—You asked him.

Mr. Morris—No, no, I am asking why he left the Covenant. I am not asking why he went to explain that to the publisher.

Mr. Evarts—The witness is giving an explanation. He is asked for his motive. Now, he has a right to give all his motives.

Judge Neilson [to the witness]—Without giving the conversation with the editor, you can say whether it was for that purpose of explaining.

The Witness—I made that the means of an interview with the publisher to make an explanation in regard to that sermon.

Judge Neilson—That is an answer.

Mr. Morris—Why did you leave the Covenant with that publisher? A. Because I wanted to say to him that now there would be a newspaper war, and we desired that Mr. Beecher should have unprejudiced treatment at the hands of the press.

Q. Ah, very well, but that does not yet answer my question; for what purpose did you leave the Covenant with that publisher? A. I did not *leave* the Covenant with him for any purpose. I took it with me as a means of communication with him.

Q. You took the Covenant as an excuse to have an interview with him; is that it? A. That's it exactly, Sir.

Q. Had you seen him before? A. I had seen him.

Q. Were you acquainted with him? A. I was not.

Q. Had you ever had any conversation with him? A. Never a word.

Q. And you thought you could not have this interview with him without taking the Covenant with you. How did you introduce that conversation? A. Oh, I don't recollect that.

Q. Now, was your sole object in taking that Covenant there the excuse that you wanted to have an interview with that publisher? A. The sole object.

Q. The sole object? A. The sole object.

Q. And when you got through with your interview you left the Covenant with him? A. I presume I did; I don't recollect taking it away; I think I did.

Q. Have you any doubt upon that subject? A. I don't recollect anything about it.

Q. Didn't you say a while ago that you left it with him? A. I think I did; but that was a matter of no kind of consequence at the close of the interview. All the papers had it the next morning, and would have had it without any regard to that publisher and myself.

Q. That is not the question. You had no idea when you left it there that it was going to be published? A. I knew it would be, whether I left it or took it.

Q. You knew it would be? A. I did.

Q. Now, Mr. Cleveland, didn't you testify at your house positively that you did not take that covenant to that publisher? A. I don't recollect that I did. If I did, I desire to correct it. I had no head then, and haven't more than half a one to-day.

Q. If you did so testify it was not correct? If I testified differently from my testimony to-day I desire to correct it.

Q. Did you see that publisher again that day? A. I don't think I did, Sir.

Q. Now, didn't you say to him, when you took him that covenant, that Mr. Beecher wanted it published? A. I did not.

Q. Your recollection—your head is perfectly good upon that point, is it? A. I think it is.

Q. Didn't you testify, Mr. Cleveland, that you went to the office of that publisher in the evening with Mr. Ford or Mr. Howard? A. I did not, positively.

Q. Didn't you state that the object of going to the office was to read the proofs? A. I testified that if I went that evening I unquestionably went with either Mr. Ford or Mr. Howard; but I did not testify that I did go, if my memory serves me now.

Q. Reflect upon that a moment, Mr. Cleveland. Did you not state that you went there in the evening with either one of those gentlemen, and that the purpose of going was to read the proof so that it might appear correctly in the paper the next morning? A. I testified that I had a partial recollection of going in the evening with one of the gentlemen named, who went to read the proof. I could not recollect distinctly that I did, and I wouldn't swear that I did not, nor I won't now.

Q. You have no present recollection upon that subject now, have you? A. I don't recall it.

Q. Didn't you say to Mr. Carpenter, on the 29th, that if he would look in the papers in the morning he would see the biggest sensation since the war? A. Possibly; I don't recall it.

Q. In the former examination at your house, did you say anything about going to the publisher for the reason that you wanted to explain to him the expression in Mr. Beecher's card concerning the New-York Ring? A. I don't think I did.

Q. Well, that was the circumstance or the visit to him that you recollect distinctly, is it? A. I did not testify at my house positively that I went to him that day.

Q. Well, you were asked, Mr. Cleveland, were you not, whether you went to his office with the Covenant, and did you not say that you did not? A. I don't think I did.

Mr. Morris—Very well.

The Witness—I may be mistaken.

Mr. Morris—Now, when you were asked about going to the office with the Covenant, which interview was most distinct in your mind—the one during the middle of the day when you went to explain that circumstance to him, or the one on the evening of which you have now but a shadowy recollection? A. Neither was distinct.

Q. Neither was distinct? A. Neither.

Q. Is either distinct now? A. Yes, Sir; perfectly.

Q. You have recalled it since? A. I have verified what I state.

CONVERSATIONS CONCERNING THE PUBLICATION.

Q. Do you recollect the interview that I have called your attention to at your house, with Mr. Carpenter—at your office, I should say? A. Of the 29th of May?

Q. The 29th. A. I can make no better recollection of that than when you were at my house.

Q. You recollect of Mr. Carpenter having an interview with you at your office? A. I don't recollect that.

Q. At no time? A. A great many times—scores of them.

Q. During the Spring of 1873? A. Not in the Spring, for I didn't see him until the 25th of May in my life.

Q. That is Spring, is it not? A. Very good; that is the first time I saw him.

Q. Now, following that, you met him at your office, did you not? A. I did.

Q. When did you next meet him at your office? A. I have no kind of idea.

Q. Do you recollect the subject of the interview? A. I do not.

Q. Or of any of the interviews? A. The subject of most of the interviews.

Q. What time of day did you see him at your office, after the 25th, when he came there? A. I have no recollection.

Q. You have seen him there a number of times? A. A great many.

Q. Can you state what hour of the day on either occasion? A. I cannot.

Q. Whether it was in the forenoon or in the afternoon? A. I have no recollection.

Q. See if you recollect giving this testimony at your house in answer to a question put by his Honor Judge Neilson:

On the occasion, just prior to the publication, that you went, what was the object of the visit—that is the visit to the office—and did you not make this answer, "My recollection of that is, that the gentlemen that I went with wanted to read proof and see that the publication of the Covenant the next morning was correct, that it accorded with the original document?"

A. I think I did.

Q. Is that true? A. It is true as my recollection was then and is to-day. If I went in the evening——

Q. Not if you went. A. I don't recollect that I went.

Q. Do you recollect it without the "ifs?" A. I don't recollect of going in the evening.

Q. You have forgotten since you testified at your house? A. If I swore positively that I went in the evening it was a mistake.

Mr. Shearman—You did not.

The Witness—I did not, I think.

Mr. Morris—It was a mistake.

Q. You were examined by Mr. Shearman and by Mr. Hill at considerable length, were you not, at your house? A. I was examined by them.

Q. At considerable length? A. I don't know——

Q. How long were you in giving your testimony in answer to questions by Mr. Hill and Mr. Shearman? A. An hour, possibly, or more; I don't recollect.

Q. An hour? A. I don't remember it at all. I attended the examination; that is all I recollect, and hardly that.

Q. You have not seen the examination since, have you? A. I have not, to read it.

Q. Forty-seven pages. Have you conversed with the counsel, or either of them, since you were examined at your house? A. I have.

Q. With reference to your testimony? A. Not in detail.

Q. With reference to your testimony? A. Not in detail.

Q. With reference to your testimony? A. Yes.

Q. Yes; and when did you have that conversation with them? A. I have had two or three.

Q. Two or three? A. The last was yesterday morning, I think.

Q. When was the first after your examination? A. I have been in the country until the last of last week.

Mr. Morris—That is not an answer to my question.

The Witness—I had no conversation with them until since I returned.

Q. When did you return? A. I returned on Thursday night of last week.

Q. Since that time how many times have you conversed with either of the counsel? A. I think four or five.

Q. Four or five times? A. Yes, Sir.

Q. And with reference to your testimony? A. With reference to my coming here.

Q. With reference to your testimony? A. Yes, Sir.

Q. With reference to the testimony you had given at your house? A. No, Sir.

Q. But as to the testimony you should give here? A. Yes, Sir.

Q. Did they state any reasons to you for omitting topics that they examined you upon at your house? A. They did.

INACCURACIES IN MR. CLEVELAND'S FORMER EXAMINATION.

Mr. Shearman—What is the reason of this?

Mr. Morris—The reasons will appear before I get through, very distinctly. There won't be any mistake about it.

Q. Well, was the hour of the day at which you saw Mr. Beecher the subject of conversation between you and your counsel? A. No, Sir.

Q. Now, let me read a little more, Mr. Cleveland, and see if this question was put to you:

Now, just reflect a moment. Did you not yourself take the Covenant in manuscript to that publisher on that night, and say to him that it was Mr. Beecher's wish that it be published?

Mr. Shearman—The answer.

Mr. Morris—The answer: "I did not." Did you make that answer to that question? A. Will you read the question again?

Q. Now, just reflect a moment. Did you not yourself take the Covenant in manuscript to that publisher on that night, and say to him that it was Mr. Beecher's wish that it be published? A. I did not.

A. I affirm it now.

Q. And it was technically correct because you had taken the Covenant in the afternoon or the middle of the day? A. I had.

Q. You didn't take it at night? A. I then believed I didn't.

Q. And when you made that answer did you recollect the fact that you had taken it in the middle of the day?

Mr. Shearman—I object to the question as put. I ought to have time to object to the question. As to whether that was technically correct, omitting a particular passage, I object to that form of question.

Mr. Morris—He answered it.

Mr. Porter—You interrupted him.

Mr. Shearman—He was going on with something more when you interrupted him.

Mr. Morris—He answered the question.

Judge Neilson [to the Witness.]—Do you wish to add anything more? A. Yes, Sir.

Judge Neilson—Then add what you wish.

The Witness [to Mr. Morris]—Will you put the question again?

Mr. Morris—I will put another question; I don't wish to put a question again that has been answered.

Mr. Shearman—The question is this: Wasn't it technically correct to say that you took that manuscript to the publisher and said to him that it was Mr. Beecher's wish that it be published. That is the substance of Mr. Morris's question.

Mr. Morris—No, it was whether it was technically correct, because he had taken it during the middle of the day and he answered that once.

The Witness [to Judge Neilson]—Your Honor, I desire to say that I never took the Covenant to the publisher with a request from Mr. Beecher to publish it. That is what I wish to say.

Q. You had positively testified prior to that that you didn't take the Covenant at all, had you not? A. I did not testify positively that I had not; if I did, I was mistaken, for I have since ascertained that I did take it to him.

Q. Well, did you recollect when I was asking you those questions that you had taken it during the day? A. I did not.

Q. The circumstance that you had taken it as an excuse to have an interview with the publisher concerning Mr. Beecher's sermon referring to the Ring had entirely escaped your recollection, had it? A. It had.

Q. Have you seen that publisher since? A. I have not.

Q. Do you know whether he has been seen upon the subject? A. I do not.

Q. Now, didn't the publisher object to publishing that Covenant? A. I don't recollect that he did.

Q. And didn't you say to him that it was Mr. Beecher's wish that it be published? A. I did not.

Q. Anything to that effect? A. I did not.

Q. Did you give this testimony in answer to the question that I will now read:

Q. Did you take with you and deliver to the publisher, on the night of the 29th of May, a copy of the Covenant for publication. A. I don't recollect that I did. My impression is that I went with Mr. Howard—John R. Howard—or E. L. Ford. He took it.

Q. Did you give that testimony? A. I presume so, if it is there; I will give it now.

Q. Do you state now positively that you had no conversation with the publisher in regard to the publication of that document? A. I state that I did have conversation with him in regard to the publication of that document.

Q. In the middle of the day? A. In the middle of the day, if that was the time I saw him; it was during that interview.

Q. In regard to publishing it? A. With regard to its publication.

Q. You didn't leave it for publication, did you? A. I did not leave it for publication.

Q. At that interview did the publisher make any objection to publishing it? A. I don't recollect that he did.

Q. Just reflect for a moment; did he not object to publishing it? A. I don't recollect that he did.

Q. And was not the object of the visit to the office in the evening for the purpose of inducing him to publish it? A. No, Sir.

Q. It was not? A. No, Sir.

Q. Well, if you went there with these gentlemen to read the proofs, did you see them that night? A. I don't know that I went there.

Q. Did you see any proofs there that night? A. I don't recollect that I did.

Q. Will you say that you did not? A. I will not.

Q. Will you say that you didn't say to that publisher that Mr. Beecher wanted the Covenant published? A. I will.

Mr. Shearman—We have had that about 14 times, your Honor, and I submit that we ought not to have it any more.

Mr. Morris—We will mark it 15 then, and stop.

Q. Have you any recollection of the conversation that occurred at the office in the evening? A. I have not.

Q. Do you recollect how long you were at the office? A. When?

Q. In the evening? A. I don't recollect being in the office.

Q. What is your present recollection upon that point? A. I have no distinct recollection about that evening. I have a partial recollection that I went over with one of the gentlemen named, but it is not distinct in my mind.

Q. Your recollection, then, upon that subject was more clear when you testified at the house than it now is?

Mr. Shearman—If your Honor please, this is about the twentieth time we have had this question brought up. I have tried to be patient thus far.

Mr. Morris—Don't lose your patience; don't weary in well doing.

Mr. Shearman—If the twentieth time would be the last time, I would not object. It seems likely to be asked 500 times.

Mr. Morris—No, I will limit it to the number you suggest.

Mr. Shearman—Limit it to 20 times and then I won't object.

Q. Was your recollection, when you testified at the house on that subject, clearer than it now is? A. I don't think it was, Sir.

Q. Well, then, what do you mean by this:

My recollection of that is, that the gentleman I went with went to read proof and see that the publication of the Covenant the next morning was correct—that it accorded with the original.

You have no such present recollection now? A. I testified, I think, that I had a partial recollection of going to the offices of the newspapers in the evening with one of the gentlemen named, who went to read proof.

Q. Have you that recollection now? A. I have an indistinct recollection now of going, but it is not clear in my mind.

Q. And that that was the purpose—to read proof? A. That was the purpose, if I went.

Q. You saw Mr. Beecher on the 25th of June? A. I did.

Q. In 1873? A. 1873.

Q. You saw him on the 26th of June, I believe, 1874, did you not? A. I did.

Q. Where did you see him on that day, first? A. I saw him at his house. First, I saw him on the horse-cars, going down Beekman-st.

Q. What time in the day was that? A. About 4 o'clock, I think.

Q. In the afternoon? A. In the afternoon.

Q. And what time did you see him after that at his house? A. Between 5 and 6.

Q. Did you go right over? A. I went over about 5 o'clock.

Q. Did you go to his house? A. I did.

Q. In consequence of any invitation? A. In consequence of an invitation.

Q. What is that? A. Yes, Sir; what I understood to be an invitation.

Q. In the afternoon of the 26th of June, Mr. Beecher suggested the names of certain gentlemen, did he not upon whom he meant to call to investigate the charges contained in the Bacon letter? A. He did.

Q. Did he name you as one of those persons? A. He did.

Q. You were asked that question when you were examined at your house, were you not? A. I don't remember.

Q. You don't remember that?

Mr. Shearman—Now, your Honor, I have submitted to a great many questions being asked in this indefinite way, but I now insist that the paper shall be shown to the witness.

Mr. Morris—I will do that.

Judge Neilson—Turn to the question and answer.

Mr. Morris—I will do that.

Q. While I am doing this, Mr. Cleveland, will you state the names of the gentlemen that he did suggest there in the afternoon? A. He named seven or eight, Sir.

Mr. Morris—That does not hardly answer my question.

The Witness—He named Henry W. Sage; he named Horace B. Claflin; he named, in fact, all the members of the Committee but one, I think.

Q. State all the names that he named? A. The members of the Committee, all but one, I think.

Q. Give us the names of the persons that he named there in the afternoon? A. He named all the members of the Committee—Mr. Belcher, Mr. Hawkins, Mr. Shearman.

Q. Which Mr. Shearman? A. Thomas G. Shearman.

Q. One of the counsel here. Well, have you named all now? A. That is as I recollect it.

Q. You say Mr. Beecher suggested your name? A. I think he did; that is my recollection.

Q. Any doubt about it? A. I have great doubts about anything I said when I was on my back.

Q. If you say it now, you are not on your back? A. No, Sir.

Q. What do you say about it now? A. I simply state that he named seven or eight gentlemen.

Mr. Morris—No, no, no; that is not my question.

Q. Did he name you as one of those gentlemen?

Mr. Shearman—He has answered that already.

Mr. Morris—How has he answered it?

Mr. Shearman—He said he did.

Mr. Morris—Well, now, I will ask you this question: Can you recollect any name he suggested?

Mr. Shearman—Well, he has mentioned the names.

Mr. Morris—I am not through yet; I will go back a little further.

Q. Were you not asked this question, and did you not make the following answer:

Q. What names did he suggest? A. I cannot recollect.
Q. Can you recollect any name that he suggested? A. I cannot state, Sir.
Q. Didn't he suggest you? A. He did not.

A. Then I desire to make the correction.

Q. That is not correct? Now, prior to his naming you as one of the members of the Committee on the afternoon of June 26, had Mr. Beecher advised with you at all with reference to the subject matter of the investigation? A. Prior to that afternoon he had not.

Q. Did he that afternoon? A. He did.

Q. Now, are you positive that prior to your meeting him at his house, between 5 and 6 o'clock, he had not advised with you with reference to the subject matter of the investigation? A. I am positive.

Q. You are positive?

Mr. Shearman—He says he did. If I understand your question, you asked him if he did not, and he says he did.

Mr. Beach—He says now he didn't.

The Witness—Will you repeat the question?

Mr. Shearman—You don't understand the question.

Mr. Morris—It is very simple.

Mr. Beach—The question is plain and simple.

Mr. Evarts—Allow me to ask you, Mr. Morris, will you be likely to be through with the witness soon, for it is our usual hour of adjournment?

Mr. Morris—Oh, no, Sir; we will take the whole afternoon.

The Witness—Will you please finish this question?

Judge Neilson [to the stenographer]—Read the last few questions and answers, and let us have an answer before we go.

Mr. Morris—Leave it as it is; it is right.

Mr. Beach—Mr. Cleveland evidently misunderstood it.

Judge Neilson—Let the stenographer read the last two questions and answers, and let us have this matter fixed before the adjournment.

Mr. Morris—Read the question.

The Tribune stenographer read the question as follows:

"Q. Now, prior to his naming you as one of the members of the Committee, on the afternoon of June 26, had Mr. Beecher advised with you at all in reference to the subject matter of the investigation? A. Prior to that afternoon he had not.

"Q. Did he that afternoon? A. He did.

"Q. Now, are you positive that prior to your meeting him at his house between five and six o'clock he had not advised with you with reference to the subject matter of the investigation at all? A. I am positive."

Judge Neilson—Are these answers satisfactory?

Mr. Beach—He says he met him in the course of that afternoon prior to his going to his house.

Mr. Evarts—We had better adjourn now.

Mr. Morris—All right. It is time for recess, and we will take our recess accordingly.

The Court here took a recess till 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m. pursuant to adjournment.

Henry M. Cleveland was recalled and the cross-examination resumed.

Mr. Morris—Mr. Cleveland, I understand you to say that you saw Mr. Beecher in the afternoon of the 26th of

June, about 4 o'clock, and went to his house between 5 and 6. You said that you went by invitation. Will you state how that invitation was given? A. By a beckoning from a car in Beekman-st.

Q. In which he was riding? A. He was riding.

Q. And that you think was about 4 o'clock in the afternoon? A. As I recollect it.

Q. And you went to his house in consequence of his having beckoned to you? A. I did.

Q. Let me call your attention to your former testimony. Speaking of this interview at Mr. Beecher's house, were you not asked this question:

"Did you go there by"——

Mr. Shearman—What page is it?

Mr. Morris—Page 90.

"Did you go there by invitation? A. I did not."

Q. Did you so state on your former examination? A. I don't recollect; I so state now—invitation in language.

Q. Well, when you made that answer, did you mean that you had not been invited by word? A. I did.

Q. And you at that time did not regard the beckoning as an invitation, as you now regard it? A. I regarded it as an act of invitation.

Q. Did you then regard it as an invitation to you to go and see him? A. An invitation, by the act.

Q. Yes, and you said that you did not go by invitation. Now let me read a little further:

Had you seen Mr. Beecher that day? A. I saw him that day.

Q. Where? A. At his house.

Q. Before you went to his house? A. No, Sir.

Did you so testify previously? A. I think not.

Mr. Beach—Show him the minutes.

Mr. Morris—Look there at the minutes and say whether you did or not. [Handing witness the testimony.] It is marked. A. I meant by that answer, Sir, that I had no personal meeting or conversation with Mr. Beecher that day until I met him at his house.

Q. Ah! This question is, had you seen him before you went to his house that day, and you answer no; is that true? A. I could not have answered in that way.

Q. Well, look again, and say whether you did answer just as it is put there. A. I simply say in regard to that——

Q. Did you make the answer just as it is put there, in the language that I have read? A. I say distinctly——

Q. No, no, Mr. Cleveland; did you answer in the precise language as recorded there by the stenographer? A. If I——

Q. No, no. Did you or did you not?

Judge Neilson—State your recollection.

Mr. Morris—Did you or did you not? A. I may have said no, Sir.

Q. Do you mean to say now that you don't recollect whether you did or not?

Mr. Shearman—Mr. Morris, I don't believe this can be correctly reported.

Mr. Morris—It is correctly reported. There are a great many things that you imagine are not correctly reported.

Mr. Shearman—I don't believe, if your Honor please, that this can be a correct report.

Mr. Beach—Well, this is irregular.

Mr. Morris—It is a correct report.

Mr. Beach—This is irregular.

Mr. Shearman—Why is it irregular?

Mr. Beach—Why, for you to dispute the stenographer's minutes on our cross-examination.

Mr. Morris—It is the official report of the testimony taken by the official stenographer of this Court, and is correct.

Judge Neilson—Well, go on.

Mr. Shearman [at the same time]—I say it is not.

Mr. Morris—Well, I say it is correct. Now, Mr. Cleveland, is it true that you had not seen Mr. Beecher on the 26th of June, before you went to his house between 5 and 6 o'clock? A. It is not true.

Q. It is not true? A. That is not a true answer.

THE INVESTIGATING COMMITTEE APPOINTED.

Q. Very well; we will take that. You have stated, Mr. Cleveland, that on the afternoon at your interview with Mr. Beecher, he named the persons who subsequently acted as members of the Investigating Committee, including yourself. Now, were any additional names—persons named in the evening by Mr. Beecher when you went there after prayer-meeting? A. There were seven or eight names discussed at the interview in the afternoon, and again in the evening.

Q. I am asking you whether——

Judge Neilson—He says, "again in the evening."

Mr. Morris [continuing]—Whether Mr. Beecher named any persons in the evening who subsequently acted as members of that Committee?

Mr. Evarts—He has answered it.

Mr. Morris—How did he answer?

Mr. Evarts—"Seven or eight in the afternoon;" and they were discussed again in the evening.

Mr. Morris—"Seven or eight in the afternoon;" that is not an answer.

Mr. Evarts—"And they were discussed again in the evening."

Mr. Beach—That is not an answer.

Mr. Morris—That is not an answer, but it suggests another question to me, and we will get at that. Do you say that there were seven or eight named in the afternoon? A. I do.

Q. Give me the names of those.

Mr. Tracy—I submit that the witness has been asked that question.

Mr. Morris—No, he has not given that.

Mr. Tracy—I appeal to the record.

Mr. Morris—Let the record be read.

Judge Neilson—He said, "Seven or eight."

Mr. Tracy—Seven or eight was the number stated by the witness.

Mr. Evarts—He stated all the number that were appointed——

Mr. Morris—I asked him to name the persons whom Mr. Beecher suggested in the afternoon, and he gave me some names, but he has not given me seven or eight. Now, if there were seven or eight named in the afternoon, I want to know who they were.

Mr. Evarts—Now, your Honor, this is a pure question of fact.

Mr. Morris—That is precisely what it is.

Mr. Evarts—The witness testified that Mr. Beecher named all the persons who were finally on the Committee, except one, and then gave two or three names besides.

Mr. Morris—Well, what of that?

Mr. Evarts—That makes eight people.

Mr. Beach—What if it does?

Mr. Evarts—Mr. Morris said it did not.

Mr. Beach—What of that?

Mr. Evarts—Nothing.

Mr. Morris—You say that he named seven or eight in the afternoon; I dispute it; now, I want the names.

Mr. Evarts—We object.

Judge Neilson—I do not recollect how many he named.

Mr. Tracy—I appeal to the record.

Mr. Morris—We both appeal to it.

Judge Neilson—It will take a long time to find it.

Mr. Beach—We have another fact stated in regard to a transaction in the evening, and we want to bring them together.

Judge Neilson—Can you readily enumerate the persons named in the afternoon?

The Witness—If your Honor please, I will make a very short statement of the interview in the afternoon?

Judge Neilson—He wants the names.

Mr. Morris—I am not asking for that, Mr. Cleveland.

Judge Neilson—Can you state the names of those named in the afternoon readily—the names under discussion?

Mr. Beach—Mr. Cleveland, will you allow me to caution you to name only those whom you remember to have been suggested in the afternoon.

Judge Neilson—Well, in the afternoon. They were who?

Mr. Beach—That is, if you can remember them as distinct from those named in the evening.

The Witness—My clearer recollection of the interview in the afternoon—clearer than when I was examined upon my sick bed—is that——

Mr Morris—Mr. Cleveland, were you examined upon your sick bed?

Mr. Tracy—I submit that the witness should be permitted to answer

Judge Neilson—Yes, certainly. Go on.

Mr. Morris—Well, go on; I will get it afterward.

Judge Neilson—Go on, Mr. Cleveland.

The Witness—The names that were suggested by Mr. Beecher that afternoon were Henry W. Sage, Horace B. Claflin, Augustus Storrs, Judge Benedict, Deacon Hawkins, Mr. Garbut; I am not clear about my own; my name was mentioned either in the afternoon or in the evening; my best recollection is that mine came in the evening.

Q. Haven't you already testified that you were named in the afternoon?

Mr. Evarts—Let him finish his answer.

Mr. Morris—He has got through. Haven't you already testified that you were named by Mr. Beecher in the afternoon?

Mr. Evarts—Let the witness answer before you ask another question.

Mr. Beach—If any other names were stated, he can name them.

Mr. Morris—I understood him to be through.

The Witness—Those were the principal names.

Q. Any others named? A. I cannot swear positively. There were some seven or eight or nine names in Mr. Beecher's mind that afternoon.

Q. Now, have you given the list of names of persons that you gave on your examination before at your house? A. I am not sure that I have.

Q. Now, who were named in the evening by Mr. Beecher? A. About the same list of names was discussed in the evening; there may have been one or two changes.

Q. Did he name any additional names in the evening that had not been named in the afternoon by him? A. My mind is not clear on that.

Q. Didn't he name Mr. Winslow? A. Mr. Winslow's name was before the conference in the evening.

Q. Mr. White. Was there a conference in the evening with reference to the names who should be upon the Committee? A. That question was discussed in the evening.

Q. Was there a conference upon that subject? A. Yes, Sir.

Q. I understood you that Mr. Beecher had named all the persons who acted upon the Committee? A. You understood me——

Mr. Shearman—With one exception.

Mr. Morris—What exception was that?

The Witness—What was the question?

Q. What person did not Mr. Beecher name who formed a part of that Committee? A. My recollection is that the name of Mr. Winslow was suggested by somebody

Q. Who suggested it? A. I think I did.

Q. Now haven't you sworn, Mr. Cleveland, that you suggested no name of that Committee?

Mr. Shearman—Wait a moment; I object to that.

Mr. Morris—I ask you the question.

Mr. Shearman—I object to it.

Mr. Morris—What is the objection?

Mr. Shearman—I object on the ground that it must be shown to the witness; what he has said on that subject—150 pages of cross-examination.

Mr. Morris—We will find it. [To the witness.] Is that the only name that was suggested to Mr. Beecher? A. I cannot give all the details of the discussion of names that afternoon and evening.

Q. I am not asking you about that. Is that the only name that was suggested to Mr. Beecher?

Mr. Shearman—Does that question mean at any time?

Mr. Morris—At the conference in the evening.

Judge Neilson—In other words, do you recollect any other name, Mr. Cleveland, that was suggested, besides Mr. Winslow's? A. It is true, in fact, that all the names were suggested to Mr. Beecher; that is to say, the names were in the minds of other gentlemen interested in that matter, leading names in Plymouth Church and society, which occurred also to Mr. Beecher when he made up his mind to demand an investigation.

Q. Now, I ask you again who first suggested the names who acted upon that Investigating Committee, with the exception of Mr. Winslow's name?

Mr. Shearman—I ask that the counsel let the witness understand whether he is referring to a particular interview, or any interview. Of course, that makes a material difference.

Mr. Morris—I am referring to what the question implies. I ask him who first suggested the names of the persons who composed that Committee, with the exception of Mr. Winslow. That is a very simple question.

Mr. Shearman—I take it that means at any interview.

Mr. Morris—It means just what it says.

Judge Neilson—It must be either the afternoon or evening. You are really inquiring about the evening. Well, Mr. Cleveland.

Mr. Shearman—It means at any interview.

Mr. Morris—Oh, never mind, Mr. Shearman. We will get along.

Mr. Shearman—Well, we are trying to get along.

Mr. Morris—I don't want any assistance. [Examining the testimony taken at Mr. Cleveland's house.]

Mr. Evarts—That is not necessary.

Mr. Beach—It is made necessary by the last answer of the witness.

Mr. Shearman—If your Honor please, this remark of counsel obliges me to say that it is really made necessary by the fact that counsel undertakes first to ask separately about two interviews, and Mr. Cleveland answers that during the afternoon interview Mr. Beecher suggested names, that at the evening interviews names were suggested to Mr. Beecher. Now he is asked a question as to who first suggested names; and it leaves the matter in doubt in the witness's mind whether he is asked as to one interview, or to both interviews.

Mr. Morris—That is not my question. My question is, Mr. Cleveland, who first suggested the names of the gentlemen who acted upon that Committee, with the exception of Mr. Winslow? I don't think there is any ambiguity about that question.

Mr. Shearman—I say it means at any time.

Mr. Morris—Never mind what it means.

Mr. Shearman—I do mind what it means.

Mr. Evarts—Of course it is important what it means.

Mr. Morris—It is a very simple question.

Judge Neilson—You must allow Mr. Shearman, however, to object, when he thinks there is occasion for it.

Mr. Morris—He can make his objection, but it is not proper that he should be continuing these observations. Now, I ask an answer to that question in that precise form.

Judge Neilson—It stands this way, Mr. Cleveland: You think you suggested Mr. Winslow's name. Now the question is, who suggested the other names? A. If your Honor please, in the afternoon interview Mr. Beecher named seven or eight persons in his church and society out of whom he should hope to find a Committee that should investigate that whole matter.

Mr. Morris—My——

Mr. Evarts [to the Witness]—Well, go on.

Mr. Morris—Was that the first suggestion as to the names? A. That was the first interview, in the afternoon.

Q. Now, I ask you the question again. Who first suggested the names of the persons who composed the Committee, with the exception of Mr. Winslow?

Mr. Tracy—I submit the witness has answered that question.

Mr. Morris—He has not.

Mr. Tracy—This is the third time it has been put and distinctly answered.

Mr. Morris—It has not yet been answered.

Mr. Tracy—If the policy of the counsel is to repeat the same question and get the same answer all day, why, let us know that. The witness has distinctly stated who were the names that were first suggested, and by whom—Mr. Beecher—in the afternoon of that day. That was the first suggestion that had been made of names.

Mr. Beach—This imputation, Sir, ought not to be permitted to rest upon us. We ask this gentleman who first suggested the names composing this Committee, with the exception of Mr. Winslow. Instead of answering that question, he says that Mr. Beecher, in the afternoon, suggested seven or eight names from whom he hoped the Committee would be formed. That is not an answer to our question, Sir. We ask who suggested the names that ultimately formed the Committee, with the exception of Mr. Winslow, who was suggested by the witness. If he will make an answer to the simple question, in a direct

way, it will end the inquiry on that subject, and not till then.

Judge Neilson—Now, Mr. Cleveland, acting on that suggestion.

Mr. Shearman [to Mr. Beach]—He says Mr. Beecher.

Mr. Beach—I know he says Mr. Beecher. Why can't he say so at once?

The Witness—I simply say in answer to that question that Mr. Beecher named in the first interview all the persons whose names I have given.

Mr. Morris—That is not the question.

Judge Neilson—Proceed; go on, Sir. And in the evening? A. In the evening that list of names was discussed. I cannot remember distinctly what the suggestions by other gentlemen were in the evening. There was a conference in the evening at half-past 9.

Mr. Morris—Then, Mr. Cleveland——

Mr. Beach—Wait one moment. [To the witness.] You are not certain, I understand, Mr. Cleveland, whether your name was mentioned in the afternoon or the evening, but you thought in the evening, I understood you? A. It was in the afternoon or evening; I am not positive.

Q. Then from the persons thus named, as you have stated, the Committee was ultimately selected? A. With the exception of Judge Benedict.

Q. He was one of those named, but from the names thus mentioned the Committee was ultimately formed? A. It was.

[Mr. Beach here turned and spoke to defendant's counsel.]

Mr. Tracy [to Mr. Beach]—Sam. Morris will repeat that question right over.

Mr. Morris—Well, when he says that "Sam. Morris will repeat that question right over," I don't notice such an insult coming from such a quarter. A man that stands in that position has no right to offer such an insult.

Mr. Shearman—He stands in a position in which you will never stand so long as you live.

Judge Neilson—One moment.

Mr. Morris—I say it is a gross insult for counsel to have made that remark.

Judge Neilson—Go on, Mr. Morris.

Mr. Beach—This is getting rather personal.

Mr. Morris—Now, then, Mr. Cleveland, I understand you as saying that Mr. Beecher suggested all the names in the afternoon that subsequently composed this Committee. Do you recollect of testifying to this on your former examination:

Q. Do you recollect whether or not any or all of the names of the Investigating Committee were suggested to Mr. Beecher by the persons then present or not? A. I think they were, mainly.

That is the interview in the evening. Did you so testify? A. I think likely.

Q. Will you state whether the gentlemen here named as members of this Committee were the same, with one exception, as those who had been suggested to Mr. Beecher by yourself and the two other persons present on Friday evening? A. I think they were.

Did you so testify? A. I don't think I testified that two other persons——

Q. Look at it and see if you think that was it—on your direct examination by Mr. Shearman. [Handing witness the testimony.] A. I beg your pardon, Sir; I thought you read it "three other persons," which included——

Q. Well, you so testified as I have read then, did you? A. Yes, Sir.

Q. Is that correct? A. Correct in this way, that the names of all the gentlemen mentioned by both sides were discussed in the evening.

Q. All the names mentioned by both sides? A. By Mr. Shearman and myself—Mr. Beecher, Mr. Shearman, and myself; the names were discussed in the evening.

Q. The names that Mr. Beecher had suggested in the afternoon? A. Came up in the evening.

Q. Who took part in that discussion in the evening? A. Mr. Beecher and Mr. Shearman.

Q. Who? A. Mr. Beecher.

Q. Who else? A. Mr. Shearman.

Q. Who else? A. I don't recollect how much I had to say about it.

Q. Who else was present? A. Present? Gen. Tracy.

Q. Did he take any part in the discussion? A. He did not; not about that.

Q. Well, Mr. Cleveland, how came that meeting about in the afternoon—how was it brought about? A. It came about by my inviting Mr. Shearman and Gen. Tracy, I think, to go over to Mr. Beecher's.

Q. Have you any doubt about that? That is my recollection.

Q. And that was after the Friday night prayer-meeting? A. That was after the Friday night prayer-meeting.

Q. And how came you to invite them to go to Mr. Beecher's? A. I think the matter came up between Mr. Beecher and myself in the afternoon interview.

Q. And in consequence of that interview you invited Mr. Tracy and Mr. Shearman to go around there. Mr. Shearman's name was suggested as one of the Committee also, was it not? A. I think it was.

Q. Now, you are sure that this was on the 26th of June? A. I am sure.

Q. Well, did you invite them around to Mr. Beecher's for the purpose of discussing the proper persons to be appointed on that Committee? A. No, Sir, not specifically.

Q. For that purpose? A. Mr. Beecher desired to consult them.

Q. Well, with reference to the appointment of the Committee—the proper persons to be appointed? A. With reference to various matters.

Q. What matters—that among others, was it? A. That as far as—yes, that among others.

Q. Now, Mr. Cleveland, let us look a little further. You are sure about that, are you, that that was one of the topics to be discussed that evening with Gen Tracy? A. I am sure that the question of the Committee was discussed.

Q. I ask you if that was one of the topics that Mr. Shearman's and Mr. Tracy's presence was desired to discuss—the selection of proper persons to compose the Committee?

Mr. Shearman—One moment, if your Honor please. I object to this question. This is a question as to what Gen. Tracy and Mr. Shearman proposed to discuss.

Mr. Morris—No, no; it is not.

Mr. Shearman—They are not fortunate enough to be Henry Ward Beecher. I have no objection to any question as to what Mr. Beecher desired to discuss; but what they desired to discuss is of no importance.

Mr. Morris—You say that you invited them around in consequence of your interview with Mr. Beecher. Now, I ask you again if the question as to the selection of proper persons to compose the Committee was one of the reasons that Mr. Tracy's and Mr. Shearman's presence was desired at Mr. Beecher's that night? A. Mr. Beecher gave no special reasons for their being there that evening, except that he wanted to consult some of his legal friends.

Q. With reference to what? A. With reference to this matter.

Q. What matter? A. The matter of investigation.

Q. What matter—wasn't it mentioned?

Mr. Shearman—He just stated.

The Witness—The investigation.

Q. Well, what about that did he want to discuss? A. It was a matter that I did not ask him specially.

Q. Had he any doubt upon any questions that were suggested? A. I don't know whether he had or not.

Q. Were any suggested? A. He wanted to take legal advice.

Q. To what end—he wanted to take legal advice, and Mr. Tracy and Mr. Shearman were invited around for that purpose, to give him the legal advice that he desired? A. They were invited around.

Q. To give the legal advice that he desired? A. To see Mr. Beecher.

Q. And to give the legal advice that he desired? A. To do what Mr. Beecher wanted to do, I suppose.

Q. Were you aware of the fact that Mr. Tracy that day had published a statement declaring that he was not Mr. Beecher's counsel? A. I was not.

Q. Well, Mr. Cleveland, you was appointed one of the members of this Committee? A. I was.

Q. You was a personal friend of Mr. Beecher's? A. Very great.

Q. Your relations confidential? A. Very.

Q. But he had not taken your advice or talked with you with reference to these difficulties that were to be investigated prior to your appointment? A. I am sorry to say he had not.

Q. When had you first heard of the difficulty that was involved in that investigation—Mr. Beecher's relations with Mrs. Tilton? A. Will you repeat the question, Sir?

Q. When had you first heard of the difficulties that were to be investigated by that Committee—the charges contained in the Bacon letter, or the matters referred to in the Bacon letter? A. I had never heard, except the common report of an impure proposal by Mr. Beecher, which was in the air.

Q. You had never seen the Woodhull & Claflin publication? A. I had; I read that.

Q. There was some matter of that kind intimated there, wasn't there? A. I read that.

Q. Yes; and had you prior to that time ever had conversation with Mr. Beecher upon the subject? A. About his difference with Mr. Beecher, do you mean?

Q. About Mr. Beecher's relations with his wife? A. No, Sir.

Q. You were a member of the Examining Committee in 1873, were you not? A. I was not, Sir.

Q. When did you cease to be a member of the Examining Committee? A. I have not ceased to be yet, Sir.

Q. When did you become one? A. 1874, January.

THE WEST CHARGES.

Q. In 1874—you recollect the West charges? A. I have an indistinct recollection about them.

Q. Haven't you a very distinct recollection about them? A. No, Sir.

Q. Didn't you become aware of them at the time or near the time that they were preferred? A. I think I did.

Q. And how did you learn the fact? A. I don't recollect; heard them talked about in the——

Q. Church? A. Yes, Sir, among the Plymouth people.

Q. Yes, a matter very generally discussed there, or talked about, wasn't it? A. I don't know how much.

Q. Haven't you so stated? A. Possibly.

Q. Very generally? A. Very likely.

Q. And you knew, therefore, that Mrs. Bradshaw's name was connected with those charges as a witness, did you not? A. I had heard that her name was connected with the charges.

Q. Yes; as a witness to substantiate one of the specifications? A. I knew nothing about her being a witness, that I recollect.

Q. Hadn't you heard her name spoken of in that connection? A. I had heard her name spoken of in connection with the charges.

Q. How in connection with the charges? A. I don't—name appeared; I think, in the charges.

Q. In what connection? A. I don't recollect distinctly; I have not seen them for a long time, if ever.

Q. Well, wasn't it a matter of general talk among the

members of that church, the West charges, and their nature and what they were? A. I have no doubt of it.

Q. And do you think that there were any persons who were regular attendants upon that church that did not know of the charges? A. Oh, I have no thought about it.

Mr. Tracy—We submit that is inadmissible. I object to the question.

Judge Neilson—He says he does not know, and very naturally he might not know.

Mr. Morris—You never saw the charges? A. I didn't say that.

Q. Did you see them? A. I did at some time.

Q. Well, when did you first see the charges? A. I don't recollect, Sir.

Q. Before the appointment of this Committee? A. I have no recollection about it.

Q. Can't you state whether it was before or after the 26th of June, 1874? A. I don't——

Q. What is your best impression upon that? A. I have no recollection about it.

Q. Now, I will try and see if I can refresh your recollection a little. You say that they were the subject of general conversation among the members of Plymouth Church? Now, can't you give us any impression as to whether that was before the 26th of June, 1874, or not? A. My present impression is that I never read those charges until I saw them incorporated in Mr. Tilton's last statement; that is my present recollection.

Q. Had you, before you were appointed on that Committee, become aware that Mrs. Bradshaw's name was attached to these charges in connection with this specification?

Mr. Shearman—Now, if it please your Honor, I have allowed this without objection to go on a long way.

Mr. Morris—I thank you for that.

Mr. Shearman—I do not know in what respect this is material, or what Mr. Cleveland's knowledge before he went on this Committee has to do with it at all. If the gentleman can suggest any reason, I am willing to be instructed. How does it bear on Mr. Beecher?

Judge Neilson—I do not see. The only idea is that it might be preliminary to some question that would be proper. Sometimes you inquire as to the knowledge and information of the witness, with a view to something that may be material, that you intend to come at by-and-by.

Mr. Shearman—Well, I ask respectfully that the gentleman state what the material point is to which he proposes to come. We have spent some twenty minutes on this, and I cannot see the materiality of it yet.

Mr. Morris—That is not my fault.

Mr. Shearman—I did not object to it in the first place in hopes that he would get through with it, and save time; but now I do object to it unless some statement is to be made.

Judge Neilson—Counsel cannot always state in cross-examination—cannot always very well state what he expects to arrive at.

Mr. Shearman—If I could imagine any, I would not object.

Mr. Morris—I am not responsible for the gentleman's imagination, or want of it.

Judge Neilson—Proceed.

Mr. Morris—Now, I ask you if this that I am about to read was not the subject of general talk among the members of the congregation prior to the 26th of June, 1874? [Reading:]

At an interview with Mrs. Bradshaw, in Thompson's dining-rooms in Clinton-st., on or about the 2d of August, 1870, Theodore Tilton stated that he had discovered that a criminal intimacy existed between his wife and Mr. Beecher. Afterward, in November, 1872, referring to the above conversation, Mr. Tilton said to Mrs. Bradshaw that he retracted none of the accusations which he had formerly made against Mr. Beecher.

Witness—Mrs. Andrew Bradshaw.

Q. Now, wasn't that the subject of general conversation among the members of the church prior to the 26th of June, 1874?

Mr. Tracy—I object to that.

Judge Neilson—I think we will take it on cross-examination.

Mr. Tracy—I did not hear the last observation of your Honor.

Judge Neilson—I think we will take it; it is on cross-examination.

Mr. Tracy—Supposing it is, your Honor. This is an attempt to prove the fact that a particular charge was the subject of general conversation in Plymouth Church. Now, is that legitimate evidence in this case? Is it a fact that is proper to be proved in that way, that a particular fact was the subject of general conversation?

Judge Neilson—To show that it came to the knowledge of the witness; that is the vital point.

Mr. Tracy—They may ask him when it first came to his knowledge, if that is material?

Judge Neilson—He was asking it a moment ago.

Mr. Tracy—That is not the question; they ask the witness when he first learned of it. They are seeking by this question to prove that the particular fact was the subject of general conversation in the society. Now, I submit that that is not competent evidence. It is not competent to prove the fact.

Judge Neilson—A little while ago the counsel did ask him when it first came to his knowledge; and now he asks him, I suppose, with a view of helping him to that fact.

Mr. Tracy—But if he has answered the question—the witness has answered that.

Judge Neilson—He don't tell us when it first came to his knowledge.

Mr. Morris—We haven't got an answer to that yet. I am making this preparatory to repeating that question again.

Mr. Tracy—Then, I suppose, your Honor, if the witness is interrogated as to the general conversations, we are permitted to know what the general conversations were?

Mr. Shearman—We are willing to take this, provided we are permittted to show the conversations and what was said about Mr. Tilton in Plymouth Church.

Judge Neilson—It would not open the door to that.

Mr. Morris [to the Witness]—When, Mr. Cleveland, did this charge that I have read first come to your knowledge?

Mr. Tracy—That I don't object to.

Judge Neilson—Well.

The Witness—Probably during the Summer.

Q. What Summer? A. 1873, if that was the year; I forget about it.

Q. Yes; during the Summer of 1873. Well, Mr. Cleveland, when did this Committee first meet? A. Had an informal conference, four members of it, on Sunday, the 28th of June.

Q. And where was that informal conference held? A. At Augustus Storrs's, in Monroe-place.

Q. Was the Committee then organized? A. It was not.

Q. Any statements made—any testimony taken? A. No, Sir.

Q. When was the next meeting of the Committee? A. There were several informal meetings during that week.

Q. That is not my question; when was the next meeting? A. The first regular formal meeting for business was on the 10th of July.

Q. Was that my question? A. You asked me when the Committee next met.

Q. You say there was a meeting on the 28th—Sunday night, the 28th; I ask you when the next meeting was. I did not ask you for any formal or informal meeting. Now, when did they meet, subsequent to that, next?

Mr. Shearman—Either formal or informal.

The Witness—I replied that—well, on Monday night.

Mr. Morris—On Monday night; and who were present on Monday night? A. I cannot recollect, Sir.

Q. As near as you can recollect?

Mr. Tracy—I object to that question, your Honor. I desire to raise the question now whether we are to have every meeting of the Investigating Committee, and what transpired on the meeting, I suppose, the fact being that the proceedings of that Committee are entirely immaterial here as a committee. Anything that the counsel wants to inquire about that this witness did as a committeeman, he is at liberty to inquire about; but I submit that it is not worth while for us to spend the time of the Court in investigating the Investigating Committee, or in taking evidence as to the number of their meetings. I have not the slightest objection, make none, to any inquiry as to what this witness did as a committeeman at all. In that I concede they have the fullest scope.

Mr. Beach—This would seem to be within that scope.

Mr. Morris—Who was present at that meeting on Monday evening?

Mr. Tracy—At the time when the Committee met; or, who were present at each of these meetings? That is the point of my objection. I submit that if he was present, you may show anything that he did or anything that he said as a committeeman.

Judge Neilson—If that were so, you could show the time when and who also were present.

Mr. Tracy—I don't think you could. All I care about it is this, to know whether the time of the Court is to be taken to go through with each meeting of the Committee. I suppose the rule to be that the only object of this inquiry is to show the bias of this witness. It can have no other legitimate purpose than that; and if that is the object, they can inquire as to what this witness did as a committeeman, or anywhere else, in any capacity that he has acted affecting this case. To that we have not the slightest objection at all.

Judge Neilson—That may be the object; I cannot tell.

Mr. Beach—I submit that that Committee and its actions has altogether a broader scope than the counsel suggests in this case.

Mr. Morris—It has. We don't narrow it down to any such simple compass as that. I am glad to see the interest of counsel upon the other side as to the time of the Court.

Mr. Tracy—No interest about it.

Mr. Morris—As to the time of the Court, whenever we have a witness we wish to examine; but they seem to forget it when it is their own case. I think they have taken up a good deal more time than we have with matters that your Honor has suggested were immaterial.

Mr. Shearman—I only suggest that the Court should limit the counsel in the line of his examination; that is all.

Mr. Morris—The question is perfectly proper and perfectly legitimate.

Judge Neilson—I think the witness can answer when the next meeting was——

Mr. Morris—He says Monday night.

The Witness—Monday night.

Mr. Morris—Now, who were present? that is the question. A. All the members of the Committee, I think, but Mr. White; that is my recollection, I mean.

Q. Was a formal organization of the Committee then effected? A. On Monday or Tuesday evening, I think.

Q. On that night I am speaking about.

Mr. Shearman—He answers.

The Witness—I am not certain whether it was that night or the next.

Mr. Morris—Either that or the next night? A. Either that or the next.

Q. Then there was a meeting on Tuesday night again, at which there was a formal organization, if it was not

effected on Monday? A. I do not recollect that there was.

Q. Very well. You say the formal organization was effected Monday night, or the following night; that would be Tuesday, wouldn't it? A. If it was not on Monday night, it was on Tuesday night; I forget——

Q. Now, were any other persons present except the gentlemen that you have named—members of the Committee? A. Yes, Sir.

Q. Who? A. The stenographer, Mr. Ellinwood.

Q. Who else? any one else? A. I do not recollect that any one else was present that evening.

Q. Any of the counsel there? A. My recollection is that they were not there.

Q. Well, on Tuesday night, who were present? A. I do not recollect about the Tuesday night meeting.

Q. When was the next meeting? A. I do not recollect the interviews of that week.

Q. Can you state when the next meeting of the Committee was? A. I do not recollect.

Q. You had a meeting on the 6th of July? A. We did not have a business meeting.

Q. Mr. Cleveland, didn't the Committee meet at Mr. Ovington's house on July the 6th? A. Five members of the Committee met there.

Q. That was a Committee, wasn't it? A. That was a Committee—five.

Q. And the Committee had then been organized? A. The Committee had appointed a Chairman.

Q. Yes, it was organized—the Committee—a regular Committee? A. Organized.

Q. Very well, and you went to Ovington's on July the 6th? A. We did.

Q. Was Mr. Ellinwood, the stenographer, there? A. I think he was.

Q. Now, who were the five persons there—what members of the Committee? A. All but Mr. White, I think.

Q. All but Mr. White. And who of the counsel? A. Gen. Tracy was there.

Q. Yes; who else? A. I do not recollect.

Q. Mr. Hill? A. I do not recollect whether he was there.

Q. Mr. Shearman? A. I do not recollect.

Q. Well, Mrs. Tilton was before the Committee that night? A. Mrs. Tilton was before the Committee.

Q. Yes; she made a statement? A. She did.

Q. And Mr. Ellinwood, the shorthand reporter, took it down? A. I think so; I have forgot about it.

Q. And the Committee met there for the purpose of hearing her statement, didn't they? A. The Committee went there to meet her.

Q. For that express purpose? A. Yes, Sir.

Q. And now do you state again that the first formal meeting of that Committee was on the 11th of July? A. No, Sir.

Q. You correct that; you said a while ago that it was the 11th. A. I beg your pardon; I said it was on the 10th.

Q. The 10th; well, do you now say that the first formal meeting of that Committee was on the 10th of July? A. I say so distinctly.

Q. You do? Well, you say you went to Ovington's—the Committee did—for the purpose of taking Mrs. Tilton's statement? A. We went to Mrs.——

Q. The Chairman had been appointed; the stenographer was there, and counsel were there, and her statement was taken. Well, we will have it stand at that.

Mr. Shearman—Better ask the question, it seems to me.

Mr. Morris—No, I will let it stand there. July 6th—what day of the week was that? A. I think that was on Monday, Sir.

Q. What time in the evening did the Committee—— A. I can't state the time.

Q. [Continuing] Commence taking the statement? A. I don't recollect the precise time.

Mr. Tracy—Whose statement are you referring to?

THE COMMITTEE AND MRS. TILTON'S STATEMENT.

Mr. Morris—Mrs. Tilton's. [To the witness.] That statement, as made there that night, has never been published, has it? A. It has not, Sir, by itself.

Q. Have you seen the stenographer's minutes of it? A. I never have.

Q. Do you know what became of them? A. I do not.

Q. Were not the stenographers directed at the conclusion of your investigation to deliver up their notes to the Committee? A. I presume so, Sir; I do not recollect about that.

Q. And what has the Committee done with them? A. They are in the hands of the Examining Committee of Plymouth Church.

Q. All the statements made before that Committee? A. I cannot swear that all of them are; I know of no exception, and yet I don't know——

Q. Do you know who delivered them to the Examining Committee? A. I do not.

Q. Was there any action taken by your Committee upon that subject—any one directed to do that? A. My impression is they were delivered to the clerk of the church to be handed over to the Examining Committee.

Q. And who was the clerk of the church? A. Thomas G. Shearman.

Q. Well, did the Committee direct him to hand them over to the Examining Committee? A. The Committee were directed by their appointment to make its returns to the Examining Committee.

Q. No, no, that is not the question. A. I do not recollect that they did.

Q. Was there any action taken by the Committee upon that subject? A. I do not recollect any.

Q. Why do you say that your impression is that Mr

Shearman was directed to hand them over to the Committee of the church? A. I did not say that Mr. Shearman was directed; I said my impression was they were handed—given to Mr. Shearman to be delivered to the Examining Committee.

Q. Given to him by whom? A. By the Committee.

Q. Well, which member of the Committee? A. I have no recollection about that.

Q. You have no recollection upon the subject at all? A. The notes must have gone from the stenographer.

Q. I do not want your reasoning; but have you any recollection? A. I have none.

Q. No recollection that they were delivered to Mr. Shearman at all? A. I have no knowledge of it.

Q. You have no knowledge of it? A. I have not.

Q. Have you no recollection? A. I have not.

Q. No recollection? A. None.

Q. And no knowledge?

Mr. Tracy—Well, that is four times he has said that.

Q. Why did you refer to him then as the person. A. Because, Sir, by virtue of the condition of the appointment of the Investigating Committee, it was to make its examination and find its results, and report to the Examining Committee of Plymouth Church. Mr. Shearman was Clerk of the church, and while I recollect nothing about it——

Q. Was he Clerk of the Examining Committee?

Mr. Beach—Wait a moment, let us hear him.

The Witness—He was Clerk of Plymouth Church. My impression about it is, and that is simply an impression, that that matter was sent to the Examining Committee through the Clerk, the proper officer of the church.

Q. Is there a Clerk of the Examining Committee independent of the Clerk of the church? A. Yes, Sir.

Q. Who was that person—what is his name? A. I think Mr. Talmage was then; I forget.

MR. TILTON BEFORE THE COMMITTEE.

Q. Well, when was the next meeting of the Committee after the 6th? A. 10th of July.

Q. 10th of July; and where was that meeting held? A. That was at Augustus Storrs's.

Q. And who were present there? A. I think the full Committee, but it would be impossible for me to swear, at any meeting for 30 days or 60 days, to the full meeting of the Committee.

Q. Who was before the Committee that night? A. Theodore Tilton.

Q. What time did he get to the Committee? A. I should say at 9 o'clock in the evening.

Q. How long did he remain there? A. Well, I cannot say: from one to two hours, more or less.

Q. Did you receive a communication while he was before the Committee from any person? A. I did.

Q. From whom? A. Mrs. Ovington.

Q. What was it? A. I cannot state the details of it.

Q. A note? A. A note; yes, Sir.

Q. Have you that note? A. I have not.

Q. You don't know where it is? A. I don't.

Q. Now, give us the purport of that note?

Mr. Shearman—We object to that, your Honor, of course. What has that got to do with Mr. Tilton or Mr. Beecher?

Judge Neilson—I don't see what it has to do, myself.

Mr. Morris—Well, I can state to your Honor very clearly and plainly what it has to do. It is simply in the direct line of proof that we have already given upon that subject that has been gone into. I propose to connect it with the fact of Mrs. Tilton's abandoning her home the next morning, simultaneously with the announcement of this Committee, because no public knowledge—there was no public knowledge of the existence of the Committee prior to that. I propose to show that it was a part of the conspiracy, entered into deliberately, as we will show, to get Mrs. Tilton to abandon her home, and get possession of her before the Committee was announced, and this is a link in the chain of that evidence.

Mr. Evarts—The trouble is, if your Honor please, that no chain, however strong, between Mrs. Ovington and Mr. Cleveland is a part of any such link that affects us.

Mr. Morris—We will see about that.

Mr. Evarts—Well, that is my proposition to have it seen now; now is the time to see it.

Mr. Morris—Well; I think it is quite apparent.

Judge Neilson—Well, it was a note by Mrs. Ovington; we will see what it is; see what the note is.

Mr. Morris—Now, what was the purport of that note?

Mr. Evarts—We object, if your Honor please, to this evidence.

Judge Neilson—Yes.

Mr. Evarts—And except to the admission of it.

Mr. Morris—What was the purport of it? A. My recollection—my positive recollection about that note is that it was an inquiry if Mr. Tilton was before the Committee.

Q. Precisely, and did you convey information to her that he was before the Committee that night? A. I did; I conveyed some information; I have forgot what I said to her.

Q. Didn't you convey to her the information that Theodore Tilton was before the Committee? A. I think I did; yes, Sir.

Q. Have you any doubt about that? A. I haven't, really, if that is the question.

Mr. Morris—That is the question.

The Witness—If that was her question, I mean.

Mr. Morris—Wasn't it her question? A. I don't recollect.

Q. Do you mean to say that you have any doubts upon that? A. No doubts, no doubts: it is not of any consequence.

Q. Mr. Tilton was present there when you received this

note, and when you sent the answer—he was not aware of the fact, was he? A. I don't know about that.

Q. What do you think about it? A. Well, I presume he was not.

Q. No—well, that was on the night of the 10th? A. That was the night of the 10th; yes, Sir.

Q. Well, the next morning Mrs. Tilton left her home, didn't she? A. I don't know, Sir.

Q. You have so understood it, haven't you? A. I have no knowledge on that point.

Q. You have so understood it, haven't you? A. I suppose she did, Sir.

Q. And next morning appeared the letter calling upon the Committee to act, in the public press, didn't it? A. Saturday morning, the 11th.

Q. Yes, Saturday morning, the 11th; and that was the first public announcement that had ever been made of the existence of that Committee, wasn't it? A. That was yes, Sir.

Mr. Evarts—If your Honor will allow me to suggest to my learned friend, he is not drawing out now any new matters of proof—I mean in these last few questions—but only referring to things that are in proof; and reasoning, as it were, with the witness, without any proper application to the present functions of getting testimony from the witness. Well, in ordinary cases, it is not of any great importance, of course; but this gentleman is suffering from very severe pain; and really if we could omit expostulating or arguing *ad hominem* with him about facts that have been proved from other sources—without inquiry to the cause of the plaintiff—it is desirable it should be done.

Judge Neilson—It is desirable, certainly, to abbreviate——

Mr. Morris—I do not propose to take any unnecessary time with this witness at all.

Mr. Evarts—I suppose you have your purposes.

Mr. Morris—We have been willing to accommodate them with reference to the examination, went to the house, and had several sessions for that purpose; but they expressed their preference to have the witness come into court.

Mr. Evarts—I suggest that the time should be devoted to getting facts out of this witness, not arguing about what other people have proved.

Judge Neilson—The date of Mrs. Tilton's leaving, I think, we have had before.

Mr. Beach—I think not, Sir. I don't think we had any knowledge of this from Mrs. Ovington, or any knowledge that Saturday, the 11th, was the first public announcement of this Committee.

Mr. Evarts—Oh, yes, we have all that.

Mr. Morris—Well, now, Mr. Evarts, I do not understand what you have objected to

Judge Neilson—The suggestion of Mr. Evarts is that this witness, in his present state of health, would naturally feel disposed to be relieved as soon as you can.

Mr. Morris—Whenever the witness indicates that he desires to leave, why we can adjourn. But the witness has made no indication yet at all, and I think the witness understands his condition better than the counsel does. Now, Mr. Cleveland, intermediate the publication of the Bacon letter and the announcement of the appointment of the Committee on the 11th of July, there had been great anxiety expressed, had there not, publicly, in regard to Mr. Beecher's silence with reference to the Bacon letter? A. I don't know about that, I am sure.

Q. Don't you know that it was the subject of almost universal comment in the press?

Mr. Shearman—Well, if your Honor please, I submit what has this got to do with this issue or with the conduct of this witness, and in what way is it connected with Mr. Beecher? What has it got to do with the case? I object. It seems to me that all those questions are aside of this case.

Judge Neilson—The counsel inquires for the general fact, merely the general fact.

Mr. Shearman—He has had one answer; why is he not satisfied with that? But even that one answer, I don't see what it has to do with the case.

Judge Neilson—Go on, Mr. Morris. Let us see what it is.

Mr. Morris—Now, are you not aware of the fact that that was the subject of discussion in the press? A. I have no doubt the Bacon letter was one of general interest.

Q. I am not speaking of that, but of the fact of Mr. Beecher's silence with reference to it? A. I don't recollect anything about that, specially.

Q. Haven't you stated before that it was? A. I think quite likely that it was; I have no knowledge about it.

THE ACTION OF THE COMMITTEE.

Q. Was Mr. Tilton present during the sessions of the Committee, except when he was making his statement, or being examined? A. He was not, Sir.

Q. He was without counsel? A. What do you say, Sir?

Q. Did he have counsel? A. He did not, to my knowledge.

Q. And he was not present at any of the meetings except the one where he made his statement?

Mr. Shearman—I object. That question has been asked and disposed of.

Q. Now, Mr. Cleveland, Mr. Tilton was the person who had made the charges against Mr. Beecher? A. He was.

Q. The charges that you were investigating? A. He was.

Q. Mr. Hill attended the sessions of the Committee? A. He did.

Q. And Mr. Tracy? A. He did.

Q. Did you consult Mr. Tilton in regard to the evidence that should be produced to sustain his charges? A. We

summoned every witness that he named to us, if I recollect right.

Q. Did you summon Mr. Bowen? A. We did not.

Q. He was named, wasn't he? A. I don't recollect that he was.

Q. Do you mean to say that he was not? A. I don't recollect that he was.

Q. Do you mean to say that he was not? A. I would not swear that he was not.

Q. Did you summon Mrs. Moulton? A. We did not.

Q. Was not she named?. A. She was not.

Q. You are positive of that, are you? A. I will swear to that.

Q. Now, whom did he name, if you are so positive? A. He named Mrs. Bradshaw; he named Mr. Richards; I do not recall—he named three or four persons.

Q. Was Mrs. Bradshaw examined? A. She was not.

Q. Was Mrs. Richards examined? A. Mr. Richards.

Q. Was Mrs. Richards examined? A. *Mr.* Richards.

Q. Was *Mrs.* Richards examined? A. She was not.

Q. Was Mr. Richards examined? A. He was—examined—he came before——

Q. Has his testimony ever been published A. He gave no testimony.

Q. Oh! Did he decline to give testimony

Mr. Shearman—I object to that question

Judge Neilson—Well, he gave no testimony

The Witness—He did not.

Mr. Shearman—What have we to do with Mr. Richards?

Mr. Morris—But you said a moment ago that Mr. Richards was examined? A. Well, he was invited—I did not say that he was *examined*.

Mr. Shearman—Never mind, Mr. Cleveland——

Mr. Morris—Why was not he examined?

Mr. Shearman—I object to that.

Judge Neilson—That is objectionable, because it asks for a reason. We simply want the fact that whether he was or was not examined.

The Witness—He was not.

Mr. Morris—Why didn't you, as a member of that Committee, examine him?

Mr. Shearman—Well!

Mr. Morris—Well!—it is well; that is why I ask it. Laughter.]

Mr. Shearman—The Judge has just ruled out that question.

Mr. Morris—No, he has not; that question has not been asked before.

Mr. Shearman—I understood your Honor to rule it out.

Judge Neilson—I threw out the suggestion that inquiries as to the reason why the thing was not done ought not to be received.

Mr. Morris—But I change my question and make it personal to the witness.

Judge Neilson—Well.

Mr. Morris—Why didn't you examine Mr. Richards? A. I don't know why I didn't; I didn't.

Q. Didn't you think it important?

Mr. Beach—What is his answer?

The Witness—I said I didn't.

Mr. Morris—He says he doesn't know why he didn't. [To the Witness:] Didn't you think it of importance that he should be examined? A. I don't recollect what I thought about it.

Q. You didn't want to ascertain what he knew about it? A. I——

Q. Now, Mr. Cleveland, is the fact that Mr. Richards was not examined before that Committee as you have stated it? A. As what, Sir?

Q. Don't you know that there was a reason why he was not examined by that Committee, and that that reason was stated by him—a reason why he was not examined by the Committee, or by you as a member of that Committee?

Mr. Shearman—This is just the point that we had up before, your Honor. I think, for my part, that anybody who listened to Mr. Richards's testimony here would need no reason in the world why he was not examined before the Committee. He was not examined because he had nothing to say. But, still, are we to go into the question of how elaborately his statement or his reasons were elicited by the Committee? He came in here and said that he had nothing to say, and proved it; but I don't suppose that we are to go here into all the nonsense that took place before the Committee of Investigation.

Judge Neilson—I do not——

Mr. Beach—Different minds will have a different impression in regard to what Mr. Richards said, its substance and its effect; and when this counsel undertakes to sum up upon that evidence in anticipation of the proper time, he ought to be answered by the remark that there is much of substance and interest in what Mr. Richards said; and however much we may deplore the attitude into which Mr. Richards was necessarily forced, yet it will be found on rational and proper consideration that his evidence carries a world of meaning upon the main issue of this case, and the gentleman will find it out before the case is closed.

Mr. Shearman—I made no comment further than to quote from what Mr. Richards himself said. We do not question that Mr. Richards is the most important and valuable witness that the plaintiff has produced——

Mr. Beach [interrupting]—That is not so, Sir.

Mr. Shearman—But he said himself that he had nothing to say, and——

Judge Neilson—One moment.

Mr. Shearman—I was only objecting——

Judge Neilson—One moment, gentlemen. Now, I think, Mr. Morris, you cannot inquire as to the reasons, except as applicable to the witness personally. That you may inquire.

Mr. Morris—As soon as Brother Shearman is through I will proceed.

Mr. Beach—He has taken occasion, whenever he could get an opportunity to speak, to sum up this case in fragments, and it is about time there was an end.

Mr. Evarts—Of the case?

Mr. Beach—Yes—and him, too.

Mr. Morris—Now, I submit, your Honor, we have a right to this fact. Mr. Richards was summoned before that Committee and not examined, and we have a right to know why he was not examined.

Judge Neilson—Yes, if the witness was connected with that reason—*his* reason.

Mr. Morris—Certainly. He, as a component part of that Committee, participated in that action, and acquiesced in it.

Judge Neilson—You can ask whether, speaking for himself as a member of the Committee, he can tell why the examination was not had.

Mr. Morris—Can you state why Mr. Richards was not examined by that Committee?

Mr. Shearman—No. That is the question that his Honor has ruled out.

Judge Neilson [to the witness]—Speaking for yourself?

Mr. Morris—Do you know of your own knowledge why he was not before that Committee?

Mr. Shearman—That is the question that has just been ruled out. I submit.

Judge Neilson [to the witness]—The question is put with reference to your own personal action as a member of the Committee. Now, speaking with reference to yourself, answer the question.

Mr. Morris—And his knowledge.

Mr. Shearman—No, no; his own personal reasons.

Mr. Morris—Haven't I a right, your Honor, to have his knowledge upon that subject? If he knows personally and individually why Mr. Richards was not examined, haven't I a right to that fact?

Judge Neilson—Ask him that.

Mr. Beach—That is the essence of it, Sir.

Mr. Morris—That is what I ask. [To the witness.] Now, then, don't you know the reason why Mr. Richards was not examined by that Committee?

Mr. Shearman—I object to that.

Judge Neilson [to the witness]—And did you acquiesce in that reason, acting as a member of the Committee?

Mr. Shearman—Ah!

Judge Neilson—Now, Mr. Cleveland.

A. My recollection of that is that Mr. Richards knew nothing bearing upon that case upon which he could be examined by the Committee.

Q. Did not Mr. Richards absolutely decline to be examined? A. Not in my presence, Sir.

Q. He did not? A. No, Sir.

Q. You say that he knew nothing; did he state that to you? A. You asked my personal recollection?

Judge Neilson—Yes.

The Witness—I said personally, for myself, that my recollection of that matter was that Mr. Richards had no testimony to give to that Committee bearing upon that case.

Mr. Beach—How did you learn that? A. I don't recollect that precisely, except——

Q. What? A. That is my recollection.

Q. Well, you are asked how you learned it.

Mr. Shearman—Who told you that? A. It probably came from him.

Mr. Beach—Probably!

Mr. Shearman—Well, that is an answer.

Mr. Beach—No, it is not an answer.

Mr. Shearman—The question is how he learned that Mr. Richards had nothing to say.

The Witness—If your Honor please, I cannot recollect definitely all the details of that long examination.

Judge Neilson—No, of course.

The Witness—I cannot undertake, at this distance from that investigation, to state the reasons for the—in regard to the examination of the Committee.

Mr. Morris—We are not talking about that. We are simply asking about one particular fact—namely, how you knew Mr. Richards had nothing to say? A. I have simply this recollection—that Mr. Richards made no statement to the Committee, because he had none to make.

Mr. Morris—How did you learn that?

The Witness—I don't recollect how I knew it.

Judge Neilson—The other inquiry is how you knew that? State, if you recollect how it came to your knowledge.

The Witness—I don't recollect.

Judge Neilson—That is an answer.

Mr. Morris—Was either of the counsel there at the time that Mr. Richards was before the Committee? A. I have no clear recollection about that.

Q. Do you recollect Mr. Tracy being there? A. I don't recollect.

Q. Do you recollect his having an interview with Mr. Richards before he came before the Committee? A. I don't recollect what——

Q. Mr. Cleveland, were you at the White Mountains? A. I was.

Q. In October last? A. No, Sir.

Q. What time? A. I left there the 4th day of September.

Q. You were there during September? A. No, Sir; I was there a week.

Q. Was Mr. Beecher there at that time? A. He was.

Q. Did you go from there to Boston? A. I came to Boston on my way home.

Q. Was there a reason why you took that homeward route? A. There was.

Q. You went there for the purpose of seeing Mr. Moulton? A. I went there to see Mr. Redpath.

Q. With reference to what? A. In response mainly to a telegram—two or three telegrams, from him, and a joint telegram from Gov. Claflin and Mr. Kennard of Boston.

Q. Did Mr. Beecher know of the object of your visit to Boston? A. He knew that I was going to Boston.

Q. Did he know the object of your going there? A. Not——

Q. Do you mean to say that he did not? A. He did not know what was the object—how the object was to be accomplished.

Q. Did he know the object? A. I insist, your Honor, upon making the statements, as they are true.

Q. Did or did not Mr. Beecher know of the object of your visiting Boston? A. He knew that I was to go to Boston and see Mr. Redpath.

Q. That does not answer my question?

Judge Neilson—Let him go on and answer further.

Mr. Morris—No. It is a simple question; did Mr. Beecher know (I ask for your knowledge now) the object of your visit to Boston? A. He knew that——

Mr. Beach—We do not ask what the object was; we ask you if he knew of your object.

Mr. Morris—Yes or no.

Mr. Shearman—I submit that that does not admit of an answer yes or no. I suppose the difficulty in the witness's mind is that Mr. Beacher knew a part of the object, but did not know all of it, did not know the details. Now the witnesses are being instructed by the counsel on the other side that they must answer with great precision.

Mr. Morris—You had a conversation with Mr. Beecher before going to Boston? A. I had, Sir.

Q. About the purpose of your going to Boston? A. Yes, Sir.

Q. Now, was Mr. Beecher aware of your purpose of going to Boston? A. He was.

Mr. Morris—There, it takes a good while to get at a simple answer. [To the witness.] Look at that paper [handing paper to witness]. A. I see it.

Q. Do you recollect such a telegram being sent? A. I do not.

Q. Look at those [handing witness other papers] and say if you know anything about them. Do you know anything about *this* one? A. I cannot translate it, Sir.

Q. Do you recollect such a dispatch being received at the White Mountains? A. I recollect there was a dispatch received at the White Mountains in Latin—if that is Latin.

[Mr. Shearman here made a whispered remark to Mr. Morris.]

Mr. Beach—What was that remark?

Mr. Morris—He asks if they are originals.

Mr. Beach [to Mr. Morris]—Prove them by your witness.

Mr. Morris—Yes, I guess they are the originals.

Mr. Morris—Just look at this, Mr. Cleveland, and state who sent this telegram?

Mr. Beach—State whether this telegram passed.

The Witness—I cannot state that.

Mr. Morris—Can you state whether this telegram passed between the parties indicated—whether Mr. Beecher sent such a telegram? A. I cannot.

Q. *This* one you say you know about? A. I do not; I didn't intend to say so, and did not.

Q. You did not? A. I did not; I didn't write one of them, and know nothing about them.

Q. Don't you know that such telegrams were sent to Mr. Redpath by Mr. Beecher?

Mr. Evarts—If your Honor please, this is not a proper mode of proving communications; communications are to be proved by the originals.

Judge Neilson—If they can be found.

Mr. Evarts—In the absence of the originals they can be shown by copies. These are not this witness's telegrams; they are not to him or by him.

Mr. Morris—That don't prove that he may not know of the fact that they were telegrams from Mr. Beecher.

Mr. Evarts—It proves that he is not to speak concerning those telegrams until you lay the basis for it by showing the reason for not producing the originals.

Mr. Morris—We cannot show they are not originals, because they are not in our possession.

Mr. Shearman—I suppose most papers produced in a case are not in the possession of a party. Get them by subpenas, the way we get our telegrams.

NEW DOCUMENTARY EVIDENCE.

Mr. Morris—Just look at that again, Mr. Cleveland, and state whether you went to Boston with any document in your possession furnished by Mr. Beecher—sent by Mr. Beecher? A. I went to Boston and stopped at Boston at Mr. Beecher's request.

Q. Did you go with documentary power to act conclusively in his behalf, or fully in his behalf? A. I went with his instructions.

Q. No, no. Did you go, in the language of this document, with full documentary power to act conclusively in his behalf?

Mr. Shearman—That is not a proper question to ask. If they ask whether he went with documentary power to act, I don't object; but if he asks whether he went with full documentary power, I object.

Mr. Morris [to the witness]—I ask whether you did not go, in the language of this telegram, with full documentary power to act?

Judge Neilson—Counsel objects that this is inquiring into the contents of the paper. Suppose you limit your question.

Mr. Morris—Have you got the power—have you got the paper? A. I don't know.

Q. Where is it? A. I don't know where it is.

Q. Can you produce it? A. I don't know whether I can or not.

Q. How? A. I don't know; possibly.

Mr. Morris—Then we will have the originals produced. Now, I ask you if you did go——

Mr. Shearman—We have got the paper.

[Mr. Shearman here handed a paper to Mr. Morris.]

Mr. Morris—Is that the document [handing paper to witness]? A. That is the paper I took, Sir.

Mr. Morris—We offer it in evidence.

Judge Neilson—Whose writing is it

Mr. Morris—Mr. Beecher's.

Judge Neilson—Now, go on.

Mr. Morris—[Reading:]

SEPT. 4, 1874.

To Whom it May Concern: I have requested Mr. Henry M. Cleveland to proceed to Boston as my alternative and representative. I hereby authorize him to hear and determine, in my behalf, all matters whatsoever in relation to the scandals which have arisen, and I give him authority to sign my name to any arrangements and documents which may, in his judgment, be needful, and I will accept his agreements as if made by myself.

HENRY WARD BEECHER.

[Paper marked Exhibit 122.]

Mr. Morris—Now, Mr. Cleveland, what scandal was referred to in this document? A. That document referred to Mr. Moulton's connection with this scandal.

Q. What scandal does this document refer to? A. General scandal.

Q. The one now under investigation? A. It referred—the paper referred to——

Q. To the scandal now under investigation? A. To Mr. Moulton's participation in the scandal.

Q. Do you mean to say it referred alone to Mr. Moulton's connection with the scandal? A. I mean to say I don't know what it referred to. That was given to me by Mr. Beecher as a credential that the Boston parties who had anything to say might say it to me.

Q. You mean to say that you don't know what scandal this referred to? A. I have no idea; I didn't write it.

Q. Well, Mr. Cleveland, have you any idea now what scandal this referred to? A. It referred to telegraphic correspondence with Mr. Redpath.

Q. And was that the scandal? A. All I know of that was that it was my credential to Mr. Redpath.

Q. Credential to whom? A. To Mr. Redpath.

Q. For what purpose? A. To hear anything he had to say.

Q. You were sent simply to listen—that is all, is it? that is the way you understood it? A. That was my authority—to hear Mr. Redpath.

Q. To hear what he had to say? A. My authority.

Q. Your understanding of your mission to Boston was to hear what Mr. Redpath had to say? A. I mean to say I had my instructions from Mr. Beecher. That was simply my authority—to hear what was to be said.

Q. To be said about what? A. Anything that Mr. Redpath had to say.

Q. About what? A. Anything.

Q. About anything? A. Yes, Sir.

Q. And you were not sent on for any specific purpose? A. I was requested to see Mr. Redpath.

Q. For what purpose?

Mr. Tracy—He is telling, I submit.

Judge Neilson—Go on, Mr. Cleveland.

The Witness—I was requested to stop in Boston, in response to this telegram from Gov. Claflin and others, to hear what Mr. Redpath had to say to Mr. Beecher, growing out of the telegraphic correspondence. That letter was my authority to hear for Mr. Beecher. My instructions were given to me by Mr. Beecher.

Q. Well, that was all that you was authorized to do, to hear what Mr. Redpath had to say? A. The letter shows its authority.

[By consent of counsel this witness was requested to stand aside, to permit the examination of another witness.]

EXAMINATION OF DR. JAMES L. LITTLE.

James L. Little, a witness called and sworn on behalf of the defendant, testifies as follows:

Mr. Hill—Where do you reside? A. 266 West Forty-second-st., New-York.

Q. How long have you resided there? A. Since 1862.

Q. Your profession? A. Physician.

Q. How long have you been engaged in its practice? A. Fourteen years.

Q. Did you ever reside in Brooklyn? A. I did.

Q. During what period? A. Up until 1872.

Q. Practicing here? A. No, Sir.

Q. Do you know the parties to this suit, Mr. Tilton and Mr. Beecher? A. I have seen them frequently, Sir.

Q. How long have you known Mr. Tilton? A. I don't know, Sir; for many years I was not personally acquainted with him.

Q. Were you a member of Plymouth Church at any time? A. I was.

Q. Did you see him there much? A. Frequently.

Q. Knew him perfectly well? A. Yes, Sir.

Q. Now, Dr. Little, did you see the Communist procession which has been referred to during the progress of this trial? A. I did.

Q. Do you recollect whether you saw Mr. Tilton in it or not? A. I did.

Q. Please state under what circumstances you saw him—who was he with? A. He was in a carriage with a woman, who was pointed out to me at that time as Miss Claflin.

Q. Did you see Mrs. Woodhull in that procession? A.

There was a woman walking in front of the carriage that was pointed out to me as Mrs. Woodhull.

Q. Immediately in front of the carriage? A. Yes, Sir; I think so.

Q. Where was the procession at the time that you saw it? A. Passing through Thirty-fourth-st., near Sixth-ave.

Q. Let me ask you this: Did the whole procession pass you? A. Yes, Sir.

Q. So that you saw all of it? A. Yes, Sir.

Mr. Hill—That is all.

Mr. Morris—That is all.

Mr. Beach—No, wait a moment. We want to get some facts.

CROSS-EXAMINATION OF DR. LITTLE.

Mr. Beach—Was this a covered or an open carriage? A. It was an open carriage.

Q. How many persons were in it? A. I don't know whether any one occupied the front seat.

Q. How many persons will you swear you saw in it? A. I only remember two persons in the carriage.

Q. A gentleman and lady? A. Yes, Sir.

Q. Sitting on the back seat? A. Sitting on the back seat; yes, Sir.

Q. And whereabouts was the carriage when you noticed those two persons? A. In what part of the procession, do you mean?

Q. Whereabouts in the street? A. In Thirty-fourth-st., near Sixth-ave.

Q. In Thirty-fourth-st., near Sixth-ave.? A. Yes, Sir; very near Dr. Taylor's Church.

Q. Which way was it passing? A. It was passing toward Sixth-ave.

Q. And which way were you going? A. I was standing on the sidewalk, looking at the procession.

Q. Which way did you go? A. I don't remember; I think I went directly home after that.

Q. Which way was that? A. Toward Sixth-ave.

Q. Toward Sixth-ave.? A. Yes, Sir.

Q. The same direction with the procession? A. Yes, Sir.

Q. Did you accompany it? A. No, Sir.

Q. On the sidewalk, along? A. No, Sir.

Q. Did it accompany you? A. I stood on the sidewalk until the procession passed.

Q. And did you observe the head of the procession as it came to you? A. I saw the head of the procession; yes, Sir.

Q. Whereabouts was this carriage in reference to the procession itself? A. I don't remember, Sir.

Q. Was it at the head of the procession? A. I don't know; I think not at the head.

Q. Was it at the foot of the procession? A. Not at the foot of the procession; it was near the head.

Q. It was near the head? A. Yes, Sir.

Q. What was in front o the procession—what was the leadership? A. I don't remember whether it was a band of music or not.

Q. Are you quite certain that there were not two ladies in this carriage? A. I could not be certain there was not some one on the front seat; I am not certain of that.

Q. You say this lady you do remember was pointed out to you as Miss Claflin? A. She was sitting in the back seat with a gentleman whom I knew to be Mr. Tilton.

Q. Yes, I understand that. If there had been a lady on the front seat, would you not also have inquired who she was? Was there any object in inquiring for this particular lady on the back seat? A. Yes, Sir.

Q. What was it? A. To see Miss Claflin.

Q. You inquired whether it was Miss Claflin? A. She was pointed out to me as Miss Claflin by a gentleman who was standing alongside there.

Q. Who was he? A. I don't remember.

Q. Did you know him at the time? A. That I don't remember. I met several gentlemen at the time I was in that vicinity, but I cannot remember who it was who spoke to me or talked to me at that time.

Q. And you say you saw a lady in front of the carriage, on foot? A. Yes, Sir.

Q. And she was pointed out to you as Mrs. Woodhull? A. Yes, Sir.

Q. Then, if the designations were properly given to you, it was not Mrs. Woodhull who was in the carriage if any other lady was there but Miss Claflin? A. No, Sir.

Q. Could not have been? A. No, Sir—if the gentleman who pointed out to me these ladies gave me the right names.

Q. Who was walking with Mrs. Woodhull? A. I do not remember. There might be some gentleman walking along side of her, but I don't remember about that.

Q. Was she carrying anything? A. She was carrying a flag, I think.

Q. What sort of a flag? A. I think it was a red flag.

Q. Was there any symbol upon it—any inscription? A. That I don't remember, Sir.

Q. What? A. I do not remember.

Q. Did you ever speak to Mr. Tilton? A. I have been introduced to him several times.

Q. You have been introduced to him several times? When was the last time? A. When I was an attendant upon Mr. Beecher's church.

Q. When was that? A. That was before 1862.

Q. You have not spoken to him since? A. No, Sir.

Q. Can you give any description of his apparel upon this occasion? A. No, Sir.

Q. You identified him from the appearance of his clothes? A. Yes, Sir.

Q. You were standing still while the procession moved in front of you? A. Yes, Sir.

Q. And past you? A. Yes,

Q. Was there any other carriage in the procession? A. I do not remember, Sir.

Q. You don't remember any other, do you? A. No, Sir.

Q. You remember but one carriage? Do you know Mr. Swinton—John Swinton? A. No, Sir.

Q. Do you know Mr. Young of the staff of *The Herald*? A. No, Sir.

Mr. Beach—That is all.

RE-DIRECT EXAMINATION OF DR. JAMES L. LITTLE.

Mr. Hill—Doctor, you did not know these two women personally? A. No, Sir.

Q. I will ask you, did you remark to any person, in the presence of Mr. Tilton, under the circumstances that you have named at that time or about that time——

Mr. Beach—Objected to.

Judge Neilson—I don't think we can take that, Mr. Hill.

Mr. Hill—Well.

Judge Neilson [to Witness]—That is all. [To the jury.] Gentlemen, get ready to retire. The jurors will please attend to-morrow morning at 11 o'clock.

The Court thereupon adjourned till Friday at 11 o'clock.

SEVENTY-FIRST DAY'S PROCEEDINGS.

A DRAMATIC SCENE AT THE CLOSE OF COURT.

PROTRACTED CROSS-EXAMINATION OF HENRY M. CLEVELAND—HIS MISSION TO BOSTON AND THE CONDITIONS WHICH MR. BEECHER IMPOSED—MR. MOULTON RECALLED FOR CROSS-EXAMINATION—THE FORMER CASHIER OF WOODRUFF & ROBINSON CONTRADICTS MR. MOULTON'S TESTIMONY—THE WITNESSES FACE TO FACE.

FRIDAY, April 23, 1875.

The cross-examination of Mr. Cleveland was concluded to-day. All the circumstances of his visit to Boston last Fall were described. Mr. Cleveland said that he went to Boston at Mr. Beecher's request, on the strength of a telegram from Mr. Redpath. The object of the visit was not to prevent the publication of Mr. Moulton's second statement. Mr. Beecher told him to go to Boston and hear what Mr. Redpath had to say, but to remember that he (Mr. Beecher) would have nothing to do with any condition or arrangement affecting the scandals unless Mr. Tilton and Mr. Moulton withdrew all their charges affecting his moral character. The paper of authorization given him by Mr. Beecher was merely intended to attest his authority if it were doubted. He would never have exercised the full powers given him. The principal subject of the cross-examination was the action of the Investigating Committee. Mr. Cleveland said that the statement in the Committee's report that Samuel E. Belcher had testified that Mr. Tilton had shown him the "True Story" was incorrect. He did not testify that its title was the "True Story." When the cross-examination was finally completed, about the middle of the afternoon session, there was a short re-direct examination by Mr. Shearman. This was followed by a "re-cross," and then by a "re-re-direct" and a "re-re-cross," and finally by a few hap-hazard questions put by several of the counsel on both sides. On the re-direct examination Mr. Cleveland stated that he had been sick for six weeks, that when he was examined at his house he was unable to sit up and in constant pain, and that his physicians has advised him that he was not physically able to attend in court. His nervous system was almost broken down. The witness was allowed to explain some of his former statements. He said that Mr. Beecher had at first suggested the names of Wm. M. Evarts, George William Curtis, and William Cullen Bryant as a committee to investigate the charges against him last year, and that Gen. Tracy and Mr. Shearman had advised him that a committee composed of those gentlemen would not have immunity from libel suits, and that the only safe way would be to select a committee under the auspices of the Examining Committee of Plymouth Church. Mr. Cleveland said he had entered into no design with anybody to cause Mrs. Tilton to leave her husband.

There was a pause of several minutes and a buzz of expectation among the audience. Presently Mr. Fullerton came in, and soon afterward Mr. Moulton entered the court-room, and took the witness-chair. Instantly all the sleepers awoke, the jury became attentive, and a hush fell upon the audience. Mr. Moulton had been recalled by the defense, and some startling developments were looked for.

Mr. Evarts's first question revealed the object for which Mr. Moulton had been recalled. He was to be confronted with Mr. Partridge, the former cashier of Messrs. Woodruff & Robinson, who on April 21 testified in regard to the memorandum which accompanied the check for $7,000 which Mr. Tilton received from Mr. Bowen. Mr. Evarts at that time sought to prove by Mr. Partridge that Mr. Moulton had told him that Mr. Tilton had written the "Life of Victoria Woodhull"

with the design of placing himself at the head of the Spiritualists of this country, who far outnumbered the Congregationalists. This was ruled out on the ground that it was not in contradiction of anything that the prosecution had brought forward. Mr. Evarts was immediately checked in his examination of Mr. Moulton, by an objection from the plaintiff's counsel, and long arguments followed between Mr. Beach and himself. Mr. Evarts explained that he was now seeking to lay the foundation for collateral impeachment, the want of which had prevented his introducing the testimony of Mr. Partridge on April 21. He was finally permitted to proceed. Mr. Moulton said that he did not remember the alleged conversation with Mr. Partridge. In regard to his telling him that Mr. Tilton's motive in writing the life of Mrs. Woodhull was to place himself at the head of the Spiritualists, who outnumbered the Congregationalists, he knew of no such thing and said no such thing; but he had an indistinct recollection that he had said that he had understood that the Spiritualists did outnumber the Congregationalists. He did not remember conversing with Mr. Partridge about Mr. Tilton's "Life of Victoria Woodhull."

As soon as Mr. Moulton left the stand Samuel Dwight Partridge was called. Mr. Beach again objected to the testimony of Mr. Partridge. There was another passage of arms between himself and Mr. Evarts, but Judge Neilson allowed a question to be put to the witness corresponding to the one just asked of Mr. Moulton. Mr. Partridge then swore that Mr. Moulton had told him in substance, soon after the publication of the "Life" of Mrs. Woodhull, that the author's object was to put himself at the head of the Spiritualists, &c. The witness was cross-examined at considerable length by Mr. Beach in regard to the time and circumstances of the alleged interview which he said took place at Messrs. Woodruff & Robinson's store.

THE PROCEEDINGS—VERBATIM.

The Court met at 11 o'clock, a. m., pursuant to adjournment.

Judge Neilson—Mr. Shearman, shall we proceed?

Mr. Shearman—Yes, Sir.

MR. CLEVELAND'S COMMISSION TO BOSTON.

Henry M. Cleveland recalled, and the cross-examination resumed.

Mr. Morris—Mr. Cleveland, I just hand that to you again. [Handing witness a paper.] Will you state as near as you can when you gave that to the lawyers—the counsel upon the other side? A. Within a week, I think.

Q. Where was it that you gave it to them? A. In my room.

Q. At No. 114—— A. No. 114 Remsen-st.

Q. And to which of the counsel did you hand it? A. To Mr. Shearman.

Mr. Morris [to the jury]—It is the paper that was introduced yesterday.

Mr. Beach—The "power" from Mr. Beecher.

Mr. Morris—Can you tell the day that it was? A. I don't recollect the day.

Q. When did you return from Connecticut? A. On Thursday.

Q. Thursday of—— A. Of last week.

Q. And was it during any day last week that you gave it to Mr. Shearman? A. Since Thursday of last week.

Q. Then it was this week? A. I don't recollect.

Q. Or was it during last week? A. I don't recollect the day; it was since Thursday of last week.

Q. Who spoke about it first? A. I did.

Q. What did you say to Mr. Shearman about it? A. I said that I had such a paper in my possession.

Q. And you gave it to him? A. I did.

Q. Let me call your attention to your testimony yesterday with reference to this paper:

Q. Have you got the "power"—have you got the paper [referring to this paper]? A. I don't know.

Q. Where is it? A. I don't know where it is.

Was that true? A. That was true.

Q. You did not know where it was; what do you mean by that? please explain. A. I meant that I did not know now where it was when I testified; I gave it to Mr. Shearman a week ago.

Q. But you recollected the fact that you had given it to Mr. Shearman? A. I did.

Q. Why didn't you state that fact? A. I don't know any reason why I did not.

Q. How? A. I don't know any reason why I did not.

Q. And you supposed when you said you didn't know where it was, that Mr. Shearman had it, did you? A. I didn't know.

Q. You had given it to him a few days ago? A. I had.

Q. When you were asked the question where the paper was, you knew the object of the question, did you not? A. I did not.

Q. Didn't you understand the object, that I desired to ascertain where it was? A. I didn't know what subsequent questions were coming.

Q. No, but the questions that I did ask you; I asked you where the paper was, and you said, "I don't know." [Reading]:

Q. Have you got the power—have you got the paper? A. I don't know.

Q. Where is it? A. I don't know wh-

Thos. E. Seawall

Didn't you suppose I asked that question for the purpose of ascertaining where the paper was?

Mr. Shearman—I submit, your Honor, that it is not necessary to go into all this. I was standing up at the very time trying to interrupt Judge Morris and trying to catch his attention, with the paper in my hands. The witness did not know whether I had got the paper or not.

Mr. Morris—That is not the point. Didn't you suppose by that question that I wanted to know where the paper was to ascertain that fact? A. I will answer that in this way, that I gave the paper to Mr. Shearman after I returned from——

Q. No, no. A. I supposed that when it was proper to introduce that paper it would be introduced; that was my supposition.

Q. And that was the reason that you answered that you did not know where it was? A. That was my reason.

Q. Very well, we will let that pass. Now, Mr. Cleveland, do you recollect the date that you went to Boston from the White Mountains? A. I do.

Q. What day was it? A. Fourth of November.

Mr. Shearman—September, you mean.

The Witness—September, I mean, 1874.

Mr. Morris—And prior to that the Committee had made its report, had they not? A. It had.

Q. Do you recollect the date of that report? A. The 28th of August, I think.

Q. Mr. Moulton had made his first long statement, had he not? A. I think so; I could not swear to that.

Q. Don't you know that it had been published before the Committee made its report? A. I think so.

Q. Have you any doubt upon that question? A. I don't recall the date; I have really no doubt.

Q. Well, as to whether you saw that publication before the Committee made its report? A. I unquestionably did.

Q. How? A. I did. I don't recollect the date of that publication. I think it was before the Committee reported.

Q. Before going to Boston, you had heard that a second statement from Mr. Moulton had been prepared, or was in course of preparation, had you not? A. I had.

Q. And that had been a matter of conference—conversation between you and Mr. Beecher before you left the White Mountains? A. I think so.

Q. And you had heard something of the contents of that report, had you not—something of its nature and character?

Mr. Shearman—The report?

Mr. Morris—Of the statement that Mr. Moulton had prepared—the second statement.

The Witness—I heard that it was to be an assault upon Mr. Beecher.

Q. You had learned generally its purport? A. I knew nothing of its details.

Q. Oh, no. You had learned that Mr. Moulton purposed vindicating himself in that report against the charge of blackmail, had you not? A. I had heard that he was going to make another long statement.

Q. Did you not understand that that long statement was to be a vindication of Mr. Moulton, and especially as against the charge of blackmail? A. I suppose that statement would cover all the points of Mr. Moulton's defense.

Q. Now, you stated yesterday that you went to Boston solely with reference to Mr. Moulton's connection with this matter.

Mr. Beach—Not solely, he didn't say.

Mr. Morris—Well, with reference to Mr. Moulton's connection with the matter. Now was that the statement that he had prepared—was that the purpose? A. I meant to say—I mean to say that as I understand the telegraphic correspondence stated to me by Mr. Beecher, that Mr. Redpath desired Mr. Beecher to come to Boston to confer with him and other parties in regard to Mr. Moulton's statement.

Mr. Beach—Proposed statement.

Mr. Morris—Proposed statement.

The Witness—Proposed statement.

Q. And the ultimate object had in view was to prevent the publication of that statement, was it not? A. It was not.

Q. Your visit to Boston, do you mean to say, had no reference to making an arrangement which would supersede the necessity of publishing that statement? A. I mean to say——

Mr. Beach—No; make him answer.

Mr. Morris—Now, answer that question.

Mr. Shearman—That question cannot be answered by yes or no, if your Honor please.

Mr. Morris—Will the stenographer read the question, please. The Tribune stenographer read the question as follows: "Your visit to Boston, do you mean to say, had no reference to making an arrangement which would supersede the necessity of publishing that statement?" A. It had not.

Q. Then your visit to Boston was not for the purpose of entering into any arrangement whatever, or any understanding, that should be satisfying to Mr. Moulton and prevent the publication of that statement; is that it? A. My visit to Boston, under the instructions of Mr. Beecher, was to hear for him no proposition or explanations upon that whole matter of all these scandals.

Q. No, no; that ain't it.

The Witness [continuing]—Until after the charges of Francis D. Moulton and Theodore Tilton should have been withdrawn, retracted—absolutely and unqualifiedly.

Q. Now, then, will you answer the question I put? The stenographer will read it.

Mr. Shearman—It is answered.

Mr. Morris—No, it is not; I beg your pardon.

The Tribune stenographer read the question, as follows:

"Then your visit to Boston was not for the purpose of entering into any arrangement whatever, or any understanding, that should be satisfying to Mr. Moulton and prevent the publication of that statement; is that it?"

Mr. Evarts—Now, the witness has given the entire affirmative body of his instructions, covering the whole question. He went there under instructions, to hear what they had to say, and have nothing to do with anything they had to say except on condition of unqualified and complete withdrawal of every charge.

Mr. Morris—I have not asked any condition, or anything about any condition.

Mr. Evarts—No, you did not want the condition; but you asked a question, and this is the answer.

Mr. Morris—Mr. Cleveland, I will ask you the question in another form, to the same point: Do you mean to say that in your visit to Boston you did not expect, by some understanding and arrangement, to be able to prevent the publication of that statement? A. I did not expect to.

Q. Well, pray tell us what you expected to do when you got to Boston? A. I expected to find out, if I could, what the Boston gentlemen wanted, as a matter of courtesy to them, partially.

Q. To hear what they had to say simply; is that it?

The witness nodded assent.

Mr. Morris—Do you mean to say that——

Mr. Beach—He has not answered.

Mr. Morris—He nodded his head, I understand. [To the witness.] To simply hear what they had to say; is that it? A. Simply to hear what Mr. Redpath had to say.

Q. And nothing else? Well. A. What anybody had to say.

Mr. Beach—Get his answer on record. His nodding don't give us any intimation.

Mr. Evarts—You asked him what he expected; it is answered.

Mr. Morris—Nothing else? A. To hear what Mr. Redpath and any of the gentlemen had to say.

Q. Is that all? A. That is all, at that point.

Q. What gentlemen?

Mr. Beach—No, no; was that all the object of his mission?

Mr. Evarts—That was not the question, Mr. Beach. The question was, "What did you expect?"

Mr. Morris—What was the object of your visit to Boston?

Mr. Evarts—You asked, "What did you expect?"

The Witness—I did not expect anything.

Mr. Beach—That was not the last question.

Mr. Evarts—Well, we will hear it.

Mr. Morris—Have you stated, now, the whole of your object in visiting Boston?

Mr. Shearman—That has not been asked.

Mr. Evarts—You have not asked that before.

Mr. Morris—Well, I ask it now? A. My object in going to Boston was to hear, under instructions of Mr. Beecher, what all that matter meant, of telegraphing him to come to Boston; and Mr. Beecher said to me: "Go that way home and see what this thing means, but remember this, that I will have nothing to do with any condition or arrangement affecting all these scandals, except upon the condition that Mr. Francis D. Moulton and Theodore Tilton make an absolute retraction of every charge affecting my moral character that they have made against me."

Q. And from whom did you expect to learn, when you got to Boston, the facts? A. I did not expect to learn that from anybody.

Q. Whom did you expect to talk with there? A. I expected to talk with Mr. Redpath.

Q. And did you expect to meet Mr. Tilton there? A. I did not.

Q. Did you expect to meet Mr. Moulton there? A. I did not.

Q. And how long had you been at the White Mountains? A. About a week.

Q. Did you see Mr. Redpath there? A. I did not.

Q. You knew that he had been up at the White Mountains to see Mr. Beecher, didn't you? A. I may have; I have forgotten it. I knew he was there after I was.

Q. How? A. I knew that he was there after I left the White Mountains. I don't recollect whether he was there before.

Q. Don't you know that he was there before that? A. I don't recollect; I may have known it.

Q. Well, what were you to do after you had heard what Mr. Redpath had to say about the matter? A. That depended upon what Mr. Redpath said.

Q. Well, what were you to do if, in your judgment, his statement was satisfactory? I. I had no idea that his statement would be satisfactory.

Q. No, no, that is not the question: what were you to do in case Mr. Redpath's statement should be satisfactory?

Mr. Evarts—If your Honor please, a preconceived plan of what he was to do implies instructions. He has given his whole instructions, and speculative inquiries as to what the witness now thinks he would have done, if this or that view had been presented by Mr. Redpath, are not admissible. That is not a worthy subject of inquiry, as it seems to me. Of course anything that Mr. Beecher told this gentleman, or any implied instructions—all that, of course, is right.

Judge Neilson—This question looks to an implied instruction.

Mr. Evarts—Let it take that shape, then.

MR. BEECHER'S INSTRUCTIONS TO MR. CLEVELAND.

Mr. Morris—No; the counsel is mistaken; the witness has not stated all of the instructions that Mr. Beecher gave him.

Mr. Evarts—Well, I don't object to your drawing them out.

Mr. Morris—And we have the written evidence here of the fact that he has not stated all the instructions that Mr. Beecher gave him before he went to Boston.

Mr. Evarts—I don't object to your drawing out instructions from Mr. Beecher in any form that you please; I believe that is right. You may get others.

Mr. Morris—Now, I ask you again, Mr. Cleveland, what did you intend to do, or what were you to do in case Mr. Redpath's statements should be satisfactory to you?

Mr. Tracy—To that we object.

Mr. Evarts—We don't know what "satisfactory" means.

Judge Neilson—I think he may answer.

The Witness—Will you repeat the question?

The Tribune stenographer read the last question.

A. If Mr. Redpath's statement to me had been accompanied with an authentic withdrawal from Theodore Tilton and Francis D. Moulton of all their charges against Mr. Beecher, I should have then taken that proposition to Mr. Beecher for his own settlement.

Q. And then you expected to return back to the White Mountains in case this was satisfactory, and report to Mr. Beecher? A. I had no expectation of returning, for I had no kind of idea I should see anything or learn anything that would interest Mr. Beecher.

Q. Well, did you understand the meaning of this language? [Reading]:

I hereby authorize him [that is you] to hear and determine in my behalf all matters whatsoever in relation to the scandal which have arisen, and I give him authority to sign my name to any arrangements and documents which may, in his judgment, be needful, and I will accept his agreements as if made by myself.

Did you understand, with this document in your possession, that after you had heard the statement of Mr Redpath you were to return and report to Mr. Beecher before taking action? A. My answer to that is that no man living, probably, but Henry Ward Beecher would ever have written such a letter, giving me such unlimited authority.

Mr. Morris—Oh, no, no.

The Witness [Continuing]—And that I never should have signed a paper in his behalf.

Mr. Morris—One moment—stop! I move to strike that out.

Mr. Evarts—Hear the answer, and strike out what is improper.

Mr. Morris—I move to strike out all that he said, as not responsive in any sense.

Mr. Evarts—Well, it is the ordinary practice to hear the answer, and then determine what to strike out.

Mr. Beach—No; when the witness undertakes to make an irrelevant statement, and has gone far enough to show that it is irrelevant, it is proper to stop the witness.

Mr. Evarts—How many sentences, with the best of us, would be irrelevant, if they were stopped in the middle?

Mr. Morris—Well, this is irrelevant, stopped in any part of it.

Mr. Evarts—I submit, the proper practice, when a question arises of striking out a witness's testimony, is that you should have the answer, and then consider whether it should be stricken out.

Judge Neilson—Yes, that is evident. Now, the question seems to be whether this witness would, as he thinks or remembers, have taken the responsibility of acting as there authorized, or whether, upon hearing a satisfactory statement, he would have preferred to return and submit it.

Mr. Morris—That is not my question, if your Honor please, precisely.

Judge Neilson—Go on.

Mr. Morris—But let us have the ruling on this motion.

Judge Neilson—Well, this is stricken out. Repeat the question, Mr. Stenographer.

The Tribune stenographer read the last question.

The Witness—I should have done so——

Q. Then, pray, what was the object in taking this document? A. As a matter of authority from Mr. Beecher to hear for him what was talked about.

Q. But this is authority to hear and determine and to sign all documents and to bind him as though he were present personally himself? A. It is an authority that I never should have exercised.

Q. You understood that that was Mr. Beecher's purpose in giving the document, didn't you—that you should exercise it?

The Witness—If your Honor please, I will make one word of explanation which will save my good friend, Judge Morris—my verbal instructions on the morning of September 4, when I left the Twin Mountain House, were given to me immediately after breakfast; just before I stepped into the carriage to go to the depot, Mr. Beecher brought a paper to me and handed it to me and said: "If anybody doubts that you can hear for me in Boston, show them that paper." I put it in my pocket, and did not read it until after I left the Twin Mountain House.

Q. Well, you say you did not expect to see Mr. Tilton in Boston, and you didn't expect to see Mr. Moulton? A. I say that I, personally, did not expect to see Mr. Moulton; Mr. Redpath expected that I might see Mr. Moulton.

Q. Did you expect that Mr. Moulton and Mr. Tilton were going to withdraw the charges that had been made? A. If the Court will allow me to explain that point——

Q. No, no; did you expect that? A. I did not.

Q. No, you did not; you hadn't any such idea whatever? A. No such idea whatever.

Q. No, and if you had no such idea whatever, and if you did not intend to act upon whatever statement was made, but expected to report to Mr. Beecher, and if you understood that he would not do anything except upon that basis—what object—— A. I went to Boston because Mr.——

Q. [Continuing]—Did you have or expect to attain in reporting back to Mr. Beecher without action? A. I stopped in Boston at the request of Mr. Beecher.

Q. Or, in other words, what was the purpose of your visit there, if you did not expect that the charges would be withdrawn, and if you knew that nothing would be done, or could be done, unless they were withdrawn? Now, tell us what object—what was the purpose of going to Boston? A. My purpose in going to Boston was to see Mr. Redpath, and hear what he had to say for any of the parties in the controversy.

Mr. Shearman—It was a mere matter of curiosity, then? A. It was a matter of courtesy to him and Gov. Claflin and other gentlemen in Boston.

Q. In response to telegrams? A. In response to telegrams—telegrams from Gov. Claflin and other friends in Boston.

Mr. Morris—And do these telegrams relate to Mr. Moulton's statement? A. I think so——

Q. Did you see them? A. I saw—Mr. Beecher stated to me at the time the substance of the telegrams.

[Here a conversation took place between counsel in regard to the telegrams.]

Mr. Beach—I understood you to say there was no objection to these telegrams.

Mr. Evarts—No; I say I have no doubt they may be treated as if they were original. They are not the whole series.

Mr. Shearman—The one in Latin I presume is very much better than as it was actually received; it had to go through three telegraph offices. I believe it was dog Latin when it got there.

THE CHARGE OF BLACKMAIL.

Mr. Morris [to the witness]—What were you to do, if anything, with reference to the charge that had been made against Mr. Moulton of blackmail?

Mr. Shearman—I didn't catch that question.

Mr. Morris—I asked what, if anything, was he to do with reference to the charge that had been made against Mr. Moulton of blackmailing?

The Witness—I had nothing specially to do with that.

Q. There was nothing said as to the withdrawing of that charge? A. By whom?

Q. By Mr. Beecher. A. I don't recollect that there was.

Q. In any event? A. I don't——

Q. If Mr. Moulton withdrew his charge, wasn't it understood that that charge was to be withdrawn against him? A. It was not.

Q. It was not? A. No, Sir.

Q. That was to stand? A. There was no understanding about withdrawing——

Q. Well, you say it was not to be withdrawn?

Mr. Shearman—No; he said there was no understanding that it was to be withdrawn.

Mr. Morris—Nothing said upon that subject at all?

The Witness—Nothing.

Q. What? A. Nothing that affected that question specially.

Q. Was anything said upon that subject at all before you went to Boston?

Mr. Shearman—The question ought to point out what subject, because here are two subjects.

Mr. Morris—The blackmail.

The Witness—I will explain that, if the Court please.

Mr. Morris—The subject of blackmail—no, my question is, was there anything said upon that subject before you left for Boston? A. There was.

Q. What? A. There was.

Q. Now, then, I ask you again, wasn't that charge of blackmail to be withdrawn in case you should find the parties ready to withdraw the charge.

Mr. Evarts—I submit, if your Honor please, the proper question is what was said, or else it must be made apparent that he is not asking for what was said, but for some other understanding.

Judge Neilson—On direct examination, that is clearly so, but——

The Witness—I will answer the question, Judge, if you will repeat it.

Judge Neilson—Go on; answer the question.

The Witness—Mr. Beecher said to me that——

Mr. Morris—No, no; I didn't ask you that.

The Witness—I cannot answer the question.

Mr. Morris—I am asking for your understanding. I ask if you did not understand that you were, on behalf of Mr. Beecher, to withdraw that charge? A. I did not so understand it at all.

Q. You did not? A. No, Sir.

Q. Not under any circumstances? A. Under any circumstances.

Q. And what papers did you understand that you were to sign? A. I did not personally understand that I was to sign any.

Q. And you did not intend to sign any? A. I did not intend to sign any.

Mr. Evarts—He says this paper was handed to him as he got into the coach, and he did not read it until he got off.

Judge Neilson—Yes; he was at liberty to act under it or not, of course, as to signing papers.

Mr. Evarts—He had his verbal instructions. This is a a letter of credence which he did not read, as when one

goes on a commission with sealed orders, not to be opened until you are off soundings.

Mr. Beach—I don't see the pertinency, Sir, of that explanation.

Mr. Evarts—Well, it is an examination that overlooks what has been already testified to.

Mr. Beach—No, it is not.

Mr. Morris—Oh, no. Well, when you got in Boston you exhibited this document, did you not, as showing your full authority to act in behalf of Mr. Beecher? A. I think quite likely; I do not recollect that.

Q. Don't recollect of showing it? A. I may have shown it to Mr. Redpath at the Revere House; I either told him that I had it, or showed it to him.

Q. Don't you know that you showed it to him? A. I don't; he knew that I had it, either by my statement, or by reading it; I cannot tell which.

Q. Well, when you saw Mr. Redpath did you say to him anything about your written authority being limited by private instructions from your principals? A. We had no discussion about that.

Q. Did you communicate that fact to Mr. Redpath, that you had not the authority, or did not intend to act as here indicated in the paper; but that your authority was limited by private instructions? A. I did not.

Q. Did not? A. The only conversation with Mr. Redpath at the Revere House was in regard to my meeting Gen. Butler and Mr. Moulton the next day. He attempted to make an appointment, and——

Q. You wanted to meet them? A. I was willing to meet them.

Q. You went there for that purpose? A. I went there to meet them or anybody else.

Q. Did you meet either of them? A. I did not.

Q. Why not? A. Well, I understood from Mr. Redpath that they would not see me.

Q. Oh, they declined to meet you? A. That was his report to me.

TELEGRAMS IN LATIN AND ENGLISH.

Mr. Morris [reading:]

TWIN MOUNTAIN HOUSE, Sept. 3.

JAMES REDPATH, *Globe Office:*

Send on your dispatch in Latin. Operator will wait. Can you wait till my reply shall come? H. W. B.

[Marked Exhibit 123.]

Now the Latin one I will give to Gen. Pryor. Gen. Pryor will be so kind as to give us the translation.

Mr. Pryor—If your Honor please——

Mr. Evarts—Read it in Latin; perhaps the jury understand Latin, anyway.

Mr. Morris—Better read it in translation.

Mr. Evarts—His Honor doubtless does. If there is anyone that does not understand he can raise his hand.

Mr. Pryor—I am willing that my classical friend, Mr. Evarts, should interpret it; I will accept his rendering.

Mr. Evarts—No; you may give the direct reading, and I will cross-examine you upon it. [Laughter.]

Mr. Pryor [reading]:

BOSTON, 1874.

To H. W. BEECHER, *Twin Mountain House, N. H.:*

Veni, veni, et statim, in nomine Patris.

Licet magnum periculum averti.

Silens laboravi tres annos ut obtineam auctoritatem quam teneo diem unum solum. Ne me frustres tuo dubitatione. Veni. J. R.

[Marked Exhibit 124.]

The English of it, I believe, we are agreed, is:

Come, come, and at once in the name of the Father, to the end that a great peril may be averted. Silently I have labored for three years that I might obtain an authority which I hold for one day only. Do not frustrate me by your doubts, or "suspicions," perhaps.

Signed, J. R.

Mr. Evarts—"*Dubitatione,*" if your Honor please, means "dubitation" naturally, or hesitation, uncertainty, or doubt.

Mr. Beach—Both doubt and hesitation.

Mr. Evarts—Doubting or hesitation, I suppose. We have an English word "dubitation" that comes pretty near "*dubitatione.*"

Mr. Morris—[Reading]:

TWIN MOUNTAIN HOUSE, Sept. 3.

To JAMES REDPATH, *Globe Office:*

Cleveland will come with full documentary power to act conclusively in my behalf. It is impossible for me to leave before Monday, if at all. H. W. B.

[Marked Exhibit 125.]

TWIN MOUNTAIN HOUSE, Sept. 3.

To JAMES REDPATH, *Boston:*

I cannot come. Meet Cleveland on Friday at Lowell. He leaves on 9:30 to-morrow. H. W. B.

[Marked Exhibit 126.]

TWIN MOUNTAIN HOUSE, Sept. 4.

JAMES REDPATH, *Tremont House:*

Cleveland left here on the 9:30 this morning. Wait for him at Tremont, but send a messenger to Revere House.

[Marked Exhibit 127.] H. W. B.

TWIN MOUNTAIN HOUSE, Sept. 4.

To JAMES REDPATH, *Boston:*

Cleveland left Twin Mountain House at 9:30 this morning, and will meet you at Lowell depot at 6:20 this (Friday) afternoon. Is that plain? H. W. B.

[Marked Exhibit 128.]

Now we will have these marked.

Mr. Beach—Well, they can be marked hereafter.

Mr. Morris—You, I think, said yesterday, Mr. Cleveland, that you saw that telegram before you left the Twin Mountain House? A. I did not so testify, I think.

Q. I so understood you.

Mr. Evarts—Which is that?

The Witness—I did not, I think—I do not—I knew of the telegrams. I could not swear that I read one of them. Mr. Beecher told me about them, and possibly read them to me; I do not recall that.

Mr. Morris—And when did he read the telegrams to you

or give you the substance of them? A. If you will allow me to explain that——

Q. How long before you left the Twin Mountain House? A. A word of explanation, if you will accept it.

Q. No; I am only asking the time simply. A. I returned from Mount Washington on Thursday evening; in the evening Mr. Beecher said he had had a dispatch from Mr. Redpath to go to Boston. I said, "Are you going?" "No, of course not."

Q. Well, now, I am not asking for that. A. I thought you asked for——

Q. Now, I am asking for the time when you became aware—— A. In the evening of Thursday, the 3d, I think.

Q. And you did not leave until the next day? A. I left the next morning.

Q. At what time in the morning—9:30, as stated here? A. I could not have told, Sir; that is——

Q. Well, 9:50, it says here. You say that when you asked Mr. Beecher if he was going, that he answered "No, of course not?" A. That is what he said.

Q. Was peremptory about it? A. Peremptory.

Q. Well, had he spoken to you about this dispatch in which he says he cannot leave, "It is impossible for me to leave before Monday, if at all?" A. He had not.

Mr. Evarts—What is the date of that?

Mr. Morris—Sept. 3.

Mr. Shearman—Mr. Cleveland ought to see the dispatch before he answers.

The Witness—I could not tell anything about that; I think my first—the first statement of Mr. Beecher to me was that he had a dispatch from Mr. Redpath.

Q. That was Thursday, the 3d, wasn't it? I could not—I have no recollection.

Q. You left on Friday? A. I left on Friday.

Q. That was the 4th? A. I have no recollection of seeing a dispatch when he stated to me that he had had one from Mr. Redpath.

Q. And when was it suggested that you should go to Boston? A. Friday morning.

Q. How long before you left? A. An hour, or an hour and a half.

Q. Were you intending to leave the Twin Mountain House on Friday when you went there Thursday? A. I was intending to leave on Saturday or Monday.

Q. On Saturday or Monday? A. Yes; I had not determined which.

Q. And what induced the change of your purpose? A. The request of Mr. Beecher to stop in Boston and see what this——

Q. Well, but you could have stopped there on Monday or Saturday as well, couldn't you? A. I hadn't the time, Sir; my plan was to——

Mr. Evarts—Mr. Cleveland, you were half through an answer; will you be so good as to complete it.

Mr. Morris—He was through all I want of it.

Mr. Evarts—I know that.

Mr. Morris—It was an answer to my question.

Mr. Evarts—But there is no right to stop it.

Mr. Morris—I say there is. When a witness has answered a question, and then is going on to state something else beyond that, it is proper for counsel to stop him.

Mr. Evarts—You ask another question, and it stops an answer, and then the witness is reported as making half answers.

Judge Neilson—The witness must be allowed to answer, of course.

Mr. Evarts—I did not observe your Honor's remark.

Judge Neilson—Of course, he must be allowed; and then if it is a wrong answer, it may be struck out.

Mr. Beach—If your Honor please, I do not assent to that rule of examination.

Judge Neilson—Well, we don't take it as a rule—it is a suggestion; and it may often be a proper suggestion and the proper rule, but not always, of course.

Mr. Beach—Certainly. But I submit to your Honor that it is the province, not only of counsel, but it is the duty of the Court, when a witness has fully answered a question, and is proceeding to state immaterial and irrelevant matter, to stop him. It is not bound to be received, to be put before the jury and the public as a portion of the evidence.

Judge Neilson—Undoubtedly; otherwise the examiner would be at the mercy of the witness.

Mr. Evarts—That I agree to.

Mr. Beach—It is what you are disputing.

Mr. Evarts—No; it is not. But, in the midst of an answer the witness is stopped by a new question; that is what I complain of.

Mr. Morris—I stop the witness; and whether by putting another question or by an objection is wholly immaterial; he had answered the question?

Judge Neilson—Now, Mr. Morris will take the answer of the witness as long as it seems in any degree to be responsive.

Mr. Morris—Certainly.

Judge Neilson—And Mr. Cleveland, you answer the questions as directly and briefly as you can. Let us see if we cannot get along without trouble.

Mr. Morris—Now, let us go back to that; you say you changed your purpose in returning home at the request of Mr. Beecher? A. I did.

Q. And that request was made Friday morning? A. Friday morning.

Q. Was that the first request that had been made to you? A. It was.

Q. The day previous or the night previous, any suggestion upon that point made? A. None whatever.

Mr. Beach—Show him that telegram. Give him that telegram.

Mr. Morris [Handing paper to witness.]—Look at that

and see if that refreshes your recollection. A. That does not refresh my recollection at all. I returned to the Twin-Mountain House in the evening of Tuesday from the White Mountains—from Mount Washington. What Mr. Beecher had determined to do with me I certainly did not know.

Q. And Mr. Beecher had not said anything to you Thursday night upon the subject at all? A. Oh, he had.

Q. No, about going to Boston, I mean? A. He had.

Q. Oh, he had spoken to you then on Thursday night about going to Boston? A. He had talked about the Boston affair, yes, Sir.

Q. No, no; about your going to Boston? A. He did not request me on Thursday night to go to Boston.

Q. Had that entered in the conversation, as to whether you should go to Boston or not, or had your name been connected—mentioned in that connection, as going to Boston in answer to these telegrams? A. The statements on Thursday evening to me by Mr. Beecher were as to what his——

Q. No, no.

Mr. Beach—Now, that is evidently irresponsive, Sir.

Mr. Morris—No, I ask you if on Thursday night there was anything said at all about your going to Boston between you and Mr. Beecher? A. There might have been an allusion to my going to Boston.

Q. Do you still say that it was first suggested to you an hour, about, before you left on Friday morning? A. I still say that the specific request to me to change my day of leaving and stop in Boston was made on Friday morning.

Q. And before Friday morning you had not intended to go to Boston? A. I had not intended to go to Boston Friday; I had not intended anything about it.

Q. Were you not aware on Friday night that this specific telegram was sent—Thursday night—[Reading.]:

Cleveland will come with full documentary power to act conclusively in my behalf. It is impossible for me to leave before Monday, if at all.

Do you mean to say that you had no knowledge of such a dispatch as that being sent on Thursday night? A. I do not recollect anything about the dispatch.

Q. This letter was handed to you where? A. As I was getting into the stage to go to the cars.

Q. Do you know where it was written? A. I do not.

RUMORED THREATS BY MR. CLEVELAND DENIED.

Q. Mr. Cleveland, when do you say you severed your connection with *The Christian Union*? A. The 31st of December, 1873.

Q. And what business did you enter into then? A. I entered into partnership with H. C. Hulbert & Co.

Q. What is their business? A. Paper manufacturers and importe

Q. Do you supply material for the house of J. B. Ford & Co.? A. We do not.

Q. After leaving *The Christian Union* did you solicit a contract with Mr. Ford, or with his house, for the supply of paper? A. I think we did.

Q. It was declined on the ground that they had a more favorable contract? A. It was withdrawn, Sir, by H. C. Hulbert & Co.

Q. Did you not say to Mr. J. B. Ford, in substance, at that time, that you had the power to ruin *The Christian Union*? A. To whom, Sir?

Q. To Mr. Ford? A. I did not.

Q. Are you positive about that? A. I am.

Q. Did you not tell Mr. Ford, in substance, that you knew the secret of Mr. Beecher's relations with Mrs. Tilton? A. I did not.

Q. And that you would divulge—— A. [Interrupting] I did not.

Q. The secret? A. I did not.

Q. Nothing upon that—nothing of that character? A. Nothing upon which that could grow.

Q. Are you positive of that? A. I am.

Q. Now, Mr. Cleveland, are you acquainted with Mr. Belcher? A. What Mr. Belcher?

Q. Samuel? A. I am.

THE REPORT OF THE INVESTIGATING COMMITTEE.

Q. The report of the Committee that you signed, who prepared it? A. The original draft was made by John Winslow.

Q. And then discussed by the Committee? A. It was.

Q. The whole of the draft made by him was gone over carefully? A. It was gone over several times.

Q. You were present? A. Yes, Sir.

Q. And all the members of the Committee? A. Generally.

Q. And it was gone over several times, with the view of having it accurate and correct? A. It was.

Q. And was it read; did you hear it read, or read it, after it was completed? A. I did.

Q. How often? A. I don't recollect that.

Q. More than once? A. I don't recollect.

Q. You understood its contents? A. I did.

Q. [Handing book containing report of the Investigating Committee]—Now, for the purpose of refreshing your memory, I will ask you to read that paragraph commencing with "Mr. Belcher."

A. [Reading]—"Mr. Belcher testifies that he met——"

Q. Just read it to yourself, for the purpose of refreshing your memory? A. I beg your pardon; I thought you meant——

Q. Now that statement is true, is it not?

Mr. Evarts—What is it?

The Witness—There is one phrase in that statement that is not true.

Q. One phrase that is not true? A. Yes, Sir.

Q. [Reading:]

Mr. Belcher testified that he met Mr. Tilton on the ferry-boat about two weeks after the publication of the Woodhull scandal, and they talked the matter over. He says that Tilton was at first mysterious and non-committal; but on their way home, in Brooklyn, Mr. Tilton invited him into his house, where the "True Story" was exhibited to Mr. Belcher.

That, you say, is not true?

Mr. Evarts—He does not. He says there is one passage.

The Witness—It is not true that Samuel E. Belcher testified before the Committee that the title of Mr. Tilton's paper was the "True Story."

Mr. Beach—Or that what he read to him was the "True Story?" A. That was an error——

Mr. Morris—Or that what he read to Mr. Belcher was the "True Story," did he testify to that? A. That is an error of Mr. Winslow, who drew up the report.

Mr. Morris—No, no; what name did Mr. Belcher give to this paper that Mr. Tilton read to him? A. He gave it one or two names.

Q. State them. A. He called it a "Paper" or "Statement," or something of that kind.

Q. State them as near as you can. A. That is as near as I recollect.

Mr. Beach [to Mr. Morris]—Did he use the word "Story?"

Mr. Morris—Did he use the word "Story?" A. I think not.

Q. Will you swear that he did not use the word "Story?" A. I will swear that he did not use the phrase "True Story?"

Mr. Beach—That is not the question.

Mr. Morris—Will you swear that he did not use the word "Story" in connection with that paper? A. I am hardly willing to swear that, whether he called it a paper, or statement, or document, or whatever——

Q. When did you first hear that it was an error in the report? A. When I read John Winslow's testimony.

Q. Have you examined the stenographer's minutes of the testimony that was taken by the Committee—— A. [Interrupting.] I have not.

Q. To verify it? A. I have not.

Q. You have not? A. I have read Mr. Belcher's testimony before the Committee.

Q. What is that? A. I have read Mr. Belcher's testimony.

Q. What from?

Mr. Shearman—Mr. Cleveland thought you meant the whole

Mr. Beach—Wait a moment.

Mr. Morris—From what did you read Mr. Belcher's testimony? A. I read Mr. Belcher's testimony from this book.

Mr. Beach—From which book?

Mr. Morris—From which book? A. From this statement.

Mr. Beach—In this book? Let him point it out. A. I don't understand the question.

Mr. Beach—You said that you had read Mr. Belcher's testimony; what did you read it from? A. Mr. Belcher's testimony before the Committee.

Mr. Morris—I ask you this question. Let me call it to your mind, for I don't want to confuse you. A. There is no trouble about that, Sir.

Q. You said that you were first aware that this was incorrect when you read Mr. Winslow's testimony, and then you were asked the question whether you had read the testimony taken before the Committee, and you said that you had read Mr. Belcher's testimony; and then the question was, where did you read Mr. Belcher's testimony—from what did you read it? A. I read Mr. Belcher's testimony from this book.

Q. Mr. Beach—What book? A. [to Mr. Morris] The report that you have in your hand.

Mr. Beach [to Mr. Morris]—Get the title of it.

The Witness—I understand that.

Mr. Morris—This book, called "The History of the Great Scandal?" A. I read it in the report of the Committee.

Q. Was it in this book?

Mr. Evarts—He said so. He said the book that you hold in your hand.

The Witness—In that book that you have in your hand.

Mr. Beach [to Mr. Morris]—Let him show where he read it.

Mr. Morris [indicating a passage in the book]—Is that the part that you refer to?

Mr. Beach—That is, you read it from the report of the Committee; is that your answer? A. Yes; and I have understood——

Q. Not what you understood. You read it from the report of the Committee, and not from Mr. Belcher's testimony? A. I read it from the report of the Committee.

Q. Then you have not read Mr. Belcher's testimony? A. I have not read Mr. Belcher's testimony.

Mr. Morris [replying to a remark by Mr. Shearman]—This is not Mr. Belcher's testimony; this is the report of the Committee.

Mr. Evarts—He has told you what he means. He says he read out of that very book that very passage.

Q. Do you know where Mr. Belcher's testimony is? A. I do not.

Q. You have made no effort to see it before you testified here? A. I have not.

Q. You expected to be a witness? A. I have expected to be a witness.

Q. For some time past? A. For some time back.

Q. And you don't know where Mr. Belcher's testimony is, except that you have an impression that the Examining Committee have it? A. I suppose it is with the Examining Committee.

Mr. Beach—I asked you yesterday, Mr. Shearman, if you would furnish us the report of the evidence by the stenographer who attended the Examining Committee.

Mr. Shearman—You never asked that broad question, Mr. Beach.

Mr. Beach—What, Sir?

Mr. Shearman—You never asked me that broad question. You asked me about a particular part of it.

Mr. Beach—No; I asked you about the testimony.

Mr. Shearman—Then I misunderstood you.

Mr. Beach—You misunderstood me. The question now is, whether you will furnish it to us.

Mr. Shearman—The question is, whether I will get it.

Mr. Beach—What, Sir?

Mr. Shearman—The question is, whether I will get it. I don't want to be——

Mr. Morris—Oh, we of course understand that it is under your control.

Mr. Shearman—No.

Mr. Morris—Your side control it.

Mr. Shearman—Not I.

[Mr. Beach here consulted with Mr. Tilton.]

Mr. Beach—It is somewhat important, gentlemen, that we should understand whether you will furnish us with the stenographer's minutes of the proceedings before the Examining Committee, or whether we must resort to process to get it.

Mr. Evarts—There is an understanding——

Mr. Beach—I suggested it yesterday.

Mr. Shearman—It is understood.

Mr. Morris—You did not detect this error in the frequent examinations of the report prior to its being signed? A. I did not.

Q. And no other member of the Committee did, so far as you know? A. So far as I know.

Q. Well, you state now, simply upon what Mr. Winslow says, that this is not correct, do you? A. Mr. Winslow told me——

Mr. Beach—Never mind what he told you.

The Witness—That is what I——

Mr. Morris—You form your judgment upon what he says? A. I do.

Q. You have no personal knowledge that Mr. Belcher, in his testimony before that Committee, did not use that very phrase, have you? A. I won't swear to that.

Q. No. What was the basis of this report; what facts were considered in the making up of this report; what statements and evidence; upon what was it based? A. Based upon evidence taken by the Committee.

Mr. Beach—Mr. Morris, will you ask him whether the witnesses were sworn?

Mr. Morris—Were the witnesses examined before the Committee sworn? A. They were not.

Q. Just look at that letter [indicating in the book] and read it over, and tell me whether that was given before the Committee, in evidence?

The Witness [to Judge Neilson]—If your Honor please, I desire to shrink no responsibility, nor to withhold any knowledge or fact that I have bearing upon this case from my first acquaintance with it; but I submit to your Honor that it will be utterly impossible for me, in my state of health, to sit here and analyze that report and make it harmonize with evidence or with anything that relates to it. It will be an utter impossibility in my state of health, and I appeal to your Honor that I may be protected in my health.

Judge Neilson—If your health, Mr. Cleveland, makes an adjournment desirable to you, we should allow your examination to stand over to any future day.

Mr. Morris—We can suspend it, and they can go on with other testimony. We have not any objection whatever to that; but there are important points yet to be inquired about.

The Witness—I mean that it would be utterly impossible for me, at this time, so far removed from that report, to make an analyzation of it.

Judge Neilson—I can appreciate that.

The Witness—It is utterly impossible.

Judge Neilson—I can appreciate that, Sir.

The Witness—I doubt whether your Honor can recall many of the several events of this very trial through which you are going.

Judge Neilson—No, Sir.

Mr. Morris—I am going to ask about some very plain facts——

The Witness [continuing]—And I am free to say that I cannot do it; I must be protected.

Mr. Evarts—I think it is better to go on and get through. This is a very plain, candid statement, and the learned counsel will have no other disposition than to direct attention to the parts that he considers important, and as each question arises the witness must meet it the best way he can. If he says that he does not know anything about it, that is the end of that particular question. Of course, everybody understands that for a man suffering bodily pain to be on the witness-stand is a very disagreeable thing. Even to sit in the repose of the bench or of the jury-box with a severe pain in his body is not pleasant.

The Witness—If your Honor will allow me to add, it is important to me to be free from this excitement by to-night, if possible, for my attack has been one that has affected my head. I have had one suspension of my vital powers, and I must ask the protection of the Court.

Mr. Morris—Protection from what?

Mr. Evarts—That is understood.

Judge Neilson—We understand it.

The Witness—That is not offensive, Sir; I mean my health.

Mr. Morris—We certainly have been very considerate——

Mr. Beach—Oh, he means the *consideration* of the Court.

Judge Neilson—He desires to be relieved and considered as far as you can.

Mr. Morris—We suggest, then, that they go on with some other branch of their case.

Judge Neilson—The witness simply desires to be considered as far as you can.

Mr. Morris—There are several important matters that he is yet to be examined upon.

Judge Neilson—You had better proceed for the present, I think.

Mr. Morris—Very well, Sir. [To the witness.] Now, look at that and see if it refreshes your memory so as to enable you to state whether that was given in evidence before the Committee.

Mr. Evarts—What passage is that?

Mr. Shearman—Is that about Mr. Belcher?

THE EVIDENCE BEFORE THE COMMITTEE.

Mr. Morris—No, Sir, it is a letter—a letter in evidence. It is one of your Exhibits.

Mr. Shearman—Yes, Sir.

Mr. Morris—It is at page 334.

Judge Neilson—Do you remember whether it was in evidence or not, Mr. Cleveland? A. I do not.

Mr. Evarts—Does the question show on the record what it is that he is asking about.

Mr. Morris—It is a letter from Mrs. Tilton to Mr. Moulton without date.

Mr. Evarts—Isn't it an Exhibit?

Mr. Morris—It is an Exhibit.

Mr. Evarts—Well, does the record show? All I want is that the question shall point to the paper. The witness knows what it is, but the record would not show.

Mr. Morris—D 44 is the Exhibit

Mr. Evarts—Very well, D 44.

Mr. Morris—Now do you recollect that that letter was contained in Mr. Moulton's first long statement, and that it nowhere else appeared? A. I don't recollect.

Q. And have you no recollection upon that point at all? A. No recollection.

Q. Just look at that statement commencing with the word "we," and read two or three lines, and see if that will refresh your recollection?

Judge Neilson—State the page, so that the counsel will know where to find it.

Mr. Shearman—The misery of this book, your Honor, is that it has got no paging.

Judge Neilson—Ah!

Mr. Shearman—That is the trouble. The compiler ought to be indicted, convicted, and hung. [Laughter.] It is a letter that is not in evidence; it is some paper that is not in evidence.

Mr. Morris—[Reading.]:

We observe that Mr. Moulton parades a letter purporting to have been written by Mrs. Tilton to him, J. J.

Now, are you not enabled to say now, Mr. Cleveland, that that quotation, or reference, is taken from Mr. Moulton's letter, and that that was marked in his long statement "J. J?" A. I have no recollection about it.

Q. You signed the report? A. I did.

Q. Was the evidence fresh in your mind at the time this report was made up? A. Very likely.

Q. Do you recollect, Mr. Cleveland, of hea ring or reading a letter or statement written by Mrs. Tilton that was shown to Dr. Storrs, commencing:

In July, 1870, prompted by my duty, I informed my husband that H. W. B., my friend and pastor, had solicited me to be a wife to him, together with all that this implied.

Do you have a recollection of such a letter or statement? A. Some recollection about it.

Q. Was that before the Committee? A. I don't recollect, Sir.

Mr. Shearman—State the number of that Exhibit.

Mr. Morris—Can't you state? A. I cannot.

Mr. Shearman—What is that?

Mr. Morris—Exhibit——

Mr. Beach [to Mr. Morris]—Never mind. Go on.

Mr. Shearman—It is Exhibit 57—plaintiff's Exhibit 57.

Mr. Morris—Now, I call your attention to another one, Exhibit 15——

Mr. Shearman—Plaintiff's exhibit?

Mr. Morris—Plaintiff's exhibit. Just look at that, and tell me whether that letter was before the Committee or not? A. I don't recollect, Sir.

Q. Now, after quoting from the letter to which I have called your attention, the statement that was shown to Dr. Storrs, is not this quotation intended to be taken from this letter:

We find her subsequently in a letter asking Mr. Beecher's forgiveness for the suffering she had caused him.

A. I don't recollect, Sir.

Q. Don't you know that that is a misquotation? A. I don't know about it.

Q. Don't you know that it uses the language "subsequently" when it was two years prior? A. I don't know anything about it.

Q. Do you recollect any other letter before the Committee from which such a quotation could have been made? A. I don't recollect much about the letters.

Q. Now, Mr. Cleveland, don't you know that in making up this report the Committee quoted from certain letters contained in Mr. Moulton's long statement?

Mr. Shearman—I object to that until the passages are shown to him—the two papers. The witness has a right to see the two documents—the report of the Committee and the statement of Mr. Moulton—before he is asked the question as to the contents of those papers.

Mr. Morris—I show him the statement of Mr. Moulton.

Judge Neilson—I think Mr. Shearman's suggestion is correct.

Mr. Evarts—I understand that the report itself says that it quotes from Mr. Moulton's statement. Why, then,

should this gentleman be troubled with inquiries of that kind. The point seems to be to prove——

Mr. Morris—Your associate suggested it, and I was going to comply with his suggestion.

Mr. Evarts—But I say the report itself professes to quote from Mr. Moulton's statement, does it not?

Mr. Shearman—It says so on its face.

Mr. Morris—It does not refer to his *statement*.

Mr. Shearman—I beg pardon.

Mr. Morris—It professes to quote from Mr. Moulton in this wise——

Mr. Evarts—The point is, that if the report says so this witness should be relieved from the trouble of being asked whether he knows that it does or not.

Mr. Morris—[Reading]:

We observe that Mr. Moulton parades a letter purporting to have been written by Mrs. Tilton to him, J. J.,
—and so on, and then giving the designation of the letters; but it does not say that they were taken from his statement.

Mr. Evarts—They mean, by "parade," that it was in the statement.

Mr. Morris—What?

Mr. Evarts—What is meant by "parade" is that it was in his statement.

Mr. Morris—I am reading now from the report.

Mr. Evarts—Well, I say——

Mr. Shearman—One question will cover that.

Mr. Morris—My purpose is to show——

Mr. Beach—If the gentlemen admit that these quotations were made from Mr. Moulton's first long statement——

Mr. Shearman—We do.

Mr. Evarts—Well, I don't know what the object of that is.

Mr. Beach—Well, then, I don't know what the object of the interruption is.

Mr. Shearman—Very well. It is admitted that from the statement published by Mr. Moulton on August 21, 1874, there are two letters quoted——

Mr. Morris—No, there are four; the letter marked "J. J." in Mr. Moulton's statement, the letter marked "K. K." in his statement, the letter marked "L. L." in his statement, and the letter marked "H. H." in his statement. There are four.

Mr. Evarts—Extracts.

Mr. Morris—Yes; what purport to be extracts, but what are false quotations, as we claim.

Mr. Shearman—I only make out three.

Mr. Morris—There are four; "J. J.," "K. K.," and the others; you will find them on these pages.

Mr. Shearman—I don't believe that I can find the pages.

Mr. Morris—Well, take my book.

Mr. Evarts—We will look at it, and whatever the fact is we will admit, instead of having the memory of the witness taxed upon it.

Mr. Shearman—We agree that there are four.

Mr. Morris—Now it is agreed, Mr. Cleveland, by the counsel upon the other side——

Mr. Shearman—One moment. Of course it is understood that by making this admission we do not intend to put Mr. Moulton's statement in evidence.

Mr. Beach—No, neither the statement nor the report.

Mr. Evarts—No, neither the report nor the statement is in evidence; and this is rather a vague——

Judge Neilson—Has the stenographer got your admission?

Mr. Beach—Yes, Sir.

Judge Neilson—Has he got your admission down as you want it?

Mr. Beach—It is down, Sir.

Judge Neilson—Go on, then.

Mr. Morris—Q. Now, Mr. Cleveland, it is admitted by counsel, and the fact is, that in making up your report you quote, or purport to quote, or at least refer to, four letters contained in Mr. Moulton's long statement of Aug. 25.

Mr. Shearman—21st.

Mr. Morris—21st?

Mr. Shearman—21st.

Mr. Morris—21st. Now, did your Committee consider that statement of Mr. Moulton in making up their report?

Mr. Beach—As part of the evidence before the Committee.

Mr. Morris [to the witness]—As part of the evidence before the Committee? A. I am utterly unable to recall any of the detail of that whole matter.

Q. Perhaps I ought to call your attention to some of the testimony here to refresh your recollection. Do you recollect having testified upon that subject at your house? A. I——

Q. In which you stated distinctly that you did not consider that at all.

Mr. Shearman—Wait a moment, wait a moment.

Mr. Morris—I will turn to it in a moment. I state it correctly.

Mr. Shearman [referring to Mr. Cleveland's testimony at his house.]—I have found the place; but it does not justify your question. It is page 137.

Mr. Morris—138 in mine. It commences on 137. I read: "In making up"——

Mr. Morris [to the witness]—Did you not give the evidence that I now read at your house——

Mr. Shearman—I object to that question on the ground that the evidence must be shown to the witness.

Mr. Beach [to Mr. Morris]—Wait a moment. Put your question and read that.

Mr. Morris [reading from Mr. Cleveland's former testimony]:

Q. In making up the report, did you take into consideration as evidence before you Mr. Moulton's long statement as published by *The Graphic*? A. In making up our

report we took into consideration all the evidence that was given before the Committee.

Q. And you did not regard that as before the Committee? A. We did not take any statement into consideration that was not made to the Committee in evidence.

Q. That answers it. You did not regard that as in any wise before you at all. It was not delivered to the Committee. A. I can only reply that in making up that report we based it upon the evidence that we compiled during that investigation. We took no statement, in making up our report, that was not put in evidence before the Committee; and that not being laid before the Committee, we did not regard it as evidence before us.

Q. Now, did you so testify at your house? A. I accept that, whether I did or not.

Q And do you say now that you did not regard Mr. Moulton's long statement as in anywise before the Committee?

Mr. Beach—Of August 21st.

Mr. Morris—Of August 21st? A. Not as evidence given to the Committee.

Mr. Beach—That answers it.

Q. And do you still mean to say that in making up your report you did not take into consideration anything except what was given to you in evidence before the Committee? A. I mean to say that the report was based upon the evidence we had taken.

Q. Had you these four letters—— A. I don't recollect.

Q. [Continuing]——that the counsel have admitted were not before you, and that were in Mr. Moulton's statement? A. I don't recollect.

Q. You don't recollect? A. No, Sir.

Q. You have no recollection about that? A. None whatever.

Q. Mr. Moulton appeared before your Committee on two or three occasions? A. He did.

Q. And made short statements? A. Short statements.

Q. I read from your report for the purpose of refreshing your memory:

We are asked by Theodore Tilton and his coadjutor, Moulton, to believe that this man, with his long and useful life and high character to sustain him, is unworthy of confidence, regard, and respect.

When did Mr. Moulton ask you to believe that? A. I can not tell you, Sir.

Q. At any time, when he was before the Committee, did he use any language that would authorize such a statement by the Committee? A. I cannot recall his statements.

Q. Don't you know, from the character and nature of his statements before the Committee, that he did not use any language that would justify such a statement?

Mr. Shearman—I object to that.

Judge Neilson—I think that is a general statement by way of characterizing the theory of the person making the charge.

Mr. Morris—But Mr. Moulton had made no charge. Mr. Moulton had not been examined with reference to the charge before the Committee. It was not he that had made any charge, and his testimony was not before the Committee, which is shown in no manner or form.

Mr. Evarts—What, then, is the relevancy of this examination?

Mr. Morris—To show that this Committee went outside of the evidence that was given before them, to make an improper use of a part of a document, to make up their one-sided and partisan report. That is the object of it.

Mr. Evarts—That is not the object of this inquiry.

Mr. Morris—It is, so far as the witness himself is concerned.

Judge Neilson—Proceed and interrogate the witness.

Mr. Evarts [to Mr. Morris]—By way of disparagement of the witness's respectability, do you mean? I don't see any connection with the charge. Most all of the testimony of this witness has proceeded upon the theory that he, as a member of the Committee, did an injudicious and rash thing.

Mr. Beach—It is that he did a prejudiced and unauthorized thing, and made a false charge against a gentleman.

Mr. Evarts—Who was——

Mr. Beach—Who was what?

Mr. Evarts—Who was referred to in the report.

Mr. Beach—Exactly.

Mr. Morris—And whom the Committee had no business to refer to.

Mr. Evarts—And whom the Committee had no business to refer to.

Mr. Morris—We agree upon that.

Q. Now, you were aware that Mr. Moulton, before your report, had requested the privilege of going before your Committee, were you not? A. I was aware that he had been requested to come before the Committee and lay before it his——

Q. That don't answer my question. Were you not aware that Mr. Moulton had sent a communication to the Chairman of the Committee, asking the privilege of coming before the Committee and offering to submit to examination? A. I am not aware that Mr. Moulton at any time offered to make a detailed statement to the Committee.

Mr. Morris—That don't answer my question.

Judge Neilson [to the witness]—Or submit to an examination.

The Witness—Or submit to an examination.

Mr. Morris—Were you never informed that the Chairman of the Committee, Mr. Sage, received such a dispatch from Mr. Moulton? A. I am aware that Mr. Moulton was invited——

Mr. Beach—No.

Mr. Morris—No, no.

The Witness—I am not aware.

Q. Now, after Mr. Moulton in his short statement before the Committee had declined to present documents and letters, and make a detail statement there before you made your report, he offered to come before the Committee and make such statement and submit to a cross-exam-

ination? A. My recollection of that is, that two or three days before the report was read in Plymouth Church, Mr. Moulton's partners received a dispatch from him saying that he wanted to go before the Committee. The report had already been written ready for delivery.

Q. Had it been signed? A. It had been signed.

Q. Well, it had not been delivered? A. It had not been read to the church.

Q. And had not passed from the possession of the Committee? A. It had been concluded by the Committee.

Q. Had it passed from the possession of the Committee? A. It did not pass from the possession of the Committee until the evening of the 28th of August, or the afternoon of the 28th.

Q. Had it at that time passed from the possession of the Committee—at the time of this communication? A. I don't recollect when it went into the hands of the Examining Committee.

Q. Was not this communication that you have spoken of before the 28th of August? A. I think two or three days before.

Q. You were in church when the West charges were disposed of, were you not? A. I was not. I beg your pardon; will you repeat your question?

Q. Were you not present in the church when the West charges were disposed of? A. I think I was, when they were disposed of—I don't recollect.

Q. The night that Mr. Tilton was there? A. I recollect, Sir, that I was there.

Q. Do you know whether Mr. Sage was there that night, or not? A. I do not.

Q. Or Mr. Augustus Storrs? A. I do not.

Q. Or Mr. Horace B. Claflin? A. I do not.

Q. Or any member of the Committee except yourself? A. I have no knowledge.

Q. You heard the report read there that night? A. I did.

Q. And you took part in the proceedings? A. I took no prominent part in the proceedings.

Q. But you participated in some degree? A. I was at the meeting.

Q. And voted? A. I voted.

Q. If what? A. I voted, I said.

Q. Well, now, Mr. Cleveland, the report that was made there that night made specific reference to the West charges, and the fact that they had been served upon Mr. Tilton, did they not? A. I cannot recall to you the incidents of that evening.

AN INTERVIEW WITH MR. TILTON.

Q. Do you recollect of having an interview with Mr. Tilton at *The Golden Age* office shortly after the publication of the Bacon letter? A. No, Sir.

Q. In which you tried to dissuade him from replying to Dr. Bacon's letter?

Mr. Shearman—How could that be after the Bacon letter?

Mr. Evarts—After the publication.

Mr. Morris—I mean after the publication of the Bacon letter, and before the publication of Mr. Tilton's letter to Dr. Bacon, in which you dissuaded him from answering Dr. Bacon, and induced him to write a letter to the church; and that you would see that the matter was there investigated? A. You have got two interviews mixed, Sir.

Q. I will ask you this question, then, if at any interview prior to his publication of the Bacon letter, and after the council, you did not say to him, in substance, that he ought not to reply to Dr. Bacon, but to send a letter to the church direct, and that you would see the charge—— A. Not in that form; I said to Mr. Tilton several times over——

Q. No, no; in substance? A. You have two things mixed.

Mr. Morris—Well, I will try and get them straight.

The Witness—Very well, then I will try and answer your question.

Mr. Morris—Did you say to Mr. Tilton that his better plan was, in substance, not to write a letter to Dr. Bacon, but to write a letter to the church? A. I said to Mr. Tilton, in my store, that if he desired to join issue with Mr. Beecher, it was a manly way for him to prefer his charge against him direct, and not go around through Leonard Bacon, of New-Haven, and that I would guarantee Plymouth Church would take his charges and investigate them.

MR. TILTON'S LETTER TO THE CHURCH.

Q. Well, Mr. Tilton after that did write a letter to the church, did he not? A. He did not.

Q. Look at that [handing letter to witness]. A. Not after he wrote the Bacon letter.

Q. No, this is before the Bacon letter I am talking about. A. He wrote three—one to the pastor, and to the assistant pastor, and to the clerk of Plymouth Church.

Q. Is that the letter [handing letter to witness]? A. Yes, Sir, that is the letter.

Mr. Morris—It is May 4, 1874.

Mr. Shearman—What is the number of the Exhibit?

Mr. Beach—It is in the case.

Mr. Morris—It is Exhibit 33.

Mr Shearman—No; that is the "Bacon letter."

Mr. Morris—It is contained in the "Bacon letter."

Mr. Beach—It is the letter of May 4, 1874, contained in the "Bacon letter"—quoted in the "Bacon letter."

Mr. Shearman—Exhibit 79 is the one you now refer to.

Mr. Morris [to the witness]—Well, do you know what action was taken with reference to the letter? A. Yes, Sir.

Q. What? A. It was discussed by a number of people

Q. What action was taken by the church with reference

to the letter? A. No action was taken by the church, if I recollect right.

Q. Well, what action was taken, if any, by the Examining Committee? A. I think it was discussed informally among the members of the Examining Committee, and replied to by Mr. Shearman.

Q. Were you present at the discussion? A. I don't recollect, Sir, whether I was or not.

Q. You were aware of the fact that the letter had been sent? A. I was.

Q. Now, didn't you promise Mr. Tilton that you would see that action was taken with reference to it?

Mr. Shearman—I object to the question; it is assuming that the witness said something about taking action on such a letter. What the witness testified to was that he would guarantee action would be taken on any direct charge made by Mr. Tilton against Mr. Beecher. This was no such letter; it was a letter asking the church to make charges against Mr. Tilton; and Mr. Tilton never made the charges of Mr. Cleveland. He did the very reverse thing of what Mr. Cleveland proposed; and now a question is asked which implies that Mr. Cleveland did not carry out his promise to Mr. Tilton, and Mr. Tilton did nothing of the kind which Mr. Cleveland proposed he should.

Judge Neilson—I see what your view is.

Mr. Morris—I withdraw the question.

Judge Neilson—Mr. Morris, can you close the examination of this witness before the adjournment? If not, we may as well adjourn now.

Mr. Morris—It will take half an hour longer.

Judge Neilson [to the witness]—Will that suit you, Mr. Cleveland?

The Witness—Thank you, Judge.

The Court here took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 o'clock, pers ant to adjournment.

Henry M. Cleveland, was recalled, and the cross-examination continued.

THE WEST CHARGES.

Mr. Morris—Mr. Cleveland, you have stated that you became acquainted with the West charges, or they were brought to your knowledge in the Summer or Fall of 1873, and the third specification, in which reference is made to Mrs. Bradshaw. Now what did you regard Mr. West—what offense or crime did you regard Mr. West as charging Mr. Beecher with, in the use of this language, that he had discovered a criminal intimacy existed between his wife and Mr. Beecher? A. If you will allow me to explain, I discovered this morning that I said 1873 in my testimony—that that was the year. My answer should have been 1874. I spoke of having it corrected, I think, to some of the gentlemen.

Q. Do you mean by that that the charges were not made until 1874? A. I mean that I had no knowledge—specific knowledge—of the charges until 1874.

Q. And when did you learn of them in 1874, and how? A. I read them in Mr. Tilton's statement.

Q. Do you mean to say that that is the first knowledge that you had of them? A. Yes, Sir, in detail.

Q. The first knowledge that you had of the character of the charges? A. Yes, Sir, in detail.

Q. I am not asking in detail; is that the first you knew of the character of the charges—of the West charges? A. The first time I read them was in 1874.

Q. That is not the question. Is that the first knowledge that you had?

Mr. Shearman—Mr. Morris means your general knowledge.

The Witness—Oh, I had a general knowledge when they were preferred.

Q. When they were preferred? A. That there were charges.

Q. What did you then understand the charges to be? A. I understood they were charges against Mr. Tilton and Mr. Bowen.

Q. What did you understand to be the character of the charges against Mr. Tilton? A. I had no general knowledge—I had no specific knowledge of the charges. I had not read them nor seen them.

Q. Did you not understand that those charges were based upon the fact that he had accused Mr. Beecher of criminal intimacy with his wife? A. I did not.

Q. You were present when they were disposed of? A. Yes, Sir, I was present.

Q. And heard the report of the Committee read? A. I think I did; yes, Sir.

Q. And you have testified that the charges were a matter of general conversation among the members of Plymouth Church? A. I don't know how general the conversation was.

Mr. Shearman—The subject.

The Witness—The subject?

Mr. Morris—The subject of the charges was a matter of general conversation among the members of the church. Now, do you mean to say that in the discussions and conversations that were had with reference to those, you never learned the nature of them? A. I learned the nature of them.

Q. Now, what did you learn about the nature of the charges? A. That they were charges against Mr. Bowen and Mr. Beecher—Mr. Bowen and Mr. Tilton for slandering the pastor of Plymouth Church.

Q. Slandering him in what respect? A. I cannot recall even now the text of those charges.

Q. No, no; I am not asking after that. What did you understand the slander to consist of? A. Circulating scandalous stories.

Q. What scandalous stories? A. It is difficult for me to say what.

Q. Relating to what? A. Relating to Mr. Beecher.

Q. Assailing his moral character? A. His moral character.

Q. In what respect? In respect to his improper relations with women? A I understood it so.

Q. Yes. Sir. And in respect to his improper relations with Mrs. Tilton? A. I don't understand that so.

Q. You did not in these general conversations and discussions among the members of Plymouth Church understand that his moral character was involved in that respect? A. I don't recollect that I had any discussions or conversations; it was a matter I paid no attention to.

Q. You say it was a matter of general conversation and talk among the members. Now, what knowledge had you upon that subject? A. Simply that I heard it spoken of occasionally.

Q. And you were very intimate with Mr. Beecher at that time? A. Oh, I was.

Q. And took great interest in him? A. I did.

Q. And now do you wish the jury to understand you that you did not know, or had not been informed, or did not learn, that his moral character was questioned in respect to Mrs. Tilton? A. I don't say any such thing.

Q. Was Mr. West called before your Committee? A. What Committee?

Q. Examining Committee? A. I don't know, Sir; I was not a member of it.

Q. The Investigating Committee, I mean? A. He was not.

Q. Can you give the reason why he was not called? A. I suppose we did not think best to call him; I have no other reason.

Q. Do you know the reason why he was not called? A. That is the only reason that I know.

Q. Was that a matter of consideration with the Committee? A. I don't think it was.

Q. You don't think his name was mentioned? A. I don't recollect of its being mentioned.

Q. You cannot give us any reason why you did not suggest his name? A. I cannot, except——

Q. You knew that he was the author of these charges? A. I knew that he had preferred charges.

Q. Did it occur to you that he might be able to throw some light upon the subject? A. It did not.

Q. Or furnish you the names of the witnesses by whom he expected to prove his charges? A. It did not.

Q. Do you recollect of seeing a letter that Mr. Tilton wrote on the 3d of August declining to appear further before the Committee, and announcing his intentions of bringing an action? A. I think I do recollect the letter.

Q. That was prior to your visit to the White Mountains? A. Yes, Sir.

Q. Some time before that? A. It was before that.

MR. SHEARMAN'S CARD IN THE "INDEPENDENT."

Q. Do you recollect a card that was published in *The Independent* in the Spring or early Summer of 1874, signed by Mr. Shearman? A. What kind of a card do you refer to?

Q. Any card? A. I recollect an article.

Q. Well, call it an article. A. Perfectly.

Q. That was after the appearance of some of the Bacon articles? A. It was.

Q. Did you have anything to do with that card? A. I did.

Q. In connection with Mr. Beecher? A. I did.

Q. In its preparation? A. Not much in its preparation.

Q. Any? A. No, Sir.

Q. How? A. Not any in its preparation. The card was written by Mr. Shearman; the paper was written by Mr. Shearman.

Q. In any changes or alterations did you consult with Mr. Beecher, or were you present when it was the subject of conversation? A. I had a conversation with Mr. Beecher about the subject of that.

Q. And did not you and Mr. Beecher—or, were you not present when Mr. Beecher made some suggestions with reference to the character of that card? A. Mr. Beecher made some suggestions to me in reference to the character of that card.

Q. The purpose of that card? A. That was prepared by Mr. Shearman upon a specific agreement made between Mr. Tilton and myself, that all he desired in that matter of settlement of the Bacon letters was that he should be vindicated from any appearance of evasion in regard to his connection with Plymouth Church.

Q. Was that the object of the card? A. That was.

Q. Will you look at that and say whose handwriting it is? [Handing witness a paper.] A. It looks like Mr. Beecher's.

Q. Have you any doubt about it? A. I have none, really.

Mr. Morris—We offer that.

The Witness—I am not willing to swear to it, but it looks like Mr. Beecher's.

Mr. Shearman—I am very glad, if your Honor please, to receive this paper; and allow me to remark that this is the paper that I was accused a little while ago of withholding, and have never been relieved of that charge down to this moment.

Mr. Morris—I don't relieve the counsel now of it, inasmuch as he was not charged with it, and never has been. I said I gave the two papers to him, and whether he had returned them or not I was not aware, but that I was at that time unable to find them: that was the fact. So that I don't relieve the counsel of an accusation that never was made.

[Reading from the printed copy of the paper last shown the witness, being already marked "105, for identification."]

MR. BEECHER'S RECONCILIATION WITH MR. BOWEN.

About February, 1870, at a long interview at Mr. Freeland's house, for the purpose of having a full and final reconciliation between Bowen and Beecher, Mr. Bowen stated his grievances, which were *all* either of a business nature or of my treatment of *him personally* (as per memorandum in his writing).

The memorandum referred to is the paper that has been put in already by the other side, and so that it may be understood I will read it in this connection:

BOWEN'S TERMS.

First—Report and publish Sermons and Lecture-room Talks.

Second—New edition Plymouth Collection, and Freeland's interest.

Third—Explanations to church.

Fourth—Write me a letter.

Fifth—Retract in every quarter what has been said to my injury.

After hours of conference everything was adjusted. We shook hands. We pledged each other to work henceforth without a jar or break. I said to him: "Mr. Bowen, if you hear anything of me not in accordance with this agreement of harmony, do not let it rest. Come straight to me at once, and I will do the same by you." He agreed. In the lecture-room I stated that all our differences were over, and that we were friends again. This public recognition he was present and heard, and expressed himself as greatly pleased with. It was after all this that I asked Mr. Howard to help me carry out this reconciliation, and to call on Mr. Bowen and to remove the little differences between *them.*

Mr. Howard called—expressed his gratification.

Then it was that without any provocation he (Mr. Bowen) told Mr. Howard that this reconciliation did not include one matter that he (Bowen) "knew about Mr. Beecher which if he should speak it would drive Mr. Beecher out of Brooklyn." Mr. Howard protested with horror against such a statement, saying: "Mr. Bowen, this is terrible. No man should make such a statement unless he has the most absolute evidence." To this Mr. Bowen replied that he had this evidence, and said, pointedly, that he (Howard) might go to Mr. Beecher, and *that Mr. Beecher would never* give his consent that he (Bowen) should tell Mr. Howard this secret.

Mr. Bowen *at no time* had ever make known to Mr. B. what this secret was, and the hints which Mr. Beecher had had of it led him to think that it was *another matter*, and not the slander which he now finds it to be.

[Paper marked "105—in evidence."]

Mr. Morris—That is all.

REDIRECT EXAMINATION OF MR. CLEVELAND.

Mr. Shearman—Mr. Cleveland, what is your state of health? A. very poor.

Q. How long have you been so? A. I have been confined to my house six weeks next Monday.

Q. Were you advised by your physician as to whether it was safe for you to attend in this court or not? A. I was advised not to attend.

Q. You have been inquired a little of as to your examination in your house; were you sitting up or lying down when that examination was taken? A. Lying down.

Q. What was your state of health at that time? A. Unable to sit up.

Q. Were you in pain or not? A. Constant pain.

Q. And during a considerable part of the day is not that pain very severe? A. Very severe from 7 or 8 o'clock in the morning until 3 or 4 in the afternoon.

Q. How does it affect your head, and how did it at that time? A. It has almost broken my nervous organization; my head has refused to serve me a good deal of the time for the last three or four weeks.

Q. In that period you fainted once at least, did you not? A. I had a paralysis of some kind; I don't know what it was. I fell upon the floor when I was alone.

Q. How long did that fainting fit last? A. I cannot tell.

Q. How long did you understand? A. Well, I thought about two or three minutes, or a minute or two.

Q. How long did the effect of it last upon you—the prostration? A. It has lasted until this time, I think.

Q. You have stated that you went, as you now believe, to see a publisher with a copy of the Tripartite Covenant, if I understood you right, in May, 1873. Did Mr. Beecher in any way authorize or request or consent to the publication of that paper? A. He did not.

Mr. Beach—Wait, wait.

Mr. Shearman—As far as your knowledge is concerned

The Witness—As far as my knowledge is concerned he knew nothing whatever about it.

Q. Did he in fact make any effort to publish it, or to prevent its publication—which? A. He made an effort to prevent it.

Q. Now, Sir, with reference to these West charges you have said that you heard of their nature. What do you mean by saying that you heard of the nature of the charges in 1873? How much did you hear about them? A. Simply that Mr. West had preferred charges; that is about all; I had not seen them.

Q. You were not a member of the Examining Committee at that time? A. I was not.

Q. You now are a member? A. I am.

Q. Do you know what is the custom and practical rule of the Examining Committee with regard to matters of that kind when laid before them, as to whether they allow persons outside of the Committee to know anything of them, or not? A. I do.

Q. What is that custom? A. That custom is not to disclose them even to members of the church.

Q. You were present at the meeting of the church on October 31, 1873, when the West charges were, in a sense, finally disposed of, were you not? A. I was.

Q. Do you or do you not remember that on that occasion no statement was made by the Examining Committ

ee, or by any other person, of the nature of the charges, on that evening? A. My recollection is that there was no statement made in regard to them.

Q. None by the Committee in its report? A. None by the Committee, I mean, of course.

Q. Do you recollect whether any statement was made by any person except by Mr. Tilton himself, tending to throw the least light upon the nature of those charges—the charges against Mr. Tilton? A. I don't recollect that there was any other statement made of that character.

Q. Now, Sir, in Mr. Tilton's speech did he in any way undertake to describe, so far as you remember, what charges had been made against him by Mr. West specifically—by Mr. West? A. My recollection is that he did not.

Q. Did he mention Mr. West's name in all his speech, that you remember? A. My recollection is, he did not

Q. After you became a member of the Examining Committee, were the records of the Examining Committee for the year 1873 ever placed in your hands? A. No, Sir, not to my knowldge.

Q. Were the minutes of any meeting in which Mr. West's charges were considered ever read in your hearing? A. Never.

Q. You never were the clerk of that Committee? A. I never was.

Q. During the year 1874 Mr. Talmadge was the clerk, was he not? A. He was.

Q. And it was his duty to keep the records, and not yours? A. It was his duty, as I understood.

Mr. Beach—Who is clerk now?

Mr. Shearman—Mr. Halliday is now.

Mr. Evarts—Of the Examining Committee.

Mr. Shearman—You were asked some questions in regard to what you testified to in your sick-room. I ask you this one general question, whether your state of health was such that you felt able clearly to understand all the questions that were put to you at that time? A. It was not.

Q. I find on the record the question asked you by Mr. Morris in reference to June 26, 1874:

Q. Had you seen Mr. Beecher that day? A. I saw him that day.

Q. Before you went to his house? A. No, Sir.

Q. Had you seen him on the cars? A. I had not.

Now, if you did make those answers as reported, have you any explanation that you desire to make of them? A. If I made them in that way, it was an error. My statement should have been, and is, that I saw Mr. Beecher on the rear end of a car coming down Beekman-st. about 4 o'clock on that afternoon. I happened to be standing in my front door of the store; he came by and beckoned to me, and pointed to Brooklyn, which I interpreted as an invitation to come over and see him; I came over at 5 o'clock.

Q. Then, if I understand you correctly, you did not mean to say that you did not see him on a car? A. I did not mean to say that I did not see him with my eyes, but that I had not met him to have conversation with him, to have a verbal invitation to go to his house.

Q. Either on the cars or anywhere else? A. Anywhere else.

Q. You have mentioned that in the interview between you and Mr. Beecher, after 5 o'clock that afternoon, June 26, he mentioned the names of seven or eight gentlemen, a part of whom or most of whom were afterward placed, in fact, upon the Investigating Committee, have you not? I understand so. A. I have.

Q. And that in the evening, after 9:30, the names of the same gentlemen, with some others, were mentioned to Mr. Beecher, either by yourself or by Mr. Shearman. Now can you explain any reason—well, in the first place, did you tell Mr. Shearman or Gen. Tracy anything about the names which Mr. Beecher had suggested? A. I did not.

Q. Now, can you explain why it was that the same names which Mr. Beecher mentioned himself were suggested to him in the evening without the knowledge that he had mentioned them? A. It was because of an interview the evening before between Gen. Tracy and yourself and myself in regard to what steps would likely be taken in regard to the publication of Mr. Tilton.

Q. Well, we have no right to ask any further than this. Were these same names mentioned in that interview? A. They were.

Q. And at that time had there been any consultation with Mr. Beecher about the Committee? A. None whatever.

Q. And when Mr. Beecher came to speak of members for a Committee, the same names among others occurred to him, did they not, as suggested by you before? A. They did.

Q. One of those names—we will give you the benefit of the exception of yourself—with the exception of yourself those names were of some of the very leading and most prominent and best known members of the church and congregation? A. With that exception, names that would have occurred to every member of Plymouth Church, I suppose, if they had been called upon to suggest strong names for an investigation.

Q. You have been asked something about an interview which took place between yourself, Mr. Beecher, Gen. Tracy, and Mr. Shearman, and the appointment of a Committee. Can you recollect whether the subject of appointing a Committee to be selected from outside of the church was brought up on that occasion? A. It was.

Q. Well, what was said on that subject?

Mr. Beach—That is objected to.

Mr. Shearman—It is a part of the conversation which they have drawn out, your Honor.

Judge Neilson—I don't think it is material.

Mr. Beach—It has no relation whatever to the part of the conversation that we introduced.

Mr. Shearman—It is a part of the very same conversation—the very same consultation.

Mr. Beach—No matter if it is.

Judge Neilson—It is an independent subject.

Mr. Shearman—I beg your Honor's pardon, but they brought in the question of who were suggested—what names were suggested for this Committee.

Mr. Morris—On the 26th?

Mr. Shearman—On the 26th; and that is what I am asking about—that very interview between Mr. Beecher, Mr. Cleveland, Gen. Tracy, and myself. I propose to complete that conversation, because it was all a part of one conversation.

Mr. Beach—The only subject to which he directed his attention was to the names—and he mentioned what names—who were to compose the Committee.

Mr. Evarts—Well, that subject, if your Honor please, was the making up of the Committee. That was the reason it was introduced.

Mr. Beach—No, it was for the names.

Mr. Evarts—It bears upon that proposition, that the making up of the Committee was such as should enable my learned friends to urge that it was a selected—what we say somewhat disrespectfully about a jury or a committee—a packed Committee. Now, the whole of that conversation, out of which they are seeking to extract materials for some suggestion of that kind, of greater or less force, we think can properly be brought in, and as a part of that consultation there was a consideration of the very important question whether or no a Committee might not properly be taken entirely outside of the church and congregation, of men prominent in the community, and the disposition of that question on such grounds as it was then disposed of; and it won't do for my learned friends to say that when the whole interview relates to the making up of a Committee, and they have extracted from the conversation such parts of it as relate to the actual making up, to draw their conclusions from, and make their arguments of; we can't show the consultation out of which this final result flowed, and which included this separate and important view of the subject.

FORMATION AND MEETINGS OF THE COMMITTEE.

Mr. Beach—The simple point, Sir, to which we directed the witness's attention was for the purpose of proving the fact that Mr. Beecher suggested the names, all or some of them, who ultimately composed this Committee. As to the discussion which arose upon that suggestion, or as to the considerations which were pressed in that conversation by the different parties to it, we made no inquiry whatever. It was upon the simple question which I have stated to your Honor; and that was not connected at all with the motives or the reasons then expressed or urged by the several parties for the selection of the particular names who afterward did form that Committee. Now, we have before, Sir, in the course of this trial, had occasion to discuss the rule, settled in the Court of Appeals, that giving a part of a conversation does not necessarily lead to the introduction of the whole of that conversation by the other side. It is not necessary to discuss that rule any further; and I submit that the extent to which we went upon that single point does not enable them to introduce all the discussions and reasons and arguments which were advanced as between Mr. Beecher and his friends upon the subject of this selection.

Mr. Shearman—Now, if your Honor please, by making an offer, I think I can remove all the objections, after making a slight reference to the evidence given on the cross. Judge Morris inquires:

Q. I ask you again if the question as to the selection of proper persons to compose the Committee was one of the reasons that Mr. Tracy's and Mr. Shearman's presence was desired at Mr. Beecher's that night? A. Mr. Beecher gave no special reasons for their being there that evening, except that he wanted to consult some of his legal friends.

Q. With reference to what? A. With reference to this matter.

Q. What matter? A. The matter of investigation.

Q. What matter—wasn't it mentioned?

Mr. Shearman—He just stated.

The Witness—The investigation.

Q. Well, what about that did he want to discuss? A. It was a matter that I did not ask him specially.

Q. Had he any doubt upon any questions that were suggested? A. I don't know whether he had or not.

Q. Were any suggested? A. He wanted to take legal advice.

Mr. Shearman—Then he is further asked about names; and your Honor will recollect that he could not at that moment refresh his memory as to all the names that were mentioned. Now, simply what I propose to offer to prove is this, that Mr. Beecher invited these three gentlemen around, as we have heard the whole consultation, and that the first proposition that he made with reference to the names and the Committee of Investigation was this: he asked these three gentlemen whether they thought it would be a proper thing for him to invite William M. Evarts, George William Curtis and William Cullen Bryant to sit as a committee to investigate this matter; and that was Mr. Beecher's proposition, and those were the three names that the counsel on the other side were trying to get out, and I should have been very glad to have helped them get out; but the witness could not then recollect it. And I propose further to show that the reason that those gentlemen were not selected was because Mr. Beecher was advised by the legal gentlemen whom he had brought in for consultation on that occasion that there was no protection to such a committee against innumerable libel suits, and that the only legal method of investigation was by the methods of his own church under the auspices of the Examining Committee, the communications to which

would be held privileged by the law. Now, that is my offer.

Judge Neilson—Well, Sir, I think you can show that. Don't give the conversation to any extent; give simply that.

Mr. Shearman—Well, then, suppose I ask just that question. [To the witness.] I ask you, then, Mr. Cleveland, to save time, whether Mr. Beecher did or did not at that time submit to the consideration of the gentlemen thus called in the names of William M. Evarts, George William Curtis, and William Cullen Bryant, as a committee to investigate this matter? A. He did.

Q. And was he, or was he not, advised by Mr. Shearman and Mr. Tracy that such a committee could not be protected against libel suits in the course of such an investigation; and that he must, in order to protect the committee, select one under the auspices of the Examining Committee of his own Church?

Mr. Beach—Well, one moment, Sir; I shall object to any such question as that.

Mr. Shearman—On the ground that it is leading?

Mr. Beach—Why; yes, Sir.

Mr. Shearman—Oh, of course we concede that; but, then, as I stated the offer in the presence of the witness, I thought it would save time. Then I withdraw that question; and I ask you what advice did Mr. Beecher receive from the two lawyers who were then present? A. I have no recollection of Gen. Tracy's advice in regard to the matter; my recollection is that Mr. Shearman suggested that the Committee had better be formed from Plymouth Church and society; the reasons, the legal reasons, I suppose, were given; I have no——

Judge Neilson—That is sufficient.

Mr. Shearman—One question it is proper to ask. At that time, so far as you had any knowledge or information, and for a long time afterward, Mr. Evarts had no relation to Mr. Beecher as counsel or in any other way? A. None that I knew of.

Q. It is conceded that Mr. Evarts had none until some time after the commencement of this suit. You were asked as to when the first formal meeting of the Committee of Investigation took place. Have you any explanation now to give as to what you meant by a formal meeting, and why you said that you thought it met the first time formally on the 10th July? A. Simply this: that there was a conference of the four members of the Committee on Sunday evening, the 28th. On the next evening several members of the Committee—four or five, I cannot tell which—met and appointed a chairman.

Q. And what was the distinction between the meeting of July 10 and that of any preceding meeting? A. The meeting of July—until the—Mr. White had not returned.

Q. Mr. White was never present before that meeting, according to your recollection? A. Mr. White was not present until the meeting of July 10, the evening that Mr. Tilton came before the Committee; the announcement of the Committee had not been made; it was—we were advised that——

Mr. Beach—Oh, well, I object to that.

Mr. Shearman—Well, that is not necessary; but had any action been taken by the Examining Committee of the church between the 26th of June and the 10th of July? A. None——

Q. Between the 26th of June and the 10th of July? A. Yes, Sir.

Q. When was that action taken? A. That was taken on Tuesday morning, the 7th, if I recollect right.

Q. Yes, the 7th of July? A. The 7th of July.

Q. That was the first time at which the Examining Committee indorsed the appointment of this Investigating Committee? A. That was the first time that the appointment was ratified by the Examining Committee.

Q. Well, did you receive any advice, as a member of the Committee, concerning the necessity of such a ratification by the Examining Committee—any legal advice? A. I did.

Q. And what was the substance of that advice? A. That the Investigating Committee before ratification by the Examining Committee would be liable to libel suits and obliged to prove the truth of the statements made, if any were made, reflecting upon character.

Q. Yes, Sir? A. And after the ratification, any publication that the Investigating Committee might make would be privileged, and that no action could lie against the Committee.

Q. When was that advice given—about what time? A. That was given immediately after the appointment of the Investigating Committee.

Mr. Beach—And before the 6th.

Mr. Shearman—Do you know whether it was given before the 6th or not? A. I do not recollect that.

Q. The advice thus given related to the danger of publication, not to the danger of taking testimony? A. I said, I think, the danger of publication of any testimony reflecting upon character taken by the Committee.

Q. You were not advised that there was danger in merely taking the testimony? A. No, Sir; the publication of testimony taken by the Committee without the ratification of the Examining Committee.

Q. And was there, in fact, any testimony published before the 7th of July? A. Not a word.

Q. You have been asked why Mr. West was not called before that Committee. Did you have any knowledge or information that Mr. West was in possession of any evidence whatever against Mr. Beecher? A. No knowledge whatever.

Q. Had you any information that he had any such evidence? A. None whatever.

Q. Did Mr. West ever make the least suggestion of the kind? A. Never.

Q. Were not all Mr. West's charges directed against Mr. Tilton?

Mr. Beach—Well, that will be found from the charges.

Judge Neilson—That appears from the paper we have on file.

The Witness—I don't recall that.

Mr. Shearman—Well, was that your understanding? A. I don't recall about that.

Q. Did you ever hear of any charges made by Mr. West against Mr. Beecher? A. Never.

Q. What was the reason in your mind for declining to call Mr. Moulton again, when he telegraphed to Mr. Sage, as you have said, on the 28th or 26th of August, 1874, that he desired to come before the Committee? A. Simply that we had exhausted every effort to get detailed statements and documents from Mr. Moulton, and had failed, and that dispatch came after the labors of the Committee were closed and the report written and signed.

Q. Do you recollect whether or not there had been any request made in church meeting the previous Friday evening for action on the part—for a report from the Investigating Committee? A. There was.

Q. And was the time fixed, when you received this message from Mr. Moulton, for the giving of the report of the Investigating Committee? A. That is my recollection.

Q. And it was actually delivered to the church on the 28th—Friday evening, the 28th? A. It was.

Q. Now, Sir, did you, or, to your knowledge or information, any member of the Committee, have any expectation that Mrs. Tilton would leave her house on the 11th of July, 1874.

Mr. Beach—That is objected to. Wait one moment; we object to it.

Mr. Shearman—Well, if it pleases your Honor, we were informed, as the reason for bringing in the correspondence between Mrs. Ovington and Mr. Cleveland, that, while it was admitted that it could not bear upon Mr. Beecher in the most remote way, it was part of the chain of evidence which was to prove a conspiracy between the Committee and Mrs. Ovington to get Mrs. Tilton away from the house.

Mr. Beach—By no means.

Mr. Shearman—Then there was no pertinency in that evidence whatever.

Mr. Beach—That may very well be; that is no reason why you should invent such an avowal on our part. There was no such avowal.

Mr. Shearman—The avowal was that there was a conspiracy to get Mrs. Tilton away from her house.

Mr. Morris—Oh, yes; but not on the part of the Committee.

Mr. Shearman—Then the correspondence between Mr. Cleveland and Mrs. Ovington was offered to prove that. Upon whose part could that conspiracy be if not on Mr. Cleveland's, if that evidence was to be in any way material? Certainly it was not a conspiracy of Mr. Beecher's; it was not one with which he was identified in any way.

Mr. Beach—Are you arguing the case?

Mr. Shearman—I am talking on the evidence. I say there is not the first particle of evidence of that kind. There is no evidence except counsel's speeches; I have never heard even a speech which imputed that to Mr. Beecher. There is no evidence, but this correspondence between Mr. Cleveland and Mrs. Ovington is put as evidence against him. If it was not evidence against Mr. Cleveland, I don't know who it was evidence against. Now, I propose to ask Mr. Cleveland whether he had any participation in it, and I lay the foundation for that by asking whether he or any member of the Committee had any expectation that Mrs. Tilton would leave the house, and I expect to follow that up by asking whether they expected anybody would ask her to leave the house. I cannot see any objection to it.

Mr. Beach—Well, Sir, it is obviously totally immaterial. Conspiracy on the part of this Committee to entice Mrs. Tilton from her house! Nobody has ever heard a suggestion of that, until the counsel has made it, and it is not worth while for him to create figments of that character for the purpose of meeting them by evidence. The gentleman says there is no evidence charging any conspiracy against anybody. Very well, Sir; if so, then it is not necessary to ask this question in regard to the Committee. Certainly there is none imputing any such conspiracy to the Committee, and nobody upon our side has ever dreamed of any such imputation, and it is hardly worth while to go into the examination of an issue thus raised by the counsel which is not presented upon our side, and totally unimportant upon the issues—any issue in this case. We object to it, Sir.

Mr. Shearman—Will the gentleman excuse me for reading a little passage from what Judge Morris said yesterday in offering this evidence of correspondence? After our objection, and after your Honor had said that you did not see yourself what it had to do with Mr. Tilton or Mr. Beecher, Mr. Morris says:

I can state to your Honor very clearly and plainly what it has to do. It is simply in the direct line of proof that we have already given upon that subject that has been gone into. I propose to connect it with the fact of Mrs. Tilton's abandoning her home the next morning, simultaneously with the announcement of this Committee, because no public knowledge—there was no public knowledge of the existence of the Committee prior to that. I propose to show that it was a part of the conspiracy, entered into deliberately, as we will show, to get Mrs. Tilton to abandon her home, and get possession of her before the Committee was announced.

Mr. Morris—That don't impute that to the Committee.

Mr. Shearman—It imputes it to Mr. Cleveland, or else what is the pertinency of that information?

Mr. Morris—That Mrs. Ovington sent for that information, and wanted it for that purpose and in furtherance of that, and Mr. Cleveland said that Mrs. Ovington requested

it, and that that was a link in the conspiracy to entice Mrs. Tilton from her home.

Judge Neilson—Well, Mr. Cleveland when you had that correspondence with Mrs. Ovington, did you know that Mrs. Tilton was to leave her house, or might do so the next day? A. Nothing whatever, Sir.

Judge Neilson—Very well, Sir; that answers it. Anything more Mr. Shearman?

Mr. Shearman—Did you have any design, Sir, or enter into any design with any one else, to induce Mrs. Tilton to leave her husband? A. Never with a human being.

Judge Neilson—Well, is that all with this witness?

Mr. Shearman—That is all.

RE-CROSS EXAMINATION BY MR. MORRIS.

Q. The advice that you have spoken of, Mr. Cleveland, about publishing the testimony, had no reference to the simple announcement of the fact that there was a Committee in existence, did it? You received no such advice as that, that there would be any danger in announcing that fact? A. There were several reasons why the Committee was not announced.

Q. No; did you receive any advice that there would be any danger?

Mr. Shearman—Legal advice?

Mr. Morris—Any legal advice that there would be any danger in announcing the simple fact that a Committee had been appointed? A. The legal advice related to the publication.

Q. Yes—publication of the evidence? A. Of the testimony.

Q. But not in regard to the announcement of the simple fact? A. No, Sir.

Q. That a Committee had been appointed—no? A. Nothing to do with that.

Q. You and Gen. Tracy and Mr. Shearman, you say, suggested or discussed names the day previous? A. I said several names came up in the interview the evening before—on Thursday evening.

Q. Where was that interview held? A. That was at Mr. Shearman's house.

Q. It was held at Mr. Shearman's house—these same names? A. Most of them.

Q. Now, when you were examined before, were you not asked specifically to give in detail all the names that Mr. Beecher suggested, either in the afternoon or in the evening, and did you not profess to give all the names that he did suggest? A. I professed to give all the names connected with Plymouth Church and society.

Q. No, all the names; weren't you asked to state all the names that he suggested without reference to the Church or society? A. My answer to that question was upon the names of Plymouth Church—in Plymouth Church and society.

Mr. Beach—Well, put in the question and answer, that is the best way—that was given there.

Mr. Morris—Now, have you until a moment ago, ever mentioned the name of Mr. Curtis and Mr. William Cullen Bryant? A. Yes, Sir.

Q. In your testimony? A. Not in my testimony.

Q. No; now, there is just one question—I won't pursue that any further, Mr. Cleveland. Now, Mr. Shearman has asked you about being examined at the house; you say that you were examined lying down. You were upon a lounge in full dress, weren't you? A. I was.

Q. And you were able to go about the house? A. I was able to go about my room, Sir.

Q. And is your condition such now as to affect your head? A. It is.

Q. And your memory? A. Most decidedly.

Mr. Morris—Very materially. That is all.

Judge Neilson—That is all, Mr. Cleveland.

Mr. Shearman—No; just one question: Can you give a reason—since you have been asked about the omission to publish the appointment of this Committee before the 11th of July—will you state what were the reasons in your mind for not publishing it before that time? A. One reason was that Mr. White had not yet returned and accepted his appointment; another reason was that we desired the ratification of the Investigating Committee by the Examining Committee.

Q. When did Mr. White return—when did he attend the Committee? A. I think Mr. White's first meeting was on the 10th of July.

Q. On the evening of that day? A. On the evening of the 10th.

Q. Altogether too late for any publication in the papers of the 10th, wasn't it—after the publication, even, of the afternoon papers? A. In the evening of the 10th.

Mr. Beach—Did he return on the 10th? A. I don't recollect that, Sir; his first meeting with the Committee was on the evening of the 10th.

Q. Yes, but do you know whether he had accepted the appointment before that? A. I don't recollect precisely when he accepted the appointment.

Q. What? A. That recollection—he appeared in the evening.

Mr. Beach—I understand Mr. Morris to say that he stated, before, that he had accepted before that the appointment.

The Witness—I do not recall.

Mr. Shearman—The members of the Committee did not make any formal acceptance—did not write any acceptance? A. No, Sir.

Q. They did not accept otherwise than by attending the meeting? A. That is all.

Mr. Beach—Didn't they by announcing their willingness to act? A. No, Sir; not to my knowledge.

Q. In conversation—well, you don't know, then? A. I know that there was no communications went from the Committee to the church or to the pastor.

Mr. Morris—And did the Committee hold these various

meetings and take testimony before they had been ratified by the Examining Committee? A. No, Sir.

Q. Then they had been ratified by the Examining Committee? A. They had been ratified on the morning of the 7th, and began to take testimony, or rather to hold regular meetings, on the 10th.

Mr. Shearman—With one exception—they took testimony on the night of July the 6th? A. They heard a statement from Mrs. Tilton. We did not consider that——

Mr. Shearman—That is all.

FRANCIS D. MOULTON AGAIN ON THE STAND.

Francis D. Moulton was then recalled and cross-examined further.

Mr. Evarts—In further cross-examination, Mr. Moulton, I call your attention now to this question: You know Mr. Samuel Dwight Partridge? A. I am very well acquainted with him, Sir.

Q. For the period of time since you have been in the firm yourself, I suppose? A. Since 1854, Sir, to the present time.

Q. Do you remember a conversation with him, freshly after the appearance of "The Life of Victoria Woodhull" by Mr. Tilton, on the subject of the writing of that "Life" by Mr. Tilton, or the reasons of it? A. I do not recollect any such conversation, Sir.

Q. Didn't you say to Mr. Partridge that Mr. Tilton's reasons for writing that "Life," or reason, or motive, for writing that "Life," was to put himself at the head of the Spiritualists of the country, or of the United States, and that there were more Spiritualists in the country than there were Congregationalists, or anything to the effect of that statement, or to the effect of any part of that statement?

Mr. Fullerton—One moment. We object to that, Sir; it is entirely irrelevant.

Mr. Evarts—How irrelevant?

Mr. Fullerton—Well, it is not for us to show that upon the face of the thing, because it appears to be entirely irrelevant. It is for you to show how it is relevant.

Mr. Evarts—We do not mean to repeat long discussions on that subject.

Judge Neilson—No, I understand that.

Mr. Evarts—The relevancy of the Victoria Woodhull "Life," and the writing of it, we called to your Honor's attention, more or less, only a few days ago, in reading from the testimony. It is a part of their affirmative proof that the writing of that "Life" was under the motive—under the justification by Mr. Beecher as a part of their plan—Mr. Moulton's, Mr. Beecher's and Mr. Tilton's plan of humoring this woman for the purpose of producing silence in reference to this scandal. Now, I ask this witness whether he has not stated as I have asked him, and the only ground of objection to Mr. Partridge's examination the other day, which was then suggested, was that the foundation had not been laid.

LEGAL DISCUSSION BY MR. BEACH AND MR. EVARTS.

Mr. Beach—Oh, the gentleman is quite mistaken, Sir. I think I satisfied your Honor the other day that there was no allegation in the evidence, or upon the record anywhere, that Mr. Moulton was concerned at all with the preparation of the "Life of Mrs. Woodhull," by Mr. Tilton; and that, when it came to his knowledge, he strenuously objected to it. And I discussed, the other day, the theory of the counsel, which was that, there being a coöperation between the three—Mr. Tilton, Mr. Beecher, and Mr. Moulton—that, therefore, they could give the declarations of Mr. Moulton upon that subject. Now, it is not pretended that Mr. Moulton, in any part of his evidence, has ever said that Mr. Tilton's object or purpose in writing the "Life" of Woodhull had any connection whatever with the arrangement made between those two gentlemen and Mr. Beecher for the purpose of suppressing action upon the part of that lady. I said to your Honor the other day, and maintained it by reference to the proof, that this was an entirely independent action upon the part of Mr. Tilton. Now, they ask, Sir, this gentleman whether he did not say to Mr. Partridge what the motive of Mr. Tilton was in the language put in the question presented to him, getting the declaration of Mr. Moulton—an entire stranger to that proceeding, so far as any coöperation or connection with it is concerned, or approbation of it is concerned. They attempt to get before this jury, by a question of this character, the assertion of Mr. Moulton (if he ever made it) in regard to the motives which actuated Mr. Tilton, which would be contradictory to those which Mr. Tilton assigns upon his evidence. Now, Sir, upon what principle can the declarations of Mr. Moulton be received to that effect, or for that purpose? It does not go to indicate the state of feeling of friendliness or hostility toward either of these parties upon the part of this witness. It is not a declaration made out of court inconsistent with any portion of his testimony given in court; and it is only upon those two principles and with those two objects that declarations out of court can be given, so far as this question is concerned. And I submit to your Honor that it is wholly immaterial, and would be doing injustice to the plaintiff in this case, to permit Mr. Moulton, if he made any such declarations of this kind, to impute motives to Mr. Tilton or to affect the interests of Mr. Tilton in this litigation, however friendly Mr. Moulton may be supposed to be toward the interests of that gentleman. And these were the reasons, Sir, which influenced your Honor, the other day, as I understand, in the rejection of that evidence, in connection with the proposition that Mr. Moulton's attention had not been drawn to it.

Mr. Evarts—No doubt, I offered the other day to give this evidence without having laid the foundation for it.

in the nature of collateral impeachment, and argued that it was admissible independently of that ground, and my learned friend argued against that, and used arguments not only very valuable in themselves, but which proved sufficient to satisfy your Honor that I was wrong. The only point ruled by your Honor was in this statement: [Reading.]

I have already intimated that it is very clear to me that the examination of this witness must be confined to contradictions of any statements which it appears that Mr. Moulton made when under examination. That is the extent to which you can go with this witness. If Mr. Moulton has stated anything, you are at liberty to contradict it by this witness.

You heard the offer, Sir, and overruled it, and overruled it as not admissible until the foundation of collateral impeachment was laid. I am now seeking to lay the foundation of collateral impeachment. Now, this must be excluded, then, upon the principles that belong to collateral impeachment, if it all. Mr. Moulton, as I suppose, so identified himself with Mr. Tilton from the proceedings, beginning in the last week of December, until the commencement of this suit, if you please, in such a way as that the statements of either of them, of Moulton as well as of Tilton, bearing upon any of the proceedings that brought them into connection and association with Mr. Beecher, according to their own showing, anything of the action, of the writing, of the influences, of the declared and imputed justification of their conduct, as under the motives of interest and concert in suppressing this scandal, are matters of direct evidence on their part on the issue of whether Mr. Beecher has been guilty of the wrong imputed to him—to wit, by the evidence against him of that wrong of implied confession, in the action and in the council, and in the motives that these proceedings had been instigated and controlled by. Now, my learned friends seek to dissever the writing of the Woodhull "Life" from the process of influence upon Mrs. Woodhull in respect to which Mr. Moulton is responsible, in the allegation that it was counseled by Mr. Beecher and in his interest, and in his motive, because it is said that he has disclosed a disapproval of the judgment and of the wisdom, and of the worth or value of this particular act; and I read to your Honor the other day the statement that he thought it was a mistake—told Mr. Beecher so—but the comment I think was, "Well, if it was a mistake, we must make the best of it." Now, certainly the fact that a particular step in a concerted movement that is to be charged to Mr. Beecher's responsibility was injudicious and was not approved by Mr. Moulton, has not any bearing upon the question of whether the act was done under the motive of assisting this purpose and interest of Mr. Beecher, which is the only material consideration in which any of the acts are brought into evidence here—don't bear upon it at all. That it was a misstatement, a mistake, a miscalculation, don't make any difference in the quality of the evidence as bearing against Mr. Beecher. Mr. Tilton, indeed, gives us a general confession, I think, in his testimony, that everything had gone wrong; he had acted very foolishly in the matter; all of it came to nothing. That don't bear upon the question of whether Mr. Beecher is to have influences brought to his prejudice in the judgment of this jury of being responsible for this course of action. Now, here is one of the principal things done—the writing of the "Life" of Woodhull which Mr. Tilton has assigned to this motive, and to this alone: [Reading.]

When I wrote that biography, I believed a good protion of it; I made an extravagant statement of it, with a view to conduce to the purpose.

Q. For rhetorical effect? A. No, Sir; not for rhetoric.

Q. For what? A. I have already told you that Mr Moulton, Mr. Beecher, and I were set on the enterprise of handling and controlling that woman; and I believed to a considerable degree, during my early months of acquaintance with her, that she was much traduced.

Mr. Fullerton says, "He went on further, and said that himself and Mr. Beecher and Mr. Moulton had agreed upon a line of conduct with reference to this woman"——

And in making the explanation he was interrupted.

Now, Mr. Moulton has not said that this was not one of the steps; but that he did not think it was a judicious step, and the most must be made of it, as it had been taken. This also tends to contradict the idea conveyed (of regarding it as an unimportant idea as bearing upon any issue in this case), as creditable to Mr. Moulton's judgment that he disapproved of the writing of this "Life;" because we have him, in an imputed conversation, concerning which I asked him, saying that Mr. Tilton wrote it under this personal idea, and he certainly expressed no disapproval of that at the time.

So that, if your Honor please, it seems to me perfectly clear that this is a direct contradiction by an extra-judicial statement which we propose to offer, and for which we are laying the foundation—a direct contradiction of the testimony of Mr. Moulton, in regard to this course of dealing with the Woodhulls, in which this writing and publishing of "The Life" was certainly a principal act, most important in all its influences, most disastrous and most injurious to Mr. Tilton, as it seems to have turned out, and made here a sacrifice on his part to the end of the concealment of the scandal and the protection of his wife and of Mr. Beecher. Now, Mr. Moulton gives us Mr. Tilton's motive for writing that "Life" the object of personal advantage and personal ambition; that it would put him at the head of the Spiritualists, who were more numerous than the Congregationalists.

Mr. Beach—The argument of the counsel discloses the radical mischief of this proposition, and at the same time acknowledges the principles upon which the objection to its admission rests. He insists upon considering Mr. Moulton, Mr. Beecher and Mr. Tilton as united in this particular portion of the effort of Mr. Tilton to influence, conciliate, and control Mrs. Woodhull. He therefore, Sir,

recognizes the truth of my proposition, that the declarations of Mr. Moulton cannot be admissible, either as against Mr. Beecher or Mr. Tilton, until this league not only for the general purpose of influencing this woman, but of influencing her by this particular mode or step in the process—to wit, the publication of her "Life"—shall have been established. This is a declaration of Mr. Moulton offered in regard to the *general* purpose or object of this undertaking on the part of these three persons. This declaration is not offered for the purpose of contradicting the testimony of Mr. Moulton, to the fact that there was such a design, concurred in by Mr. Beecher, entered upon by Mr. Moulton and Mr. Tilton. I beg your Honor to remark that fact. This declaration is not for the purpose of contradicting Mr. Moulton in his testimony concerning the general combination and coöperation between these three persons in relation to the general influence which should be exerted over the mind and the action of Mrs. Woodhull. Now, Mr. Tilton commits a certain act, the publication of this "Life." He says he did it for the purpose of conciliating this lady. Has Mr. Moulton said that, Sir? Has Mr. Moulton or Mr. Tilton asserted that that act was done by Mr. Tilton with the knowledge of Mr. Beecher, or in pursuance of any arrangement with Mr. Beecher—that it was not communicated to or approved of by him in any respect? There is no evidence of that kind in the case, may it please your Honor. On the contrary, the testimony of Mr. Moulton, who is sought to be contradicted by imputing to him a declaration in regard to the motives of Mr. Tilton—on the contrary, Mr. Moulton's evidence was that he knew nothing about it until Mr. Tilton told him it was done, and that then he disapproved and disapprobated it; and in that situation of things, Sir, when, with reference to this particular act, neither Mr. Moulton nor Mr. Beecher is in any degree involved; when it was not a concurrent act as between these three, or any two of these three; when it was discountenanced and condemned by Mr. Moulton, they propose to prove his declaration in regard to the motives of Mr. Tilton in doing it, for the purpose of contradicting him. Wherein does it contradict him? and wherein is the evidence anything else but the giving of the declarations of Mr. Moulton in regard to a matter in which he did not act in coöperation with Mr. Tilton, and in his absence, for the purpose of concluding or affecting the rights of Mr. Tilton? Now, Sir, in this attitude this question must be viewed. Either your Honor must hold that Mr. Moulton and Mr. Tilton are identical in the transactions resulting in the publication of that "Life," or else you must hold that these declarations, in some degree, go to designate sentiments and feelings of friendliness or hostility of Mr. Moulton to one party or the other. It is not contended, Sir, that it can be received in the last point of view; and it is only upon the ground of identity and coöperation of action in regard to that particular act—in other words, a league between these parties in relation to that particular act—that this evidence can by possibility be admitted. I have shown your Honor before, and I will refer again to that testimony, if necessary to show, that there was no such relation, no such unity of action or purpose, between these two parties in regard to that act, which makes the declarations of the one admissible as against the other.

Judge Neilson—I think I will take the answer.

Mr. Beach—Will the stenographer read the question?

The Tribune stenographer read the question as follows:

Did you say to Mr. Partridge that Mr. Tilton's reasons for writing that "Life," or reason or motive for writing that "Life," was to put himself at the head of the Spiritualists of the country, or of the United States, and that there were more Spiritualists in the country than there were Congregationalists, or anything to the effect of that statement, or to the effect of any part of that statement?

A. The question, Sir, is involved. With regard to the first part of it, I answer I knew no such thing, and said no such thing. In regard to that part of it which asks me with regard to whether I said or not that the Spiritualists outnumbered the Congregationalists, I have an indistinct recollection—sufficient, however, for this impression—that I told Mr. Partridge that I had understood from somebody, I don't remember whom, that the Spiritualists of the country did outnumber the Congregationalists.

Mr. Evarts—What were you talking about with Mr. Partridge when you told him this last? A. I don't recollect, Sir, the specific opening of the conversation—the specific opening of the conversation by Mr. Partridge.

Q. Or by yourself? A. Or by myself.

Q. Something suggested it, didn't it? A. Well, Sir, I don't know whether—I don't know what did suggest it; I suppose something did suggest it.

Q. It was not an independent conversation, beginning and ending with that remark? A. I remember nothing further about it, Sir, than as I have stated with regard to the Spiritualists and the Congregationalists; Mr. Partridge and myself frequently conversed together about Mr. Tilton, and about Mr. Beecher, and about Mrs. Woodhull.

Q. Yes. Well, are you not able to say, then, that this remark, of which you have a sufficient impression to be able to make a statement, was not a part of the conversation in which the writing of "The Life of Mrs. Woodhull" by Tilton was spoken of between Mr. Partridge and yourself? A. I recollect, Sir, nothing about any conversation in regard to the "Life" of Victoria Woodhull by Mr. Tilton, with Mr. Partridge.

Q. Have you no impression concerning any such conversation that is sufficient for you to make a statement upon as you do of the last part of the matter? A. I have not, Sir. [A pause.] Mr. Evarts, I will swear distinctly to one thing in connection with this question—another thing, rather—that if I did have a conversation with Mr. Partridge with reference to the "Life of Victoria Wood-

hull," I did *not* tell him in that connection that Mr. Tilton told me, or that I knew from Mr. Tilton, either directly or indirectly, that he had written it for the purpose of placing himself at the head of the Spiritualists of the country.

Q. I did not ask you——

The Witness—I beg pardon——

Q. I did not ask you whether you told Mr. Partridge that Mr. Tilton told you? A. Well, I am trying to make it broad enough.

Q. I asked you whether you told Mr. Partridge that Mr. Tilton's motive, or object, in writing that life was to put himself at the head of the Congregationalists? A. Very well, Sir, I answered that question.

Q. Of the Spiritualists, I mean, or anything to that effect? A. I answered that question distinctly, no.

Q. Whether you invented the reason, or it came from Mr. Tilton, has nothing to do with my question? A. Precisely, Sir; I understand it perfectly.

Q. I want to know whether you told Mr. Partridge that? A. I did *not* tell Mr. Partridge that.

Q. Very well. That is all.

Mr. Beach—It is conceded that we are not to pursue our general re-examination of Mr. Moulton now.

Mr. Evarts—Of course, I only introduce this single question now.

The Witness—Is that all, Sir.

Mr. Beach—That is all, Mr. Moulton

FURTHER EXAMINATION OF SAMUEL D. PARTRIDGE.

Samuel Dwight Partridge was recalled and further examined.

Mr. Evarts—I will take up your examination now upon a certain point at the stage at which it was arrested by a legal objection when you were on the stand before. I called your attention to a conversation with Mr. Moulton on the subject of the fact of the publication of Mrs. Woodhull's "Life," by Mr. Moulton (which you remembered), and asked you if Mr. Moulton said anything to you on the subject of Mr. Tilton's object and motive in writing that "Life," and you answered that he did; now I ask you what did he say to you?

Mr. Beach—That is objected to upon the ground that the declarations of Mr. Moulton are not evidence against Mr. Tilton; and upon the further ground that the declarations were as to a collateral matter, and they are therefore not subject to a contradiction; and on the further ground that there is nothing in those declarations called for, contradictory of the evidence of Mr Moulton previously given, except, of course, his denial of having made the declarations. And your Honor will perceive from the testimony drawn out now from Mr. Moulton on the stand that he declares that no such motives were ever assigned to him by Mr. Tilton, and it is taking his declarations as against Mr. Tilton—declarations which in themselves are not competent as against him, and declarations which, I submit to your Honor, are entirely upon a collateral topic, and in regard to which the answer of the witness is conclusive.

Judge Neilson—And the witness's answer would merely show Mr. Moulton's own opinion, whatever it was.

Mr. Beach—That is all, Sir. It might be very proper to take the answer of Mr. Moulton to the question whether or not he made these declarations, but that answer is conclusive upon the counsel upon the other side, being to a collateral matter, and is not the subject of contradiction.

Judge Neilson—I think I will allow the counsel to put the question to the witness in the very terms of the statements made by Mr. Moulton, not in the general form.

Mr. Evarts—Your Honor will remember that Mr. Moulton stated that he had no conversatian with this witness on the subject of the "Life of Victoria Woodhull."

Mr. Beach—No, no.

Judge Neilson—You put a specific question to Mr. Moulton; now frame your question with regard to that same matter that you interrogated Mr. Moulton about; otherwise the answer might be as to some independent matter and not to the question.

Mr. Evarts—I have confined it already. My question is, what he said to him as to Mr. Tilton's motives or objects in writing the "Life of Victoria Woodhull."

Judge Neilson—You must confine that to the very terms of the question that you put to Mr. Moulton just now.

Mr. Shearman—Have the question read.

Mr. Evarts—Well, I remember it near enough for all the purposes of this examination. [To the witness.] In that conversation, and in stating to you the motives or objects of Mr. Tilton in writing the "Life of Victoria Woodhull," did Mr. Moulton say to you that Mr. Tilton's motive or object was to put himself at the head of the Spiritualists of the country, and that the Spiritualists were more numerous than the Congregationalists, or anything to that effect, or to the effect of any part of that statement? A. Shall I say yes or no to that, or shall I state what he—what it was?

Q. Well, you should state what he said, of that effect.

Mr. Fullerton—You should state the truth, I suppose.

The Witness—Mr. Tilton told me——

Mr. Beach—I understood, your Honor, that the question was to be put specifically and answered specifically.

Judge Neilson—Yes.

Mr. Evarts—It is to that effect, or to the effect of any part of it.

Mr. Beach—Very well; you must not allow the witness to give what he said. The question is, Did he say that? Yes or no.

Judge Neilson—Yes, or no, I should say to that.

The Witness—Well, he said—he didn't use precisely that

phraseology that Mr. Evarts has used; he said that, substantially.

Mr. Evarts—Very well. Now, what *did* he say A. He said that Mr. Tilton——

Mr. Beach—That is not admissible.

Mr. Evarts—My question to Mr. Moulton was whether he said that, or anything to that effect, or to the effect of any part of it.

Judge Neilson—Yes.

Mr. Beach—And the witness says he did say that, not in the precise language, but that substantially.

Mr. Evarts—Do you mean the whole—that he said the whole of it substantially?

Mr. Beach—Yes.

Mr. Evarts—Very well; I am satisfied.

Mr. Beach—You ought to be.

Judge Neilson—That covers your ground, then?

Mr. Evarts—Well, if the answer is to be taken in that way, it is but justice to the witness to read it, that he may see that it is correct.

Judge Neilson—Read the answer, Mr. Stenographer.

The Tribune stenographer read the answer, as follows:

"Well he said that—he didn't use precisely that phraseology that Mr. Evarts has used—he said that, substantially."

The Witness—If it is proper, I would say that——

Mr. Beach—Wait a moment.

Mr. Evarts—Wait a moment, Mr. Partridge. Now I suppose that I have a right, and that it is the fair thing to both the present witness and the preceding witness, that what he did say should be stated.

Mr. Beach—The gentleman has no right, under your Honor's ruling, to call out that conversation. What may be fair to the preceding witness we will undertake to secure. Very likely I shall call out that conversation.

Judge Neilson—I think you have the answer, Mr. Evarts.

Mr. Evarts—Well, I will ask this question: What did Mr. Moulton say at that conversation?

Mr. Beach—I object.

Judge Neilson—That is ruled out.

Mr. Evarts—We except.

Q. What did Mr. Moulton say in that conversation that was substantially to the effect of what I have asked you?

Mr. Beach—That I object to.

Mr. Evarts—Well, I understand that.

Mr. Beach—I understand it is a repetition of your other question.

Judge Neilson—I think he has answered your question that you put to Mr. Moulton, covering the same ground precisely.

Mr Evarts—I except to your Honor's ruling.

Mr. Beach [to defendant's counsel]—Give me that check—that piece of yellow paper.

CROSS-EXAMINATION OF MR. PARTRIDGE.

Mr. Beach—When was this conversation, Sir? A. It was very soon after the publication of the book, pamphlet, or whatever you call it.

Q. Is that the nearest indication of the time that you can give? A. I have no date—no date to go by.

Q. I asked you if that was the nearest indication of the time that you can give? A. I don't think of anything that I can give you now.

Q. It was very soon after the publication of the pamphlet? A. Yes, Sir; very soon.

Q. Where did you see that "Life" published? A. Where did I see it?

Q. Yes, Sir; first. A. I don't recollect.

Q. How? A. I don't know that I can tell you.

Q. In what form did you see it first? A. I should think it was in a pamphlet form that I saw it.

Q. Don't you recollect where you saw that? A. I can tell you where I think I saw it.

.Q Sir? A. I cannot tell you so as to swear definitely.

Q. What year was this conversation with Mr. Moulton? A. It was immediately after——

Q. I don't ask you that, Sir. Answer my question. A. I can answer it——

Q. Answer my question, Sir; what year that conversation was in, naming the year? A. Well, I will state, Sir——

Q. No, you will answer my question, if you please. A. I must answer it in such a way as I can answer it.

Q. If you can't answer it in that way, you can say so. What year, Sir, was that conversation in, stating the year? A. I believe that it was in 1872, but I wish to state——

Q. No, no; wait a moment. A. Oh, yes; now let me state.

Q. Well, if you ask me—— A. Let me state it.

Q. [Continuing.] A favor, of course, I will grant it. A. I don't ask for any favor.

Q. Then stop. Are you quite certain that it was in the year 1872? A. Well, I was going to tell you what made me think——

Q. No, I didn't want to know that. A. Well.

Q. I asked you, now, if you was quite certain that it was in the year 1872 that this conversation occurred? A. I am not——

Q. Can't you state whether you are quite certain? A. I have understood——

Q. I ask you to stop. A. [Continuing.] During the progress of this trial——

Q. Won't you stop when I ask you to? A. Certainly.

Q. I will treat you with entire fairness, Sir, but when I request you to cease, you will be good enough to do so. I put to you the simple question whether you are quite certain that the conversation you have spoken of with Mr. Moulton was in the year 1872? A. If that was the year that that was published, then I am certain.

Mr. Beach—I object, Sir, to that question, and move to strike it out.

Mr. Evarts—Why should it be struck out?

Mr. Beach—Because it is not an answer; it is the reasoning.

Mr. Evarts—Exactly; but it is the reasoning that the witness gives you in the form of an answer. That is his opinion.

Judge Neilson—He did not ask him why he thought, it was in 1872, but whether he is certain it was 1872.

Mr. Beach—Yes, Sir.

Judge Neilson—Now, he is certain or he is not.

Mr. Evarts—Hasn't he said that he was not certain?

Mr. Beach—No, he has not said so.

Mr. Evarts—He *thought* it was in 1872.

Mr. Beach—I move to strike that out.

Judge Neilson—Yes. [To the witness.] I think you could say whether you are certain or not, Mr. Partridge.

The Witness—Yes, Sir; but I have no date to go by, except what I read in the progress of this trial, that it was——

Mr. Beach—Will you please stop a moment?

The Witness [continuing]—In September, 1872.

Mr. Beach—Well, if this rambling talk, of this witness, is all taken by the stenographer, Sir, I must move to strike it out. I insist that it shall not appear on the record.

Judge Neilson—Everything is struck out subsequent to the question you put him, because that question remains unanswered. Now the simple question, Mr. Partridge, is whether you are certain or not that this was in 1872?

Mr. Porter—We except to your Honor's decision striking it out.

Judge Neilson—Yes, Sir. [To the witness.] You are either certain or are not certain, which is it? A. Well, I am certain that it was made after the publication of the book.

Mr. Beach—I move to strike out that answer, Sir.

Judge Neilson—Yes.

Mr. Evarts—Well, if you Honor please——

The Witness—Since the publication——

Mr. Beach—Stop a moment.

Judge Neilson—The witness must pay some attention to the question, and the witness is not at liberty to branch off and carry the examiner with him, wheresoever he will.

Mr. Evarts—No.

Judge Neilson—Now he is certain or he is not certain. It is a very simple question.

Mr. Evarts—I am now talking about striking out.

Judge Neilson—That was not competent, and was not called for.

Mr. Evarts—I have no objection to following the inquiry, but the witness's mode of answering comes to this: "My knowledge is as to time only in connecting it with the recency of the publication."

Mr. Beach—I don't know, Sir, the object of these interruptions upon the part of the counsel. I insist that upon a cross-examination of this character, in answer to a question of this kind, plain and simple, I am entitled to a categorical answer.

Judge Neilson—Certainly you are.

Mr. Beach—And that the reasoning of the witness cannot be forced upon me.

Mr. Evarts—My object—you say you don't understand it?

Mr. Beach—No.

Mr. Evarts—My object is to have the rights of evidence preserved to the parties and to the witness. I was speaking only on the question of striking out; I do not object to their pursuing it.

Mr. Beach—That was a very laudable object, but I didn't see the object from the remarks, Sir.

Mr. Morris—The evidence had been stricken out before.

Judge Neilson—It is so easy and simple for the witness to say that he is certain or that he is not certain, that there is no occasion for hesitation.

Mr. Beach—Well, Mr. Partridge, we will get that stumbling-block out of the way, and let it go. Where was it? A. In the office of Woodruff & Robinson.

Q. What season of the year was it? A. I should say it was in the Fall.

Q. Do you feel quite positive about it? A. I feel pretty sure.

Q. And early or late in the Fall? A. I should think it was not very late in the Fall.

Q. Some time in the course of the Fall. Was any one present at the conversation beside you and Mr. Moulton? A. I don't recollect any one but himself and myself.

Q. Do you recollect in what part of the store it occurred? A. I presume——

Q. Now, I don't want any of your presumption. A. No, I can't say.

Q. You don't recollect in what part of the store? A. I don't recollect what particular part.

Q. Well, are you enabled to recollect in what portion of the day it was? A. No, Sir; I don't recollect what portion of the day it was.

Q. Do you remember whether any of the other partners or attachés of that establishment were there? A. I don't recollect that they were—any one but he and I.

Q. Don't recollect whether they were or were not? A. I don't recollect.

Q. Do you recollect anything that you was engaged in at that time? A. I do not; only listening to what he said, and something that I said myself; I spoke myself.

Q. I will get at that by and by. During that time have

you any recollection of what your occupation was? Is there any incident connected with the conversation which refreshes your recollection? A. No, Sir.

Q. Nothing at all? A. I don't think of anything.

Q. What was your ordinary daily duty at that time? A. My duty was receiving and paying out the cash.

Q. And making entries upon the books, I suppose? A. Making entries upon the books and making checks.

Q. But there was no noticeable variation in your ordinary employment at that time, I suppose? A. Not that I recollect, Sir.

Q. Was you in the habit daily of seeing Mr. Moulton? A. I think I was, Sir.

Q. Well, almost daily? A. I presume so.

Q. He was an active member of the firm, an active participant in the business of the firm, wasn't he? A. Yes, Sir.

Q. Do you recollect what portion of that day he spent in the office of the firm? A. I couldn't tell you.

Q. Do you recollect any business that was transacted upon that day? A. I cannot tell you; I don't recollect anything done between him and me that day except what I have told you.

Q. You don't recollect anything done that day except what you have told me, as to the declarations of Mr. Moulton? A. I cannot tell you anything.

Q. Well, my object was to find out, Mr. Partridge, if I could fairly, from you, whether there was any incident or circumstance connected with this conversation as arising from your business or occupation, which impressed it upon your mind unusually? A. I don't recollect anything, Sir.

Q. And it was received by you and transpired as an ordinary conversation, making no especial impression upon your mind? A. It made such an impression that I remembered it.

Q. No, no, Sir.

Mr. Evarts—Well, now——

Mr. Beach—Did it make any especial impression upon your mind? A. It is the only thing that I remember.

Mr. Beach—I must insist, your Honor, that this gentleman shall pay some little attention to your Honor's instruction in answering my question.

The Witness—I certainly will.

Mr. Evarts—If your Honor please, I see no occasion for my learned friend's animadversion upon this witness, either in expression or in matter; and when he is asked whether it made any especial impression upon him, he certainly has a right to answer what degree of especial impression it made.

Judge Neilson—He has, when he is asked. Until he is asked he has a right to say yes or no, it did or did not make any especial impression.

Mr. Evarts—Well, if your Honor please, if witnesses are confined to saying yes or no, we shall have a very strange production of evidence.

Judge Neilson—I hardly think it would be strange if the witness is directed to answer——

Mr. Evarts—Yes or no?

Judge Neilson [continuing]—The specific question put.

Mr. Evarts—Now, the question is, did it make any especial impression upon him?

Judge Neilson—It is easy to say yes or no.

Mr. Evarts—That would depend upon how the fact was.

Judge Neilson—Then I should say I could not tell.

Mr. Evarts—It would depend upon how the fact was. He might say yes.

Judge Neilson—The witness ought, on examination, to pay attention to the examining counsel without turning to the right or left.

Mr. Evarts—Yes; but when he is asked whether anything made a special impression upon him, he has a right to state what impression it made upon him, and other people are to judge whether it is special.

Mr. Beach—Well, I dissent from that, Sir.

Judge Neilson—Of course; the witness must answer the question.

Mr. Beach—I cannot conclude this examination, Sir. I am perfectly willing to stay——

Mr. Evarts—Take this question and answer.

Mr. Beach—Oh, no; I guess not.

Mr. Evarts—Surely.

Mr. Beach—Well, I will withdraw the question.

Mr. Evarts—There is no necessity—this single question can be disposed of.

Mr. Beach—No, it cannot, when I withdraw it.

Judge Neilson—You are willing to withdraw it to have an adjournment?

Mr. Beach—Yes, Sir.

Mr. Evarts—It is withdrawn for good.

Mr. Beach—No, Sir.

Mr. Evarts—No? [Laughter.] It is all very well, but I think the question should be disposed of.

Mr. Beach—No, no. Mr. Evarts's remarks have so impressed me that I must make one or two preliminary questions before I put that.

Mr. Evarts [smiling]—"Especially impressed" you?

Judge Neilson—Get ready to retire, gentlemen. Please attend Monday morning at 11 o'clock.

The Court then adjourned until Monday morning, April 26, at 11 o'clock.

SEVENTY-SECOND DAY'S PROCEEDINGS.

FOUR WITNESSES IN THE CHAIR.

TESTIMONY OF SAMUEL DWIGHT PARTRIDGE, EDWARD J. WRIGHT, MRS. ELIZABETH LA PIERRE PALMER, AND BENJAMIN F. TRACY—THE MEMORANDUM ACCOMPANYING THE CHECK FOR $7,000—MR. TILTON'S COMMENTS SOON AFTER THE WOODHULL PUBLICATION—HIS RELATIONS TO MRS. WOODHULL AT HER OFFICE AND AT HER HOUSE—REMARKABLE TESTIMONY OF A CLAIRVOYANT—MR. TRACY'S EARLY CONNECTION WITH THE CASE.

MONDAY, April 26, 1875.

The cross-examination of Samuel Dwight Partridge by Mr. Beach was opened with questions in reference to the yellow slip of paper containing the words: "Spoils from new friends for the enrichment of old," which accompanied the Bowen check of deposit for $7,000 in 1872. The witness described the drawer in which he had placed the check and the slip of paper. He said he did not recollect whether the check and the slip of paper had come fastened together or not. After the paper had been in the drawer for some time he took it out, folded it, and put it in his pocket-book, without telling any member of the firm about it. An amusing scene occurred when Mr. Beach asked the witness to take out his pocket-book and replace the paper in it in the compartment which it had occupied after being taken from the drawer. Mr. Partridge did not recollect ever telling any member of the firm that such a paper had accompanied the Bowen check until two or three weeks ago, when he told Jeremiah P. Robinson about it. He had shown it to his wife and children, and one or two other persons, soon after the publication of the statements in relation to the scandal last Summer.

Mr. Partridge was also questioned about his alleged conversation with Mr. Moulton. When he first took the stand in the morning, he said he desired to correct the statement which he made last Friday in regard to the time when the conversation took place. It was in 1871 instead of 1872. He had had another conversation with Mr. Moulton about the scandal about two years before he left the firm of Woodruff & Robinson, which was on Dec. 31, 1874. The witness could not swear that Franklin Woodruff was not present at the conversation in 1871, but that was the only conversation with Mr. Moulton in which the number of Spiritualists had been mentioned. On the re-direct examination of Mr. Partridge Mr. Evarts drew from him the fact that he had been educated for the law. Soon afterward he asked the witness a question to which the latter began to respond in his customary wandering manner.

"Will you stop, Sir!" exclaimed Mr. Beach, and then added ironically, "you know you are a lawyer."

"I ought not to have that brought up against me," replied the witness smiling.

During the course of his cross-examination Mr. Partridge manifested a tendency in answering questions to branch out into collateral matters, and Mr. Beach more than once asked Judge Neilson to instruct the witness to confine his answers to the questions.

Edward J. Wright, a resident of Greenwich, Conn., was the next witness for the defense. Before the examination was begun, Mr. Evarts offered in evidence a letter from Mr. Tilton to Mr. Davis, dated at the office of *The Golden Age*, Sept. 18, 1871. In this letter Mr. Tilton asked the recipient and his wife to read his "Life of Victoria Woodhull," and to give him their impression of it. He said that he had understated rather than overstated the facts in that book. Mr. Wright testified that he had known Theodore Tilton by sight for eight years. On Nov. 4, 1872, soon after the publication of the Woodhull article, which he had read, he took a train from Concord, N. H., for New-York. Soon after leaving Concord, Mr. Tilton entered the train and sat down near him. Another gentleman came in and sat down by Mr. Tilton's side. This gentleman asked Mr. Tilton about the Woodhull scandal. The latter replied that he had seen it in an Eastern paper, but said that he cared nothing for it himself, but that Mrs. Tilton was in delicate health and he feared for its effect upon her.

Mr. Beach, in cross-examining this witness, said that he understood the conversation in the cars referred to was in reference to a speech made in Boston by Mrs. Woodhull about Mr. Beecher and Mrs. Tilton. The witness said he distinctly recollected that *Woodhull & Claflin's Weekly* was mentioned in that conversation, and that it referred to the Woodhull scandal. During the cross-examination of Mr. Wright, Mr. Beach consulted with Mr. Tilton two or three times. The latter was busily writing during a large part of the day.

There was a murmur of curiosity when a woman of very striking appearance was conducted to the chair as the next witness for the defense. She was of middle age, and was apparently weakened by sickness. She was examined by Mr. Shearman.

She gave her name as Elizabeth La Pierre Palmer. She had pursued the profession of a landscape artist and had resided at Montmorency, S.C. At present she was staying with friends in this city. She had been married twice. She was divorced from her former husband, Herbert Daniels, in 1868. In 1874 she was married to her present husband, Frederick Augustus Palmer, an eclectic physician of New-York. She had formerly, she said, resided in New-York, where she manufactured and sold ladies' stocking-suspenders of her own invention. She occupied a part of Mrs. Woodhull's office in the Spring of 1871. She there met Mr. Tilton in February, 1871. She had heard Mrs. Woodhull and Mr. Tilton talk about the projected publication of *The Golden Age*. The substance of their conversation was that Mr. Tilton was to start *The Golden Age*, and run it together with *Woodhull & Claflin's Weekly* in connection with the Spiritualism movement. It was to be a radical paper, taking up all the radical questions of the day. Mr. Tilton had asked the witness to be an agent for his new paper, but she had refused. She saw Mr. Tilton at Mrs. Woodhull's office two or three times a day, during part of February and during March and April, 1871. She saw Mr. Tilton go to lunch with Mrs. Woodhull at least six times. Several times she heard Mrs. Woodhull say to him, "Come, Theodore, let us go out to lunch." They called each other "Theodore" and "Vickey." She also saw Mr. Tilton taken into the back parlor, which was not thrown open to ordinary guests, and four times she saw him in Mrs. Woodhull's bedroom, sitting at a desk, and either talking or writing. Mr. Tilton treated Mrs. Woodhull very affectionately, and it was his common habit to put his arm around her. She had heard Mrs. Woodhull talk of Mr. Tilton's becoming the head of the Spiritualists. Perhaps the most remarkable portion of Mrs. Palmer's testimony was in reference to a conversation which she had heard between Mrs. Woodhull and Mr. Tilton about the scandal. On that occasion Mr. Tilton had told Mrs. Woodhull that his wife was as pure as snow, and that the scandal was not true.

The cross-examination of Mrs. Palmer was conducted by Mr. Beach, who was somewhat taken aback when, having asked a question relative to her husband's business, she turned to Judge Neilson and appealed to the Court, saying that that had no relation to this case, and unless the Court compelled her she would refuse to answer. "That is not the first time I have been refused by a lady," said Mr. Beach, smiling. She was obliged to go on. The cross-examination developed the fact that Mrs. Palmer was a medium, and had assisted her husband as a clairvoyant by making examinations of patients. The skillful lawyer led her on until she became interested in telling about her powers, and the counsel, jurymen, and audience listened with lively interest. She said she could, when in the proper condition, to a great extent, read the secrets of others' lives—the acts which they had done. She announced her belief that around every human soul there was a band of guardian spirits, and that no evil influences can reach that soul, unless God opens the cordon of guarding spirits. She believed that no human soul was responsible for its acts, except that it would be responsible if it did not pray for the Divine assistance that could be had for the asking. Mr. Beach smiled when the witness announced that she saw a spirit standing near him.

"Is it a good or a bad one, for I should like to know?" he asked.

She replied that it was a young lady—his daughter.

"Well, I've had one of that kind," replied the lawyer, his face reddening.

Mrs. Palmer went on to give her views about marriage and divorce. She said she was not a free lover, but believed that when a married man and woman found that they were totally incompatible, and couldn't possibly live happily together, they should be divorced. The witness proceeded at great length to explain her peculiar ideas of Spiritualism and religion, and talked so earnestly that her auditors paid close attention. She insisted on telling what she knew in her own way, and could not be made to entangle herself in contradictions. She repeated in substantially the same language what she had before said about *The Golden Age*, and the relations of Mr. Tilton and Mrs. Woodhull. She admitted that Mr. Tilton's familiarities with Mrs. Woodhull must have been seen by Col. Blood and Stephen Pearl Andrews, since they were neither open nor concealed. She said she believed in the God of the Christians and in the Lord Jesus Christ, although she held some peculiar views about the relation of the latter to the Father.

Near the close of the session, Benjamin F. Tracy was called and sworn as a witness for the defense. His examination, conducted by Mr. Evarts, had proceeded only a little way, when the Court adjourned.

THE PROCEEDINGS—VERBATIM.

SAMUEL D. PARTRIDGE RECALLED.

The Court met at 11 a. m., pursuant to adjournment.

Samuel D. Partridge was recalled and his cross-examination resumed.

Mr. Beach—Mr. Partridge, on your examination the other day you spoke of a check which was handed to you——

The Witness [rising]—Will you excuse me? I wish to correct a mistake that I fell into, as I understand, on Friday.

A Juror—A little louder.

Judge Neilson—Sit down, Mr. Partridge. Make your correction, Sir.

The Witness—As I understand, I stated that I believed that it was in 1872; I should have said 1871. I don't know how—I must have misapprehended the question, I think.

A Juror—We can't hear.

Mr. Beach—The substance is: "As I understand, I stated on Friday that it was in 1872; it was in 1871. I must have misunderstood the question."

The Witness—The publication of the biography was the matter, I think.

Mr. Shearman—The publication of the "Life of Mrs. Woodhull."

THE APPEARANCE OF THE BOWEN CHECK.

Mr. Beach—When you were examined before, Mr. Partridge, you spoke of a check which was handed to you as the cashier of the firm of Woodruff & Robinson? A. Yes, Sir.

Q. What was the amount of that check? A. $7,000, if I recollect right.

Q. Who drew it? A. It was signed, I think, by H. C. Bowen—Mr. Bowen's check, I think.

Q. You knew Mr. Bowen, didn't you? I knew him by sight, Sir; I hadn't any acquaintance with him.

Q. You knew him very well by reputation? A. Yes, Sir.

Q. Can you recollect the precise form of the signature? A. I do not, Sir.

Q. You think it was H. C. Bowen? A. It was the same check that was handed to me the other day, and credited to Mr. Bowen.

Q. I didn't ask you that. A. I think that was the check.

Q. What? A. I don't recollect that I looked particularly at the signature.

Q. Credited, did you say, to Mr. Henry C. Bowen? A. It was credited to Mr. Tilton.

Q. You said to Henry C. Bowen a moment ago? A. Well, I made a mistake.

Q. Made a mistake? And it was payable to Mr. Tilton, you say? A. That is as I understand it; yes, Sir.

Q. Well, are you quite sure of that, or whether it was indorsed over to Mr. Tilton? A. Mr. Tilton was an indorser on it.

Q. Well, was he the first indorser? A. I would not be sure, Sir.

Q. What? A. I won't be sure how that was; I didn't look attentively at that part of it the other day. It might have been drawn by somebody else to the order of Mr. Bowen; I could not say certain; I don't remember.

Mr. Evarts—Mr. Partridge, I think you will find it, perhaps, convenient to speak a little louder when you know that the jury cannot understand you.

The Witness—Yes, Sir.

Mr. Beach—Do you recollect how the check was indorsed? A. I recollect that Mr. Tilton was an indorser on it, and Woodruff & Robinson were indorsers on it; as to any other—there may have been one other, but I don't remember who it was.

Q. Was it indorsed by Woodruff & Robinson when it was presented to you? A. No, not when it was presented to me; it was when it was presented to me the other day.

Q. No, no; when it was originally handed to you, was it indorsed by Woodruff & Robinson? A. No, I think not.

Q. Did you see that indorsement put upon the check? A. I couldn't tell you whether I did or not, Sir; it is not——

Q. Wait a moment, Sir. When you answer my question please stop. And you put the check, I understand, in the drawer? A. I did.

Q. And there were two apartments in the drawer? A. There were more apartments than two.

Q. Well, there were two? A. The front part of the drawer was divided into narrow apartments, and the back part of it was not divided; there were two in that sense.

Q. And the check, I understand, you put in the front apartment of the drawer? A. Yes, Sir.

THE SHAPE IN WHICH THE CHECK AND YELLOW PAPER CAME.

Q. And this yellow paper you put in the back portion of the drawer? A. In the back portion; that is, according to my recollection.

Q. Were the two papers, the yellow paper and the check, attached together in any form when you received them? A. I don't recollect, Sir, whether they were or not.

Q. Don't recollect whether they were or not. Well, can't you recollect, Sir, whether they came to you annexed, and that you undertook to separate them? A. I do not; I know that they came to me at the same time.

Q. That ain't the question I put to you. A. And by the same hand.

Q. Wait one moment, Sir. The question I put to you was whether you can not recollect whether or not these pa-

pers came to you annexed, and that you assumed to separate them? A. I don't remember.

Q. If a check with a memorandum came to you in your business, did you assume the authority to separate them? A. I don't remember in this matter whether—anything how they came, relative to each other, except that they were handed to me at the same time.

Q. You are not now, Sir, answering my question, and I beg you to confine your attention to the question I put to you. I ask you whether, as the cashier of a business firm, when a check came into your hands with a memorandum attached to it, you, as cashier, would assume, without direction, to separate them and put them apart? A. I don't recollect, Sir, that any such occurrence ever happened.

Q. Would you consider it in the line of your duty to do that? A. I should consider—it wouldn't be expected if a thing came attached to a check that I should deposit that, unless it was a part of the check.

Mr. Beach [to the Court]—I don't know, Sir, as to this witness, whether he purposely avoids answering my question, and answers matters which are not pertinent or responsive, but I assume, if your Honor please, that I have a right to ask instructions from your Honor to him, that he should answer the question I put to him.

Judge Neilson—Mr. Partridge, the duty of the witness is to attend to the very question put, and answer it as closely and directly as you can.

The Witness—I will do so, your Honor.

Judge Neilson—When you cannot answer it, say you cannot.

Mr. Beach—Please attend, then, to this question.

The Witness—I will, Sir.

Q. When you, as the cashier of that firm, received a check with a memorandum annexed to it, would you conceive it in the line of your duty to separate those two papers and place them apart? A. Well, Sir, isn't it proper for me to say that I have no recollection that any such occurrence ever happened, and how can I tell how I should act?

Q. You cannot tell how you should act? A. If no such thing ever happened——

Q. You could not tell. You have no sense of business propriety and duty, then? A. If I——

Q. I am asking you, Sir, whether, as a business man, and trusted cashier of a firm, when a check came to you with a memorandum annexed to it, from a partner of the firm, you would consider it your province to separate those two papers and put them apart? A. Well, I don't know, Sir.

Q. You don't know whether you would consider it your duty or not? A. I don't know.

Q. Did you do that on this occasion, with this check and memorandum? A. I don't remember whether they came pinned together—fastened together, or not; I don't remember.

Q. Well, Mr. Partridge, refreshing your recollection by your sense of duty and your practice, cannot you say whether or not they were attached when they came to your hands? A. I cannot, Sir; I don't remember.

Q. Well, Sir, you put the check in the front apartment of the drawer, and the memorandum in the back part of the drawer? A. Yes, Sir; they were separate then.

Q. What? A. They were separate then, at that time.

Q. Well, I should suppose so, Sir. [Laughter.] It is not necessary that you should swear to it. How long did the check remain where you placed it in the fore part of the drawer? A. Well, I think that I deposited that the same day, Sir.

Q. You think you deposited that the same day? A. I think I did.

Q. Cannot you tell by reference to your books? A. I can be pretty well satisfied.

Q. From an examination of the books? A. From an examination of the bank book, and see if I deposited the $7,000 check that day. It is not likely I had more than one.

Q. Well, is there any memorandum upon your books by which you can tell upon what day you received the check? A. Yes, Sir.

Q. What? A. I can.

Q. Have you examined them? A. I have; I looked.

Q. What? A. I did.

Q. Can you tell, then, from that examination of the entries upon the book when you received it? A. On the 5th day of April, if I recollect right.

Q. On the 5th day of April? A. 1872, I think.

Q. Do the books so declare? A. I think so.

Q. You think so. A. It has been some time——

Q. Have you any recollection whether or not you did deposit it on the day you received it; have you now any present recollection of that circumstance? A. Without reference to the book I cannot tell you, Sir.

Q. You could not tell? A. No, Sir.

A HISTORY OF THE YELLOW PAPER.

Q. How long did this piece of yellow paper remain in the back apartment of the drawer before you took it and put it in your pocketbook? A. It is impossible for me to say exactly, but I should think not a great while.

Q. Well, two or three days or a week. How long? A. Well, I cannot tell.

Q. Sir? A. According to—the impression that I have is——

Q. Just answer my question. A. I will.

Mr. Evarts—He is.

Mr. Beach—No, he is not answering.

Mr. Evarts—According to his impression, he says.

Mr. Beach—Yes. According to your recollection how many days—what length of time did this paper remain in the back apartment before you took it out and put it

in your pocketbook? A. I should think not a great while; but I cannot be explicit as to that.

Q. According to the best of your recollection how long? A. According to the best of my recollection I had that in my pocket, I should think, two or three years.

Q. Well, that is very pertinent to something I may ask you by and by. A. Well, I cannot say.

Q. Do you understand my question, Sir? A. If I understand your question, you wish me to say how many days, or precisely how long that lay in the back part of the drawer before I put it into my pocket?

Q. Yes, Sir. I did not say "precisely," but I said according to the best of your recollection. A. Well, I don't recollect.

Q. Now, you seem to understand the question; will you answer it? A. I don't recollect.

Q. Tell me, according to the best of your impression. A. The best of my recollection is—the best of my impression is that I cannot tell exactly what time it was.

Q. I didn't ask you to tell me exactly. A. I cannot tell you; I have no criterion by which I can recollect.

Q. According to the best of your recollection, did it remain in the back drawer a week before you took it out? A. I could not tell you, Sir.

Q. What? A. I could not say certainly; I should think it did, however.

Q. Well, two weeks? A. I could not tell you, Sir, how long; it did not remain a great while.

Q. Well, you have said you should think longer than a week? A. Yes, Sir.

Q. How with regard to two weeks? A. I could not tell you, Sir.

Q. Well, what do you think about it? A. I have no recollection about it.

Q. Well, you think it remained there longer than a week; how much longer than a week, should you think? A. I could not tell you, Sir.

Q. Why, if you think it remained there longer than a week, you must have some impression about it? A. The only impression that I have about it is that it did not remain there a great while.

Q. Then you took it out, folded it up, and put it in your pocketbook? A. I put it in my pocket; yes, Sir.

Q. Do you remember how many times you folded it? A. No, Sir; I do not; I don't remember. It is folded; I don't remember anything about that matter.

Q. What? A. It is folded now; it was folded when I put it into my pocketbook.

Q. Is your eyesight good enough to see whether the holes of the check and the paper correspond, placing those pin holes together? A. I can't see the pin holes.

Q. Can't see the pin holes? A. No, Sir.

Q. Have you the pocketbook in which you kept it? A. I have; yes, Sir.

Q. Let us see it?

The Witness [Producing his pocketbook]—*There*, if I recollect aright it was kept in that compartment.

Q. Now, fold it up as you kept it there; don't tear it.

The Witness—Will you have the kindness to fold it; I cannot see.

Mr. Beach—Well, I have put it in the folds as they are. [Folding paper and handing it to witness, who tried to put it in the pocketbook.] Well, that is enough; you needn't put it in. Then you folded it twice? A. I don't recollect.

Q. What? A. I don't recollect anything about it; I don't recollect.

Q. Well, you must have folded it three times. *There* it is; you see it, don't you? A. Folded it so it would go in *there*.

Q. Well, you folded it three times, did you not? A. Do you expect I recollect from that time until now how many times I folded that piece of paper, as though I had nothing else to think of?

Q. Well, *there* is the pocketbook, *there* is the paper. You see how it is folded to go in there, and you see it won't go in without folding, don't you?

Mr. Evarts—That is reasoning; not memory.

Mr. Beach—I ask him to look at this paper and tell me how many times he folded it to put it into this pocketbook.

The Witness—I can't tell you anything about it.

Q. No; but looking at the paper and your pocketbook, and making the experiment, you can tell? A. Well, you can tell——

Q. Can you tell? I want to get it on the record. A. You can get it on the record as soon as you please; I put it into my pocketbook.

Q. You take that paper with your pocketbook and tell me how many times you folded it to get it into your pocketbook? A. Well, it requires the folding that it has now to get in there.

Q. That is three foldings, isn't it? A. Well, I can't see, Sir.

Q. Look at it—yes, you can see that; I know better? A. That is one——

Q. That is one, and that two, and that three—that makes three, doesn't it? A. Well, I don't see three—unless you count one, two, three.

Q. This is one, ain't it, to fold it *this* way? A. Oh, yes, Sir.

Q. And *that* is another, and *that* is another? A. That is another.

Q. How long did you carry it in your pocketbook? A. Well, from the time I put it into it until the other day, in my pocketbook.

TO WHOM THE YELLOW PAPER WAS SHOWN.

Q. Did you have it out at any time? A. I have.

Q. How many times? A. I could not tell you how many times.

Q. When did you first have it out? A. I don't recollect of ever showing that——

Q. Wait a moment; when did you first have it out according to your recollection? A can't tell you, Sir, only—I can tell you that since a particular time.

Mr. Evarts. That is, taking it out, showing it.

Mr. Beach—I don't ask him about showing it to anybody.

The Witness—Oh! I have no recollection of ever taking that out until I took it out to show it to somebody.

Q. Well, when did you first take it out to show to somebody, then? A. It was since—I have no recollection of ever showing that to any one until since these statements.

Q. Since what statements? A. Well, statements that were made last Summer, I think.

Q. That is the first time that you took it out? A. I have no recollection of taking it out——

Q. To whom did you first show it? A. I could not tell you that.

Q. Who is the first person that you recollect that you showed it to? A. I should think that the first persons I showed it to were individuals in our own family.

Q. Well, who? A. In our own family—in my own family.

Q. Well, who? Who? A. My wife, or my children, or both, perhaps, at the same time; I don't know——

Q. Well, I want to know whom you recollect first to have shown it to? A. I don't recollect who I did first show it to.

Q. Well, who do you recollet of ever showing it to? A. I recollect of showing it in my family; I recollect of showing it to a gentleman by the name of Clark.

Q. Where does he reside? A. He resides in Northampton.

Q. What is his full name? A. His full name is—I think it is Josiah, Sir.

Q. When was that? A. That was last Winter.

Q. Well, who else do you remember showing it to? A. I remember showing it to Mr. Albert Woodruff.

Q. Albert Woodruff? A. Yes, Sir.

Q. Who is he? A. He is Mr. Albert Woodruff; he was formerly a member of the firm of A. Woodruff & Robinson.

Q. Was he a member at the time you showed the paper to him? A. No, Sir; he was not.

Q. Where was he when you showed it to him? A. I was at his house, Sir.

Q. Where? A. In State-st., Brooklyn.

Q. In this city? A. Yes, Sir.

Q. When was that do you think? A. I should think that was not more than 10 days ago, or a fortnight, perhaps; that was recently.

THE YELLOW PAPER KEPT AS A CURIOSITY.

Q. Now, in the month of April, 1872, were you personally acquainted with Mr. Tilton? A. I had seen him repeatedly; I never had any acquaintance with Mr. Tilton; I know him well by sight.

Q. Well, at that time did you know anything about the difficulties between Mr. Tilton and Mr. Bowen? A. I knew, previous to this, that Mr. Moulton, and I think Mr. Tilton was with him, came to me one day——

Q. No, no; I am not asking about that. A. I am telling all I know about it, if that is what you want.

Q. Well, I don't want it all; it would be a burden to me to carry it. I am asking you if, at the time this check was handed to you, you were acquainted with the difficulties between Mr. Moulton and Mr. Tilton—Mr. Tilton and Mr. Bowen, I mean? A. All that I knew—that I recollect that I knew at the time that I received this check, was that I had been informed that Mr. Tilton, on his way to see Mr. Bowen, had some paper printed in type; that he was going to see Mr. Bowen and show it to him and tell him that he must settle with him, or pay him some money or something or other, or he should publish that; that is all that I knew about it up to that time.

Q. And that you had heard from other parties? A. That I had heard from other parties; yes, Sir.

Q. At the time you took out this yellow paper and put it in your pocket-book, had you heard anything more about it? A. I had not heard anything more.

Q. Hadn't heard anything more? A. That is all that I——

Q. Now, when did you first communicate to any person that you had this paper? A. Well, I told you I did not remember when——

Q. What? A. Since—I don't think I ever mentioned it to any one until since——

Q. Those statements last Summer? Yes, Sir, those statements; I think it was, as I mentioned, since those statements.

Q. Were there any other checks in that drawer at the time you put these papers in it? A. I presume there were, but that is a mere matter of guessing; I don't remember anything about it; there generally was checks there.

Q. You did not attach those papers together with a pin? A. I never did—not to my recollection; I have no recollection of ever anything about pins or pinning in connection with it.

Q. Have you no idea how those pin-holes got in there? A. No; not the least in the world, Sir.

Q. Least in the world? A. Don't know anything about it; I don't recollect anything about it.

Q. Did you communicate to any member of that firm that you had taken this paper from their drawer and put it in your pocket-book? A. Not at that time that I know of; no, I never did.

Q. You never did? A. I presume I never did.

Q. No; did you think it perfectly proper to take a paper of that kind and appropriate it to your private use? A. I had a right, Sir, to infer that that paper came into my possession to be taken care of, and I did take care of it.

Q. And that was—— A. In my custody——

Q. And that was the object of putting it in your pocket-book? A. My object——

Q. Was that your object? A. I have no recollection——

Q. Was that your object? A. What?

Q. You say that you presumed when this paper came into your possession it was your duty to take care of it? A. I did not say so; I said that I had a right to infer.

Q. Well, you had a right to infer; did you infer that? A. I don't recollect that I did; I don't recollect that I acted at all from that motive; I recollect only one thing that induced me to do it.

Q. You didn't take it, then, to preserve it? A. What?

Q. You did not take it then for the purpose of taking care of it, or preserving it? A. I do not think I had that in my mind at all; it was a sort of curiosity, I thought, connected with that transaction; I never attached much consequence to it at the time, that I recollect.

Q. You did not attach much consequence to it at the time? A. That I recollect; I don't recollect that I looked at it in any other light than as a sort of curiosity.

Q. Don't recollect that you looked at it in any other light than as a sort of curiosity? A. At that time.

Q. At that time? A. At that time—and there was only one word that attracted my attention then, particularly.

Q. That was "spoils," I suppose? A. That was "spoils."

Q. Yes, Sir; that is an attractive word; "spoils from new friends;" the "new" is underscored, you perceive? A. Yes, Sir.

Q. Did you know to whom that referred? A. I did not.

Q. "For the enrichment old;" the "old" is underscored also. A. I did not underscore it.

Q. You did not understand what that referred to? A. No, Sir.

Q. You were curious about it? A. I was curious; all the curiosity I had was with the "spoils;" the word "spoils" seemed to refer to the check.

Q. Well, did you ever take any means to satisfy your curiosity except to hold on to the paper? A. No; I did not care particularly about it.

Q. But you were curious, and a curious person does care about the object? A. A man may have a curiosity in his possession and not exhibit it all the time—not every day.

Q. Well, did you ever make any effort to satisfy your curiosity? A. Not the least.

Q. And you never addressed any person connected with the establishment of Woodruff & Robinson to ascertain what this paper meant? A. I told one of the firm——

Q. Did you ever show this paper, or consult either of the persons? A. I have no recollection of ever doing it.

Q. No recollection that you ever did?

Mr. Porter—The jury want to know what he said last.

Mr. Beach—He said he never did—never consulted any member of the firm about it.

The Witness—That I recollect.

Q. So far as you know, didn't the firm know that that paper existed? A. I told one of them that such a paper as that came with that check.

Q. Who was that? A. Jeremiah P. Robinson; but it was at a very comparatively recent date; not at that time.

Q. At what time was that? A. Well, I should think it was two or three weeks ago.

Q. About two or three weeks ago—did you show it to him then? A. I don't recollect that I did, Sir; I think I did not.

THE CONVERSATION ABOUT TILTON AND SPIRITUALISTS.

Q. Now, on Friday, Sir, when the Court adjourned, we were speaking of a conversation you had with Mr. Moulton; you now change the time of that conversation from 1872 to 1871? A. In the Fall of 1871; yes, Sir.

Q. Have you conversed with any one upon the subject of when it was since you were upon the stand, Friday? A. I knew——

Q. Have you conversed with any one, Sir, in regard to the time, since you were on the stand last Friday? A. I stated at our table——

Q. Have you conversed with any one; will you answer me? A. Yes, Sir, I have.

Q. Whom? A. With my family.

Q. With anybody else? A. I don't recollect that I have.

Q. Well, try and recollect; I guess you will remember some one else. A. I spoke with Dr. Bacon this morning about it.

Q. Dr. Bacon? A. Yes.

Q. Haven't you spoken with any one else about it? A. I don't—in going away—in going out from the court that day I passed along with Mr. Hill——

Q. Ah! A. [Continuing]—and something was said about the 1872.

Q. Yes. A. But it was in connection with——

Q. Well, you have answered me; now stop. Now, you have been in consultation with Mr. Hill in regard to your testimony several times, haven't you? A. I don't recollect that I have, Sir.

Q. What, Sir? A. I don't recollect that I have, Sir.

Q. Before you were first up upon the stand, hadn't you been in consultation with him? A. I don't recollect of having any consultation with Mr. Hill but once, and then not at—I don't know that I ever saw Mr. Hill until Friday morning.

Q. Well, which of the counsel consulted with you in

regard to your testimony before you were put upon the stand? A. I talked with Mr. Shearman.

Q. With Mr. Shearman? A. Mr. Shearman and—and with Mr. Shearman's partner, previous to talking with Mr. Shearman.

Q. Well, Sir, we have got that conversation now located in the Fall of 1871; you are now certain of the time ain't you? A. I understand—I have understood——

Q. No, no; I don't want that? A. Well, I am satisfied in my own mind that that is the time; yes, Sir.

Q. Yes, you are satisfied in your own mind, so that you are reasonably certain of the time? A. I am satisfied in my own mind.

Q. Did you ever have more than one conversation with Mr. Moulton in regard to the Woodhull publication, or in regard to Mr. Tilton? A. I do not recollect of its ever occupying any attention between us, except on that time.

Q. On that one occasion; and that is the only time you conversed upon this subject—this general subject—at all with him? A. What general subject do you mean?

Q. The general subject of the Woodhull publication and of this scandal and difficulty? A. Of that publication I do not recollect ever having any conversation with him but one.

Q. Well, do you recollect of having any conversation with him, except upon that occasion, with reference to this general difficulty, general scandal, and if so, when and where was it? A. Well, now, you will excuse me for asking you to be a little more definite than that; I can't precisely understand what you would have me answer.

Mr. Shearman—I cannot hear what you say.

Mr. Beach—He wanted me to excuse him for asking me to be more precise; he could not understand. [To the witness.] Well, you understand the general nature of this difficulty between Mr. Tilton and Mr. Beecher? A. Yes, Sir.

Q. Now, do you recollect of having any other conversation than the one you spoke of with Mr. Moulton, either alone or in presence of any other party, when the expression was made use of that the Spiritualists were more numerous than the Congregationalists of the country? A. I have not.

Q. Don't recollect but this one occasion? A. I recall that I had heard that expression——

Q. No, no. A. [Continuing.] A short time before that.

Q. Won't you stop when I ask you, Sir. Be kind enough. I treat you courteously and I hope you will me. A. Excuse me.

Judge Neilson—You must listen to the question and answer the question. If you cannot remember, say you don't remember, and let that be the end of each question.

The Witness—Well, Sir.

Mr. Beach—Now, my question to you, Sir, is whether you reccollect of any conversation besides the one you have mentioned, with Mr. Moulton, or in the presence of any person, between you and Mr. Moulton, when that expression, or substantially that expression, was used, that the Spiritualists were more numerous than the Congregationalists of the country? A. You ask me if I understand—if I had any conversation, or heard anything from Mr. Moulton or from any other one?

Q. No, no; from Moulton. A. From Moulton; that is the only time that I recollect.

Q. That is the only time? Now, will you swear that Mr. Franklin Woodruff was not present at the conversation to which you allude when that very expression was used? A. Franklin Woodruff told me a——

Q. Wait one moment. Will you swear that Franklin Woodruff was not present at that conversation between you and Moulton to which you allude, when that expression. or substantially that—— A. I don't think he was——

Q. Hear my question? A. Well, I have answered it.

Q. You say you don't think he was? A. I don't think he was.

Q. Will you swear positively that he was not? A. I will not swear positively; I could not tell you what Mr. Woodruff has told me in regard to that same thing as coming from Mr. Tilton; he used the same expression exactly.

Q. Oh, well, now, will you stop, Sir? A. I have stopped.

Q. What is your object in forcing declarations of that kind upon me? A. I have no particular object in forcing the declaration upon you, Sir.

Q. Have you ever been sworn as a witness before? A. I have not for a great many years.

Q. Have you ever been sworn as a witness before? A. I have been; not in New-York, however.

Q. Where do you say this conversation with Mr. Moulton was; what part of the store? A. In the office.

Q. Now relate the whole of that conversation? A. I said substantially to Mr. Moulton: "I think Mr. Tilton has done a foolish thing in writing that biography." Mr. Moulton said: "He wrote that in order to get the leadership of the Spiritualists." I said: "I did not suppose they were sufficiently numerous to make it an object." He said: "There are more Spiritualists in the country than there are Congregationalists."

Q. Well, is that all of it? A. That is the whole conversation, so far as I recollect.

Q. Now, wasn't it Mr. Woodruff that used the expression that Mr. Tilton wrote that biography for the purpose of taking or obtaining the leadership of the Spiritualists? A. No, Sir; Mr. Woodruff—I have no—he did not tell me so then; I have no recollection of his telling me——

Q. I am not talking about any other time, Sir. How long was that conversation? A. How long?

Q. Yes, Sir. A. Just as long as I have been speaking.

Q. Just long enough to utter those words? A. Not longer than that.

Q. Not longer than that—there was no other expression used in that conversation? A. Not that I recollect.

Q. Well, do you recollect sufficiently to say that there was none other? A. None other that I recollect.

Q. Is your recollection sufficient to enable you to say that there was no other conversation? A. It is sufficient to say that I don't recollect any more.

Q. You don't answer my question. A. I do, Sir, to the best that I possibly can answer it.

Q. Don't you recognize the difference between recollecting what a conversation was and recollecting that there was a conversation, as a sensible man? A. I was not aware that you had made that distinction, however.

Q. I have made the distinction, Sir; I asked you whether your recollection was sufficiently accurate in regard to that conversation to enable you to swear that nothing more was said than what you have repeated? A. All that I can say in reply to that is that I don't recollect anything more.

Q. Well, that will do, Sir. That is all. And you have now no recollection that Mr. Woodruff participated in that conversation? A. Not in that conversation; Mr. Woodruff told me——

Q. Wait one moment, Sir, wait one moment—and upon that subject, or upon any kindred subject connected with this litigation and scandal, you have no recollection of having conversed with Mr. Moulton at any other time? A. I have no recollection of ever having conversed with Mr. Moulton on the subject of this scandal, except on one occasion.

Q. This one occasion? A. No, not that one occasion; that had nothing to do with this scandal.

Q. Well, then, you had another conversation with Mr. Moulton upon another occasion? A. I did.

Q. When was that? A. I should think that was about two years before I left the office.

Q. Well, when did you leave the office? A. I left the office the 31st day of last December.

Q. Well, then, that was in 1872? A. Well, I should think about two years; I could not give you the particular date.

Q. Well, that is not the conversation you alluded to, when this expression of about the Spiritualists and the Congregationalists was used? A. No, Sir.

A, Did you make any memorandum of that conversation? A. No, Sir.

Mr. Evarts—What conversation?

Mr. Beach—Why, the one in evidence, of course; it is the only one I have been inquiring about. When did you first repeat that conversation? A. I could not tell you, Sir.

Q. When do you first recollect of repeating it? A. Well, I don't recollect when I did first repeat it.

Q. Well, you must recollect the time when you first recollect it? A. I have repeated it a great many times, and I could not tell you when I repeated it first; I have repeated it several times.

Q. The first that you recollect, I ask you? A. Well, I could not tell you.

Q. Why, you can tell me the first that you recollect can't you? A. I cannot at this moment tell you any time, except when I repeated it to counsel, but I have repeated it a good many times before that.

Q. Well, I want to know as near as you can tell, when you first repeated it? A. I could not tell, but since—it must have been since those statements last Summer.

Q. Oh! since those statements last Summer; that will do, Sir; that is the first time you repeated it? A. I don't recollect——

Q. To whom did you repeat it? A. I could not tell you.

Q. Can you mention some one person? A. I could not mention any now that I——

Q. I asked you, Sir, to name to me one person to whom you repeated this conversation? A. Well, I think, Sir, I stated it to that same gentleman in Northampton, Mr. Clark, and I think one other gentleman in Northampton, Mr. Hubbard, and I——

Q. And do you recollect any others—recollect any one in this vicinity or neighborhood? A. I think I did to Mr. Albert Woodruff.

Q. And that was within two or three weeks? A. That was within a short time; yes, Sir.

Q. Well, you have no doubt about that, have you—you have no doubt about having repeated it to Mr. Albert Woodruff, have you? A. I don't think that I need doubt it——

Q. Well, have you? I don't know whether you need have or not—have you any doubt about it? A. I would not say certainly whether I did or not; I think I did.

Q. Well, name some one in this vicinity to whom you are certain that you repeated it before you did to counsel upon this trial? A. I repeated it, I recollect, to Col. Noyes, in Woodruff & Robinson's office—Capt. Noyes.

Q. Capt. Noyes? A. Yes, Sir.

Q. A single question, Sir, is all that I propose to ask you further. When this check and yellow memorandum was handed to you, were any instructions given to you by the person who gave them to you? A. Not on—I cannot recollect any particular language used.

Q. Do you recollect any instructions in regard to them given to you by any person connected with the firm? A. Well, it is not proper for me to say that I haven't any doubt but what I was told to credit it to Mr. Tilton.

Q. No, I don't ask you that; I ask whether any instructions were given to you? A. Unless some such instructions as that.

Q. Do you recollect any instructions given to you? A. Not positively.

Q. Do you recollect at all any instructions given to you at the time the papers were handed you? A. I

could not say that I can recollect anything that Mr. Woodruff said at the time.

Mr. Beach—Well, that will cover it, I think.

RE-DIRECT EXAMINATION OF MR. PARTRIDGE.

Mr. Evarts—You are a gentleman of liberal education? A. I am a graduate.

Q. Of Amherst? A. Yes, Sir.

Q. And have been educated to the profession of the law? A. Yes, Sir.

Q. Now, as to Mr. Albert Woodruff, who was he? A. He was the senior partner of the firm of A. Woodruff & Robinson; I think he went out of the firm not far from the year 1856, but I will not say positively when.

Q. He was an older member of the firm than the Messrs. Robinson who still remain? A. Yes, Sir.

Q. Is he the father of Mr. Franklin Woodruff? A. No, Sir; he is a distant connection—a cousin.

Q. You have said that you think Mr. Franklin Woodruff was not present at the conversation between Mr. Moulton and yourself, which you have given? A. I think he was not.

Q. Do you remember an occasion in which you had a conversation with Mr. Franklin Woodruff? A. Shortly before I had this conversation with Mr. Moulton, Mr. Woodruff told me——

Mr. Beach—Never mind.

The Witness—He told me——

Mr. Beach—Will you stop, Sir! You know you are a lawyer.

The Witness—I ought not to have that brought up against me. [Laughter.]

Mr. Evarts—You had a conversation. Now, in that conversation with Mr. Franklin Woodruff, which you now recall, was the subject of Mr. Tilton writing this Life or the subject of the comparative number of Spiritualists and Congregationalists in the country spoken of? A. He said——

Q. No matter what he said. Please to answer yes or no; was one of these the subject of conversation? A. One of them was.

Q. Which was that? A. The comparative number of Spiritualists and Congregationalists.

Q. What did Mr. Woodruff say on that subject?

Mr. Beach—I desire to object.

Mr. Evarts—If this is objected to, I suppose we are not entitled to show that.

Mr. Shearman—It was partly called out on their examination.

Mr. Beach—No, Sir; you are not correct.

Mr. Evarts—I don't know that they have proved any part of that conversation.

Judge Neilson—No, they have not.

Mr. Evarts—The witness got so far as to say that he told him something.

Mr. Shearman—If the stenographer will read the examination, your Honor will find that Mr. Partridge gave a part of that conversation.

Judge Neilson—If he did so, it was without the consent of counsel, who persistently objected.

Mr. Shearman—If your Honor please, it was just the same as when Mr. Tilton and Mr. Moulton were on the stand; they made certain statements to which Mr. Evarts objected, but as he did not move to have them stricken from the record, the statements were held to be evidence in the case.

Judge Neilson—I do not see any necessity for explaining any former ruling, but it is clear that the counsel was very persistent in trying to stop this witness.

Mr. Shearman—It was precisely the same experience with Mr. Evarts, when examining Mr. Tilton; he was trying to stop him, and yet certain statements were made, which were allowed to remain because there was no motion to strike them out at the time.

Judge Neilson—I do not think that these remarks are called for.

Mr. Beach—If your Honor please, it is an entire misstatement, unconsciously made, I have no doubt, by the counsel; but it is a misrepresentation.

Judge Neilson—The observations are uncalled for, referring to any former ruling, which has no application here. Mr. Beach was unusually eager in stopping this witness, who, doubtless without any intention, was continually wandering from the question.

Mr. Evarts—I would not like, if your Honor please, by my silence, to acquiesce in any reflection being cast upon the witness.

Judge Neilson—I am not reflecting upon him; and I don't know that any comparison has been made, except that made by Mr. Shearman, in relation to Mr. Tilton.

Mr. Evarts—But some comments have been made upon the witness's manner of testifying.

Judge Neilson—The only comment that I made was that the witness, against the objection of counsel, brought in certain statements of third parties which cannot go into evidence; undoubtedly this was not intentional on his part.

Mr. Evarts—I understand from your Honor that these imperfect remarks are not in evidence. All I can do is to offer to prove by the witness what has passed between Franklin Woodruff and himself on this subject.

Judge Neilson—And that I rule out.

Mr. Evarts—We offer it as bearing hereafter upon any evidence of what was said at this conversation. And we except.

Mr. Beach—At the conversation of which you have just spoken with Mr. Franklin Woodruff, was Mr. Moulton present? A. I don't recollect that he was.

A NEW LETTER PUT IN EVIDENCE.

At this time a man in the back part of the court room became ill, and was removed by the officers in a fainting condition. This caused some confusion, and Judge Neilson asked if there was any physician present. A physician responded, and Judge Neilson requested him to step out in the corridor and see what was the matter with the man.

Mr. Evarts—If your Honor please, I now offer in evidence a letter from Mr. Tilton.

[The letter was examined by Mr. Beach and Mr. Morris, and handed back to Mr. Evarts, who read it in evidence, without objection, as follows.];

THE GOLDEN AGE, NEW-YORK, Sept. 18, 1871.

MY DEAR MR. DAVIS: I want you and your wife to read carefully my narrative of the life and spiritual experiences of Mrs. Woodhull, and then to give me your exact impression of the tale. Some people refuse to believe what is so marvelous, but I understated rather than overstated the facts which were originally communicated to me by my authority. Tell Mrs. Davis to write more for *The Golden Age*, and do the same yourself.

Fraternally yours, THEODORE TILTON.

[Marked "Exhibit D, 136."]

TESTIMONY OF EDWARD J. WRIGHT.

Edward J. Wright was called and sworn on behalf of the defendant.

Mr. Shearman—Where do you reside? A. In Greenwich, Conn.

Q. What is your business? A. That of cashier in a mercantile house in New-York.

Q. Of what firm? A. A. T. Stewart & Co.

Q. How long have you been so engaged? A. Thirteen years.

Q. And are you in their up-town or down-town house? A. On the corner of Broadway and Chambers-st., down-town—wholesale.

Q. Are you acquainted by sight with Mr. Theodore Tilton? A. I am.

Q. How long have you so known him? A. I cannot say positively, but I should say upward of eight years.

Q. Do you remember the period of the publication of what is commonly called the Woodhull scandal? A. I do.

Q. Do you recollect purchasing a copy of *The Woodhull & Claflin Weekly* containing that scandal? A. I do.

Q. About what time did you purchase that paper? A. I think on the 3d of November, 1872—within a day or two of that time; not before.

Q. The 3d of November was on Sunday. A. Then it was on the 2d—on Saturday.

Q. Well, did you, early in November, take a vacation and travel north? A. I made a short trip; I was away from business two days, I think.

Q. Which days were those? A. On the 4th and 5th of November—Monday and Tuesday.

Q. Did you carry that paper, *The Woodhull & Claflin Weekly*, with you? A. I did.

Q. On what day did you start to return to New-York? A. On Monday, the 4th of November.

Q. 1872? A. 1872.

Q. Where did you take the train, and what train? A. At Concord, N. H., returning by way of Worcester and New-Haven.

Q. Now did you see Mr. Theodore Tilton enter the train, and, if so, about what point? I saw him enter the train; my recollection is not distinct as to the particular point, but somewhere within a short distance of Concord—before reaching Worcester—some time before.

Q. Is it your recollection that it was before reaching the boundary line of Massachusetts? A. It was not long after we started from Concord—within, I should say, an hour.

Q. Well, did you observe Mr. Tilton in conversation with any person? A. I did.

Q. Did you hear anything said to Mr. Tilton and by him on the subject of the Woodhull scandal? A. I did.

Q. Will you state all you heard on that subject that passed between him and the gentleman with whom he talked? A. The gentleman with whom he was conversing entered the train and took a seat with Mr. Tilton, and asked him with reference to the publication; he stated that he had seen it.

Q. How did the gentleman describe the publication? A. He spoke of it as the Woodhull & Claflin publication—the Woodhull scandal; the exact verbiage I cannot state; he then said that he had seen it in the Eastern papers, I think in the Boston papers.

Q. That is, you mean Mr. Tilton so stated? A. Mr. Tilton so stated; a conversation then ensued in which he was asked what he thought of it; or I think, first, what it amounted to; he said he knew about it; and when a further question was asked, which was something to the intent of what he thought of it, he said that he cared nothing for it for himself; that Mrs. Tilton was in delicate health and of a nervous temperament, and he feared for its result upon her—for its effect upon her.

Q. Was that all the conversation you remember? A. That was the substance of it; I don't recollect just at the moment anything more.

CROSS-EXAMINATION OF MR. WRIGHT.

Mr. Beach—When did you leave New-York on that trip? A. I left New-York on Saturday evening, going to my residence in Greenwich on Sunday evening.

Q. That was on the 2d of November you left New-York? A. The 2d of November.

Q. You left your residence in Greenwich on the 3d? A. Yes, Sir; the 3d.

Q. And went to what place? A. Concord, N. H.

Q. And on the 4th you returned to New-York? A. From Concord to Greenwich.

Q. That was on Monday the 4th? A. That was on Monday the 4th.

Q. What train was it—what part of the day? A. It was a train leaving Concord some time after 3 o'clock.

Q. Had you any person in company with you—any friend? A. No, Sir.

Q. What seat did Mr. Tilton occupy, when he entered the train, with reference to you? A. My recollection is that he occupied a seat on the right-hand side of the car, and then changed to the left-hand side; this conversation occurred sitting at the left-hand side of the car.

Q. And where in reference to you? A. I was sitting at that time, I think, two seats in front of him.

Q. Two seats in front of him? A. Two seats in front of him; he had the first seat in front of him turned, and I was sitting in the seat in front of that, I think.

Q. Will you describe, as near as you can, the friend who entered and took a seat beside him? A. I cannot give an accurate description; he was a gentleman, I should judge, something about 40 years of age—from 35 to 42; a gentlemanly appearing man, and a man of medium hight; nothing particular that struck me as to his person.

Q. Was he grey at all? A. That I cannot recollect.

Q. Do you happen to recollect whether he wore a beard on any part of his face? A. Not distinctly.

Q. And you didn't happen to hear his name mentioned? A. No, Sir; I did not.

Q. Well, what was the opening of the conversation between the two? A. First a general greeting; then some remark from this friend of Mr. Tilton to Mr. Tilton, he opening the subject.

Q. Do you recollect what the remark was? A. I cannot remember distinctly as to the verbiage, but it was in substance whether he had seen this publication.

Q. Was that as near as you can get to the language of the remark? I ask you, frankly telling you my purpose, that I understand that the conversation referred to a speech which was made by Mrs. Woodhull in Boston at that time, or just before that time, attacking Mrs. Tilton and Mr. Beecher; and now I want you, as you are a gentleman of intelligence and reliability—I appeal to you to be as accurate as you can possibly be in the recollection of the language used. I think that there is evidently a mistake. A. There was—as I understood it, it was distinct——

Q. Wait one moment, until you have the point of the question to which I ask your attention. I want you now to tell me, in the language, as near as you can, the opening remark of either Mr. Tilton or his friend, referring to the publication about which the future conversation occurred. A. I can only give my impression of it—not the wording; it was asking him with reference to that particular paper.

Q. So you understood? A. So I understood.

Q. But the manner in which reference was made to the paper you cannot now state? A. Not the wording.

Q. Can you be sufficiently accurate to remember, Mr. Wright, whether the term "Woodhull & Claflin" was used? A. I know that it was.

Q. Was it "Woodhull & Claflin" or "Woodhull?" A. That paper was referred to—the Woodhull & Claflin paper; that I am distinct about.

Q. Well, I understand that your recollection isn't sufficiently accurate to enable you to give the language of the conversation? A. I could, some of the language of the conversation—not all.

Q. Well, can you give the language of the opening remark? I understand you to say that you cannot? A. Not more than that it was asking whether he had seen that paper.

Q. That was the impression you derived from the remark; but you are not able to give the terms of the remark? A. My recollection is distinct that he asked him whether he had seen that paper; yet the terms I cannot give; and his reply was that he had seen it in the Eastern papers—I think the Boston.

Mr. Beach—Exactly, exactly! The Eastern papers. That is all, Mr. Wright.

RE-DIRECT EXAMINATION OF MR. WRIGHT.

Mr. Shearman—Had you ever heard of any lecture, Mr. Wright, on the subject? A. I had not.

Q. Was anything said in this conversation about a lecture? A. There was not, except that Mr. Tilton had delivered a lecture the evening previous, or rather a campaign speech; that was the only lecture.

Q. Nothing about any lecture or speech of Mrs. Woodhull? A. No.

Q. Have you examined any memorandum in the books of A. T. Stewart & Co. to satisfy yourself of the precise date? A. I have, and I have also other circumstances connected with it to show me definitely the time.

Q. Have you seen an entry in the books of the firm showing when you were absent? A. Yes, Sir.

Mr. Beach.—That is not necessary; there is no question as to the time.

RE-CROSS EXAMINATION OF MR. WRIGHT.

Mr. Beach—Do you recollect the conversation so accurately that you can swear that the word "speech" was not used in it? A. Except it was in reference to a speech of Mr. Tilton's.

Q. I ask if your recollection is so accurate that you can swear that the term "speech" was not used in that conversation? A. I recollect that Mr. Tilton said that he spoke the evening before.

Q. My question is, whether your recollection is so accurate that you will swear the term "speech" was not used in this conversation. A. I will not.

Q. Were the cars in motion when this conversation was progressing? A. It was, Sir.

Q. Any one sitting with you? A. No, Sir.

Q. You were not engaged in reading at the time? A. I think not.

Q. Are you sure of that? A. I am not.

Q. How long were these parties conversing behind you? A. The conversation which I heard lasted about fifteen or twenty minutes.

Q. Did they continue the conversation not in your hearing? A. My recollection is that I left the car soon after and went into another car.

Q. Did you hear all the conversation that passed between them during those fifteen or twenty minutes? A. I can't say that I did.

Mr. Beach—That is all, Sir.

Mr. Shearman—Are you not positive that if this word "speech" was used it was used in reference to Mr. Tilton's speech? A. I am positive with reference to that.

Mr. Beach—Oh, let us see about that! Are you so positive in your recollection that you will swear that the word "speech," in that conversation between these parties, was not used in any other connection? A. It was not, that I heard.

Q. Did you make a memorandum of the conversation? A. I did not.

Q. It was in 1872, over two years ago? A. It was in 1872, Sir.

Q. And when did you first communicate that conversation to any one? A. I spoke of it on my return home, next morning.

Q. To whom? A. My wife.

Q. To whom else did you communicate it at any time? A. I can't recollect, unless within a recent period—since the commencement of this suit.

Q. How came you to communicate it to any one? A. I communicated it to Mr. H. G. Combs.

Q. Who is he? A. He is connected with the same place of business.

Q. Do you know how the defendant's counsel became acquainted with your information on this subject? A. I do not know, of my own knowledge.

Q. You suppose it was through that communication? A. I presume so.

Q. Where does Mr. Combs reside? A. In Brooklyn.

Mr. Beach—That is all, Sir.

TESTIMONY OF ELIZABETH LA PIERRE PALMER.

Elizabeth La Pierre Palmer was then called for the defense, sworn, and examined.

Mr. Shearman—Mrs. Palmer, where do you reside? A. In South Carolina.

Q. What is your post-office in South Carolina? A. Montmorency.

Mr. Evarts—A little louder.

Mr. Shearman—If you can. Are you at present stopping in New-York? A. I am.

Q. With whom are you at present stopping? A. Mrs. John Keyser.

Q. The wife of John H. Keyser. A. Yes, Sir.

Q. In Second-ave.? A. Yes, Sir.

Q. Your health is not very good, I suppose? A. No, Sir; I am not quite well.

Q. Still, try to speak louder. Where were you born and brought up? A. I was born in Ticonderoga, on Lake George. I was brought up in Elizabethtown, in this State.

Q. Elizabethtown, Essex County? A. Yes, Sir.

Q. Did you afterward remove to Massachusetts? A. I did.

Q. Where did you live in Massachusetts? A. I lived in Cambridge a part of the time.

Q. About how long? A. I was in Cambridge nearly five years.

Q. After that where did you live? A. In Boston.

Q. About how long there? A. Three or four years, I think.

Q. Did you afterward remove to this State? A. I did.

Q. When did you come back to New-York State? A. In the Spring of 1871.

Q. What was your occupation at Cambridge, Mrs. Palmer? A. I was studying as a landscape painter—an artist.

Q. A landscape artist? A. Yes.

Q. Have you pursued that profession? A. I have, Sir.

Q. Did you afterward enter into any other business? A. Yes, Sir.

Q. State what that business was, and what led you to it? A. I invented a lady's stocking suspender, and went to Washington and patented it, and afterward manufactured it—afterward manufactured it and introduced it all through the country.

Q. What is your husband's name? A. Frederick Augustus Palmer.

Q. Have you been married more than once? A. Yes, Sir; twice.

Q. Who was your former husband? A. Herbert Daniels.

Q. How is it that you have been married again? A. I was divorced from my first husband.

Q. Who obtained that divorce? A. George Hart of this city.

Q. I mean as between you and your husband—did you or did he obtain it? A. I did.

Q. You obtained the divorce? A. Yes, Sir.

Q. And when did you marry your present husband? A. On the 19th day of March, 1874.

Q. When did you marry your former husband? A. On the 16th day of March, 1868.

Q. You were married, then, about six years? A. Yes, Sir.

Q. Now, Mrs. Palmer, did you ever form the acquaintance of Mrs. Victoria C. Woodhull? A. Yes, Sir.

Q. Will you state about what time you formed her acquaintance? A. In May of 1870.

Q. Under what circumstances? A. I was here holding a convention in connection with Mr. Heywood and others.

Q. Mr. E. H. Heywood? A. Yes, Sir.

Q. He is a prominent labor reformer of Massachusetts? A. Yes, Sir.

Q. Were you interested in the Labor Reform movement? A. Yes, Sir.

Q. Go on and state what occurred? A. I was on the Executive Committee and one of the Vice-Presidents of that Association, and I invited, in connection with others, Mrs. Woodhull to speak at that convention.

Q. Did she come? A. She did.

Q. From that time forward you had an acquaintance with her? A. Yes, Sir.

Q. State whether you ever occupied any portion of her office? A. I did.

Q. When did that begin? A. In the Spring of 1871.

Q. Under what circumstances did you come to share a portion of her office? A. Mrs. Woodhull gave me, very kindly, permission to take my business of my stocking-suspender into her office, and to work from there.

Q. When did you become, if ever, acquainted with Mr. Theodore Tilton? A. In the Spring of 1871.

Q. And where? A. At Mrs. Woodhull's office.

Q. Now, can you fix the date so far as to say whether it was before or after the first publication of *The Golden Age* that you became acquainted with Mr. Tilton at Mrs. Woodhull's office? A. It was before.

Mr. Shearman—That date, it is agreed, was the 4th of March, 1871. [To the witness.] About how long before that date do you feel at all positive that you saw Mr. Tilton at that office? A. Either the last of January or the first of February.

Q. That is, you mean the first part of February? A. Yes, Sir; the first part of the month.

Q. Not necessarily the first day? A. Not the day, Sir; I could not tell anything about the day.

Q. Can you recollect anything of the circumstances under which you first saw Mr. Tilton there? A. Yes, Sir.

Q. State what they were. A. Mrs. Woodhull told me she had——

Mr. Beach—Wait a moment.

"THE GOLDEN AGE" TO SUPPORT THE SPIRITUALISTS.

Mr. Shearman—No; I mean the circumstances, so far as when Mr. Tilton was present. A. I called—I called at Mr. Tilton's office with Mrs. Woodhull.

Q. And did he call at Mrs. Woodhull's office? A. Yes, Sir.

Q. What happened on that first interview at Mrs. Woodhull's office? A. I don't remember.

Q. Did you hear any conversation between Mr. Tilton and Mrs. Woodhull concerning the projected publication of *The Golden Age*? A. I did, Sir.

Q. Was there any discussion about its prospectus? A. Yes, Sir.

Q. State what that conversation was as near as you remember, giving the words or the substance of the words? I cannot give the words at all, but the general form——

Q. The substance? A. The general conversation, a number of times, was——

Mr. Beach—No, no; not a number of times; *that* time.

Mr. Shearman—Well!

Mr. Beach—Let her answer your question.

Mr. Shearman—I want the conversation about the prospectus or the plans about *The Golden Age*? Was there more than one conversation on that subject? A. Yes, Sir.

Q. Are you able to distinguish between the conversations, or not? A. I don't think that I can, definitely.

Q. Then you can state the substance of those conversations? A. The substance was that Mr. Tilton should start this paper, and if possible they should run the two papers in connection with the Spiritual movement.

Q. You speak now of *The Golden Age* and of *Woodhull & Claflin's Weekly*? A. Yes, Sir.

Q. Was anything said about what kind of a paper *The Golden Age* was to be—I mean between Mrs. Woodhull and Mr. Tilton? A. Yes.

Q. What was said? A. It was to be a radical paper, taking up all the radical questions of the day.

Q. Did Mr. Tilton make any proposition to you in relation to *The Golden Age*? A. Yes, Sir.

Q. What was that? A. He wished me to become an agent for him.

Q. You did not, however? A. No, Sir; I did not.

Q. Now, how frequently, during the period of February and March, 1871, did you see Mr. Tilton at Mrs. Woodhull's office? A. Almost daily; sometimes twice a day—three times.

Q. And during what period did the frequency of Mr. Tilton's visits to that office continue? A. All through the month—the latter part of the month of February, and of March, and of April, of 1871.

Q. During the Summer of 1871 was he also a frequent visitor at the office? A. Yes, Sir.

Q. Did your ever see Mr. Tilton take lunch at Mrs. Woodhull's office? A. Yes, Sir.

Q. Did you see that frequently? A. I cannot state that it was frequently; but I saw him lunch there a number of times.

Q. How many times do you feel sure that you saw him take lunch there? A. I would not—I could not swear to having seen him take lunch there more than six times; I don't think.

Q. But can you swear to having seen him oftener in the office, and at about the period of lunch time? A. Yes, Sir.

Q. Did you take lunch with Mrs. Woodhull on those occasions? A. I never took lunch with Mrs. Woodhull and Mr. Tilton.

Q. You did sometimes with Mrs. Woodhull when Mr. Tilton was not there? A. Several times.

Q. Did you ever hear any conversation between Mr. Tilton and Mrs. Woodhull on the subject of going out to lunch? A. I have never heard any conversation between them, but I have heard Mrs. Woodhull say, "Come, Theodore, let us go out to lunch."

Q. Have you heard that more than once? A. Yes, Sir.

FAMILIARITIES BETWEEN MR. TILTON AND MRS. WOODHULL.

Q. Now, did you ever see, during the Spring and Summer of 1871, Mr. Tilton at the house of Mrs. Woodhull? A. Yes, Sir.

Q. How often do you suppose you saw him there? A. Almost every evening, during the same periods that I have spoken of seeing him at the office.

Q. What was Mr. Tilton's habit with regard to the room he would occupy when he came to that house? A. He usually remained a few moments in the parlor—in the front parlor—and afterward retired to the back parlor with Mrs. Woodhull, and perhaps Miss Claflin, or with Colonel Blood, or sometimes alone with her; or up stairs to the room occupied by Mrs. Woodhull and Colonel Blood.

Q. In this back parlor of which you speak, were the other guests seated, or was it kept separate from the front parlor? A. It was kept separate from the front parlor, as a general thing; it was rarely ever thrown open to general or casual guests.

Q. And where did the general guests sit? A. In the front parlor.

Q. Did you ever see Mr. Tilton in Mrs. Woodhull's bedroom? A. Yes, Sir.

Q. How often did you see him there? A. I could not swear to having seen him there more than four times.

Q. But is it your impression that you saw him oftener—your best impression? A. Not that I saw him oftener; but that I knew he was there.

Mr. Beach—Well!—but it was no matter. That must be from information, I suppose?

Mr. Shearman—I suppose so; or she might have heard him speak.

Mr. Beach—Well, I don't know. I will get at it, though.

Mr. Shearman—You say you knew that he was there; do you mean that you knew from some one else's information, or from hearing him speak—his voice? A. From some one else saying that he had gone there.

Mr. Beach—Wait one moment. Don't state what was said to you. I move to strike that out, your Honor.

Judge Neilson—Yes, that last clause.

Mr. Shearman—I want to ascertain the character of her information. It shows that the other matter was not—[To witness.] Where was this bedroom of Mrs. Woodhull—on which floor? A. Up one flight from the parlor—the back room.

Q. Up one flight of stairs? A. Yes, Sir.

Q. Were papers or writing materials kept in that room? A. Yes, Sir; there was a desk there, and Colonel Blood did most of the writing there in that room in the evening.

Q. What was Mr. Tilton doing on those occasions when you saw him there? A. He was sitting at the desk, either talking or writing.

Q. Did you, on any other occasion, see Mr. Tilton on his way up stairs? A. Yes, Sir.

Q. With whom was he when he was going up stairs on those occasions? A. With Mrs. Woodhull.

Q. About what time of day was it? A. In the evening.

Q. Late in the evening or early? A. About 9 or 10 o'clock.

Q. What were you doing on those occasions to which you refer? A. I was about leaving the house.

Q. Were you bidding them goodby? A. Yes, Sir.

Q. State just what their position was. What position did Mrs. Woodhull and Mr. Tilton occupy on those occasions to which you refer when they were going up stairs and you were bidding them goodby? About how far up the stairs were they? A. Sometimes, or several times, I saw them just starting to go up, and other times I have seen them at the head of the stairs, and other times half way up the stairs; it was not always when I was going out; sometimes I was going into the back parlor, back and forth, and saw them go up.

Q. Can you recollect whether on some of those occasions you bade them "good night" as they were going upstairs? A. Yes, Sir.

Q. About how many times do you recollect that? A. I don't know that I can swear to bidding them "good night" more than once on the stairs.

Q. To bidding them "good night" more than once? A. Not bidding them "good night."

Mr. Beach—Was that when she was going out?

The Witness—When I was going out.

Mr. Shearman—But how many times can you swear to seeing them going up the stairs, or starting up the stairs, together? A. Four or five times.

Q. Besides this one? A. Yes, Sir.

Q. Now, you say that you saw Mr. Tilton, you are pretty positive, four times in Mrs. Woodhull's bedroom up stairs; can you state whether on any one of those occasions Mrs. Woodhull was taking Mr. Tilton around on a tour of inspection? A. No, Sir, never.

Q. That is to say—— A. Not in my presence.

Q. She never was doing it when you saw her? A. No, Sir.

Q. Was he standing or seated? A. Seated.

Q. Every time? A. Yes, Sir.

Q. Every time of the four times? A. Yes, Sir.

Q. Then are you able to be positive in saying that he was not engaged in looking over the rooms to see whether they were furnished or empty? A. He was not, at the time I saw him.

Q. What was Mr. Tilton's manner toward Mrs. Woodhull; what degree of familiarity existed between them during that period? A. Their manner was always very affectionate toward each other.

Q. How did they address each other? A. "Vicky" and "Theodore."

Q. State what, if any, familiarities existed between them to your observation—familiarities of manner. Did they kiss each other? A. I could not swear to seeing them kiss each other but once; but I have frequently seen Mr. Tilton sitting with his arm around Mrs. Woodhull, on the sofa. It was the common habit when he sat down by her to put his arm around her.

Q. When they were standing, did you ever see him put his arm around her? A. Yes, Sir.

Q. Did that happen frequently? A. Yes, Sir.

Q. Did that amount to a habit or not? A. It was a habit.

Q. Did you ever hear any conversation between Mr. Tilton and Mrs. Woodhull on the subject of one or the other of them becoming the head of the Spiritualists of the United States? A. That was frequently the talk between Mrs. Woodhull and Theodore Tilton at this time that I have spoken of—their first acquaintance.

Q. Well, which of them was it that—— A. Mrs. Woodhull—that was the conversation on the part of Mrs. Woodhull at the time that I called at his office with her, the first time that I saw him.

Q. Well, was anything ever said about Mr. Tilton becoming the head or leader of the Spiritualists? A. By Mrs. Woodhull—yes.

Q. To him? A. Yes, Sir.

MR. TILTON DENIES MRS. WOODHULL'S CHARGES.

Q. Do you recollect any conversation between Mrs. Woodhull and Mr. Tilton on the subject of a scandal about Mr. Beecher, prior to the publication of the card of May 22, 1871? A. I don't understand your question.

Q. You remember there was a card published by Mrs. Woodhull on the 22d of May, 1871? A. Yes, Sir.

Q. Did you not see that card? A. Mrs. Woodhull read the card to me before it was published.

Q. Before it was published? A. Yes, Sir.

Q. Now, can you recollect whether before she read the card to you in that way there was any conversation between Mr. Tilton and Mrs. Woodhull on the subject of the charge against Mr. Beecher and Mrs. Tilton? A. Yes, Sir, once in the back office. Mrs. Woodhull was speaking of this charge against Mr. Beecher and Mrs. Tilton, and Mr. Tilton started up, his face flushed, and says: "Vicky, that is not true. My wife is as pure as snow, and no such relation ever existed between Mr. Beecher and my wife It is false."

Q. Did he say anything about never having told her so? A. He said, "I have never told you so. You may have inferred it from what I have said." These—this may not be the exact words that I have just given you, but it is the idea.

Q. The substance? A. The last that I have given you is the idea; the first part of it were the exact words.

Q. What was Mrs. Woodhull's reply to him? A. Mrs. Woodhull stepped up to him and laid both of her hands on his shoulders, facing him, and said, "Now, Theodore, Theodore, you know it is not in the nature of things that a man and woman should be thrown together as Mr. Beecher and Mrs. Tilton were and have nothing of that kind take place between them;" and he soon left the room—the office.

PROOFS OF THE SCANDAL SHOWN THE WITNESS.

Q. Do you recollect an occurrence in the early part of 1872, a considerable time prior to the publication of what is known as the "Woodhull Scandal," when any proofs were exhibited to you? A. Yes, Sir.

Q. Who was present on the occasion? A. Mrs. Woodhull and Theodore Tilton; there might have somebody else in the room, but I don't remember.

Q. Now, will you state what occurred on that occasion, as far as Mrs. Woodhull and Mr. Tilton were concerned? A. Mrs. Woodhull and Mr. Tilton came in hastily to the private office, where I was engaged on my stocking-suspenders, and Mrs. Woodhull says, "I have something to show you, Daniels," and she commenced reading what I afterward heard called, and heard at the time called, the Woodhull Scandal; read a portion of it; Mr. Tilton only stopped for a moment, or a few moments, and went out immediately.

Q. Well, about what time in the year was this, Mrs. Palmer? A. This was some little time before I went into my house in Twenty-seventh-st., which was in May; it was some weeks before this—some four or six weeks before this, I think.

Q. Some four or six weeks before the 1st of May? A. Yes, Sir; in 1872.

Q. 1872? A. Yes, Sir.

Q. Well, after Mr. Tilton went out did Mrs. Woodhull give you these proofs? A. She did.

Q. Did you read them? A. Yes, Sir, I did.

Q. What were the contents of those proofs, the substance of it? A. It was substantially the same that I saw published afterward in *The Weekly*, as "The Great Woodhull Scandal"—"Beecher-Tilton Scandal."

Q. You said you had heard it called "The Woodhull Scandal." Do you mean to say that at that time it was

called "The Woodhull Scandal," or "The Beecher Scandal?" A. It was called "The Woodhull Beecher-Tilton Scandal," always.

Q. Yes. Now, did you make any remark on the subject of this proposed publication, in the presence of Mr. Tilton? A. Yes, Sir.

Q. What did you say? A. I said, "Mrs. Woodhull, if you publish that scandal or any other scandal in your paper concerning—or publish anything concerning, the private lives of any persons whatever—I will have nothing more to do with you. I will never work with you again, and I will have nothing to do with you if you meddle with the private lives of any persons. It will be your death-blow if you do that; it will be your death-blow, and it will be Mr. Tilton's death-blow, if you do it."

Q. What did Mrs. Woodhull say? A. I don't remember what she said.

Q. Did she say anything? A. I don't know that she made any reply; I don't remember.

Q. Didn't Mr. Tilton say anything? A. No, Sir, Mr. Tilton left immediately.

Q. But he heard you say this? A. He must have heard; he was in the room.

Q. He was present in the room, at least? A. Yes, Sir.

Q. Did you ever hear any conversation between Mrs. Woodhull and Mr. Tilton concerning Mr. Tilton's biography of Mrs. Woodhull?

Mr. Evarts—That is a new subject, and it is 1 o'clock.

The Court then took the usual recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Elizabeth La Pierre Palmer was recalled and the direct examination resumed.

Mr. Shearman—Mrs. Palmer, I was asking you before the recess as to any interview which took place between Mr. Tilton and Mrs. Woodhull concerning the "Life of Mrs. Woodhull." I ask you now whether you were present at any interview between them on that subject? A. Not until after it was published.

Q. After it was published, I mean. A. After it was published? Yes, Sir.

Q. Were you present at any interview when anything was done in regard to sending out the book? A. Yes, Sir.

Q. State what passed between Mr. Tilton and Mrs. Woodhull on that subject? A. Mr. Tilton looked over the list of names where the "Life" was to be sent, and on one occasion he brought in some tracts of *The Golden Age*, or tracts that belonged to him, which he wished sent to particular individuals with the "Life"—with some of the books of the "Life"—a few of them. He seemed to superintend the sending away.

Mr. Beach—Never mind, madam!

Mr. Shearman—That is not quite the proper shape in which to put it; you must tell what acts he did, Mrs. Palmer, and not what he seemed to do; any acts that he did, or any words that he said, or the substance of the words, if there is anything further. A. I think I have told you all I remember.

Q. Now, madam, do you recollect the Sunday on which the famous Commune procession took place? A. Yes, Sir.

Q. Can you tell how you spent that day yourself? A. I spent the day with my friends in Madison-ave.—the greater part of the day. In the latter part of the afternoon I went in to Mrs. Woodhull's, and was there for a while.

Q. Where did your friends live? What friends were you stopping with? A. William B. Hatch's, No. 210 Madison-ave.

Q. How long did you stay there? A. I was there about six months.

Q. About what time of the day did you go down to Mrs. Woodhull's? A. In the afternoon.

Q. Did you that afternoon—— Oh! one moment. Did you yourself take any part in the Commune procession? A. No, Sir.

Q. When you went down to Mrs. Woodhull's was Mrs. Woodhull at home? A. No, Sir.

Q. Did you see her come in? A. I did.

Q. State under what circumstances you saw her come in, and who was with her. A. I was standing at the window and looking out, when a carriage drove up, and Mr. Tilton and Mrs. Woodhull and Miss Claflin got out of the carriage and came into the room.

Mr. Shearman—That is all, Mr. Beach.

CROSS-EXAMINATION OF MRS. PALMER.

Mr. Beach—Madam, what year was it you stated you was married to Mr. Daniels. A. 1868.

Q. 1868? A. 1868.

Q. What? A. 1868.

Q. 1868? A. Yes, Sir.

Q. Where did the marriage take place? A. At the Rev. Mr. Sargent's, on Beacon Hill.

Q. In what place, madam? A. At the Rev. Mr. Sargent's, on Beacon Hill, in Boston.

Q. In Boston. I beg pardon. I am not familiar with Boston. And where did you then reside after the marriage? A. We went immediately to live in some rooms which my husband had furnished in a bank which he was carrying on.

Q. In Boston, I suppose? A. Yes, Sir.

Q. How long did you remain there? A. Remained there about six months, I think, in that building.

Q. I don't mean that particular building, but in the City of Boston? A. Remained there until the Spring of 1871.

Q. Until the Spring of 1871? A. Yes, Sir.

Q. And where then did you remove to? A. To New-York.

Q. You and your husband? A. Yes, Sir. No, Sir, I came here without my husband.

Q. You came without your husband. What time in the Spring of 1871? A. I came here in the last week of January of 1871.

Q. The last week of January of 1871? A. I don't mean the last week; I mean the week after the holidays of January. I came the week after New-Year's.

Q. That would be the second week of January? A. I don't know whether the second week; it was the week after New-Year's.

Q. Well, where did you take up your residence then at that time, in New-York? A. At A. S. Hatch's, in 49 Park-ave.

Q. What business was your husband engaged in in Boston when you left in January, 1871? A. He was manufacturing my stocking-suspenders, and sending them on to me in New-York as fast as I ordered them.

Q. And he continued up to what time? A. Up to 1872, the May of 1872, when he moved here.

Q. When what? A. When he moved to New-York.

Q. He moved to New-York? A. Yes, Sir.

Q. In the Spring of 1872? A. Yes, Sir.

Q. And you continued to reside at Park-ave.? A. I was there until about the 1st of May.

Q. Of 1872? A. Yes, Sir; no, Sir; of 1871.

Q. Of 1871? A. Of 1871.

Q. Where then did you go? A. Then I went back to Boston and stayed during the month of May, and made preparations to go West.

Q. You returned to your husband's house in Boston? A. Yes, Sir.

Q. And remained there about how long? A. During the month of May, and perhaps into the first of June; I couldn't tell exactly; it was in the month of June that I returned here—the early part of June that I returned here.

Q. June, 1871? A. Yes, Sir.

Q. You returned again to New-York? A. Yes, Sir.

Q. Where then did you take up your residence? A. I went to the Cosmopolitan Hotel.

Q. As a boarder? A. Yes, Sir. I don't know as a boarder; I stopped there.

Q. How long did you remain there? A. I was there perhaps two weeks, or three weeks, or four weeks; I cannot tell exactly. I got a severe cold and went back again to Boston, and stayed a few weeks.

Q. When did you return again to New-York? A. I returned in about two or three weeks' time.

Q. Some time in July following? A. I think it was in July; I couldn't tell exactly; it was three or four weeks.

Q. Where then did you take up your residence in New-York? A. Then I went to Madison-ave. with my friends.

Q. The same name that you have mentioned? A. Yes Sir; a brother of A. S. Hatch, the banker.

Q. And how long did you remain there? A. I remained there about six months.

Q. Well, what change did you then make in your residence? A. Then I went to the hotel, the Westmoreland Hotel, and was there perhaps three weeks—two or three weeks; and from there I took a house in Twenty-seventh-st.

Q. Any one with you at the Westmoreland Hotel? A. No, Sir; I was alone.

Q. You then took a house where? A. At the Westmoreland Hotel.

Q. From there you say you took a house? A. Yes, Sir, on Twenty-seventh-st.

Q. Twenty-seventh-st.? A. Twenty-seventh-st. of this city.

Q. Of New-York? A. Yes, Sir.

Q. For how long did you lease that house? A. Two years.

Q. Did you occupy it for that time? A. Yes, Sir.

Q. Was your husband, Mr. Daniels, with you? A. He was there a part of the time.

Q. During what part of the time? A. He was there during the year of 1872 and a part of the year 1873.

Q. During the whole year 1872? A. Yes, Sir.

Q. How? A. Yes, Sir.

Q. And during what part of the year 1873? A. The early part of the year; I couldn't tell just the month. He was coming and going always; sometimes he would be there for three and four weeks together; and then he would be away for a month, or a week, or three or four days, or perhaps six weeks at a time.

Q. Who were the inmates of that house during the time you occupied it? A. My inmates were varying, changing; I let part of my rooms.

Q. To whom did you let them? A. I let the first floor—the parlor floor—to a doctor—Fred. A. Palmer, my present husband.

Q. Frederick A. who? A. Palmer.

Q. When did you let them to him? A. The 1st of May, when I first went into the house.

Q. Did he remain in the occupancy of them during the lease? A. Yes, Sir, during the entire time.

Q. What portion of the house did you occupy? A. I occupied the second floor.

Q. Did you let any other part of the house? A. Yes, Sir; I let the back room of the floor that I was on most of the time, and the upper floor, all of it, with the exception of a small room for my servants.

Q. To whom did you let the back room? A. Up stairs, on the floor that I was?

Q. Yes. A. It was to patients of my husband.

Q. Dr. Palmer? A. Yes, Sir.

Q. To whom did you rent the upper floor? A. To pa-

tients a part of the time, and an artist a part of the time.

Q. What artist? A. George Allen, a portrait painter.

Q. Well, then, during most of the time the portion of the house not occupied by your present husband and yourself was occupied by patients under his treatment? A. Yes, Sir.

Q. What school of practice does he belong to? A. Magnetic physician.

Q. A magnetic physician? A. Yes, Sir.

Q. Well, will you give us some general idea of his mode of treatment?

Mr. Shearman—One moment.

Mr. Beach—Does he apply electricity?

Mr. Shearman—One moment. We object to that, if your Honor please. We do not see that this is in any way material, what the mode or the school of practice was, homopathic, allopathic, electric, Thompsonian, or magnetic, or what it was.

Judge Neilson—I suppose the counsel only asks for a general view.

Mr. Beach—That is all, Sir. I am not trying to learn the secrets, Sir. [Laughter.]

Judge Neilson—No.

The Witness—If the gentleman will allow me, I ought properly to have said that his practice is electric rather than magnetic.

Q. That is, he adopts the best part of all schools? A. Yes, Sir.

Q. Well, is he an electrician? A. I could not answer that question.

Q. Well, how does he apply magnetism?

Mr. Shearman—I take it this is going into the details; it will open an endless inquiry as to the different schools.

Mr. Beach—Oh! it will not be very long, Sir. I am cross-examining, Sir, and inquiring into the history a little. [To the witness.] Will you answer me, madam, how he applies his magnetic treatment? A. I think that I shall appeal to the Court, that my husband's business as a physician has nothing to do with this case whatever, and shall, unless the Court compels me, refuse to answer the question.

Q. Well, it is not the first time I have been refused by a lady. [Laughter.] Did you participate in his practice? A. No, Sir.

Q. Not at all? A. Not to participate in the practice.

Q. How? A. Not to participate in the treatment of his patients.

Q. Did you aid him in the practice? A. No, Sir.

THE WITNESS A CLAIRVOYANT.

Q. Well, you seemed to qualify your answer to my question. Did you act as a medium in the discovery of the diseases of patients? A. I did, Sir.

Q. You are a spiritual medium, then—profess to be? A. That depends entirely upon what you mean by a spiritual medium.

Q. Well, what you mean? A. I am not called upon to describe the term.

Q. Oh, yes, you certainly are called upon. I call upon you. A. I am not very good at description, and shall not be able to give you any description.

Q. Madam, I differ with you in regard to your capacity to describe; I thought your descriptive faculty was very excellent. A. If you will tell me what you mean by a spiritual medium, then I will answer your question to the very best of my ability. I don't understand you.

Q. Don't you understand what the term means in common phraseology? A. I understand a good many meanings to the word "spiritual medium."

Q. Well, in any of its meanings do you profess to be one? A. Yes, Sir.

Q. And you was called upon in that capacity to aid your husband in detecting the diseases of patients that applied to him? A. I was called upon at times to make clairvoyant examinations of the patients of my husband.

Q. When did you say you was married to Dr. Palmer? A. On the 19th day of March of 1874.

Q. That was just before the termination of your lease? A. Yes, Sir.

Q. And this practice of aiding him you had pursued before you became his wife? A. Yes, Sir; not of aiding him, but of examining patients clairvoyantly.

Q. That was done for compensation? A. Yes, Sir.

Q. Did you have any stated part of the proceeds of the business? A. No, Sir.

Q. Paid by the job? A. I was paid for whatever I did.

Q. Well, paid for the particular service you rendered? A. If I made a clairvoyant examination of a patient I was paid so much for that examination; the patient understood this and paid me.

Q. Undoubtedly, madam. A. Handed the pay to me, not as a part of the business, but as a clairvoyant.

Q. When you made these examinations were you in what is termed a state of trance? A. I cannot tell you, Sir.

Q. How? A. I cannot tell you.

Q. You cannot tell me? A. I don't know.

Q. Did you have a perfect self-consciousness at the time? A. No, Sir, I did not.

Q. Then you supposed yourself to be in a condition of trance, did you not? A. I had entire confidence in the persons who told me that I was in a trance.

Q. I have no doubt of that, madam? A. That is all the knowledge I have of it.

Q. So that when you made these examinations you went into a state of personal unconsciousness? A. I suppose so.

Q. Well, you know you was not conscious of your condition and the revelations you made at the time, was you? A. I was not conscious of saying anything or doing anything.

Q. Have you heard the term "trance medium" used ever? A. Yes, Sir, a great many times.

Q. Is that the description of the condition or faculty which you possessed? A. I don't think it is, not in the common acceptation of the word.

Q. Well, wherein did you suppose the difference to exist, Mrs. Palmer? A. I could not explain the difference, only I know that there is a difference.

Q. And yours was a higher state or spiritual condition? A. I cannot tell.

Q. Well, did you conceive it to be so? I don't suppose you could tell. A. I had no thought on the subject at all until you have asked me to think on it.

Q. Well, when in that condition you could detect the condition of the physical system of a patient? A. I don't know, Sir; *I* could not.

Q. Well, the spirit, the force, the power which you supposed operated within you, enabled you to communicate to Dr. Palmer, or whoever else was treating the patient, the condition of the patient? A. I was told when I would awaken that such was the fact.

Q. Well, you had no doubt about it; you believed in the possession of that spiritual power or agency, did you not? A. Yes, Sir, I believed in it; but belief and knowledge are two different things.

Q. Certainly; I am aware of that, madam. Did you upon other occasions act as a medium of that character, besides for your present husband, Mr. Palmer? A. Well, what do you mean, Sir? I will answer your question if I can understand what you want.

Q. What I want to know, madam, is whether upon other occasions you acted as a medium—spiritual medium? A. Yes, Sir; a great many times.

Q. And for various purposes and objects, or was it entirely confined to the practice of medicine? A. It was not confined to the practice of medicine.

STRANGE REVELATIONS ABOUT A CLAIRVOYANT'S GIFTS.

Q. Did you suppose this spiritual power enabled you to detect other secrets or invisible conditions than those in the human frame? A. Yes, Sir; even when I am in my normal, or seem to be in my normal state—that I can answer to as having knowledge concerning. It is more than belief.

Q. That is, when you are in what you consider a perfectly natural, normal condition, you can see secrets, conditions, invisible to other persons who have not the particular faculty which you possess? A. Yes, Sir, when I am in the peculiar spiritual or magnetic state, and yet I am perfectly unconscious. It enables me to read the secrets of people to a very great degree.

Q That is, you can read the secrets of their minds, or the operations of their minds or hearts? A. I don't think it is the operation of their mind, but I am enabled to see the acts of people, that they have committed during their life, because they are all photographed upon the soul of the man or the woman, and in this clairvoyant state where I am perfectly conscious, apparently, I am enabled to read as clearly what is written on the soul of a man or woman, all their past acts, as you are enabled to read the page of a written book. [Sensation.]

Q. Yes. How does this mysterious power supervene, Mrs. Palmer? How do you feel the communication, the approach of this clairvoyant condition? A. I feel, in the first place, a strange sensation in my eyes and head, and my vision seems to be turned within, so to speak, and I seem to see not with my eyes, but from the forehead rather than the eyes. I don't hardly know how to answer your question. I am perfectly willing to answer your question.

Q. Oh, I have no doubt, madam. A. But I don't hardly know what you want; I don't hardly understand your question.

Q. Well, the purpose of my question—it was perhaps obscurely conveyed—was to learn whether this clairvoyant condition was voluntarily, or whether it came insensibly and unconsciously? A. It comes without any volition on my part; I have nothing whatever to do with it any more than you have. I have no power to compel it to come to me, no power of entering into such a state. When this power comes to me, and takes possession of me, or overcomes me, or affects me, it comes without any consciousness on my part. For instance, I may be thrown into a peculiar, half-conscious state, and lose the consciousness of all persons around me, and yet be perfectly conscious of that which is right before me, as you are now. Perhaps my hand will be taken and affected, then the hand and the arm, and a poem written through my hand, or some remarkable revelation of prophecy, or something of that kind written through my hand; and again I am thrown into a state where I become totally unconscious—that is, I am told that I am—and through my lips are poured hymns, and revelations, and poems, from the old poets, and men and women, who lived long ago, giving unmistakable evidence that they still live, that they are not dead, and that they still live, giving unmistakable evidence of their presence; but I have no power to ask them to come to me, if that is what you want to know.

Q. No. A. They come of their own free will, whenever the wiser power that is guiding all that is, or the band that surrounds me sees fit to open the door, because around me, and around you, and around every other human being, is a band of spirits that take up their abode around them when the child is born, and that band protect the child, or the man, or the woman wherever they go, and no other spirit has any power or any right to approach you, or to approach me, or to approach anybody else, only as the band opens and allows them to come in for some wise purpose, which God Himself governs and controls and admits.

Q. Well, you suppose this band of spirits which surrounds every human soul at its birth into the world is a band of benignant and good spirits, don't you? A. Always.

Q. Then no human soul can be assailed with improper influences and temptations unless God opens the circle or spiritual influence for the evil spirit to enter? A. Most certainly not. No human soul is ever left to the mercy of a good spirit or a bad spirit. God Himself controls every human soul, man or woman, and not only permits all of their acts, but impels their acts for a wise purpose, which will be seen soon or late.

Q. Do you consider the human soul responsible for the acts on earth? A. Yes and no.

Q. Well, we have had that answer here before. [Laughter.] It has bothered us very greatly. A. Well, I will answer you then without the "yes"—no, Sir; no human soul is responsible for its acts, because no human soul is responsible for its birth; no human soul is responsible for any act, because if you lift your hand in that manner [illustrating], you don't know the effect it is going to have upon displacing the air, and upon every other human being that lives; you don't know the effect of any single word that you drop; you don't know the effect of any single act of your life, what it is going to be upon any other human soul, and therefore you are not responsible.

Q. You don't believe in free agency, then? A. Agency and freedom are two words that are so diametrically opposed to each other that I cannot understand that they belong together at all.

Q. Well, perhaps it is covered by your answer that you don't believe in personal responsibility for human action? A. No, Sir; I do not.

Q. That is, no matter what a person may do on this earth, there is no just responsibility—— A. Yes, Sir; there is a just responsibility in this wise: if any human soul believes in God, and asks to be protected from evil, or rather undeveloped spirits, and is joined unto the Divine Spirit of God, or, rather as our Lord and Master said, "grafted into a true vine, which is the Son of God," then no evil can approach them. If any human soul will ask God to protect them, through our Lord and Master Jesus Christ, then they will be protected; and in that wise they are responsible.

Q. But you say that every human soul at its birth is at once under the influence of this circling band of spirits? A. That God appoints for them; yes, Sir.

Q. And that those influences which are blessed in the first instance become injurious only by the permission of the Lord? A. I don't think they ever become injurious, because when anybody's spiritual vision is opened so that they can see, they will see that all evil is only a manner of growth that the Lord permits every human soul to go into or their growth, and for their spiritual good, soon or late.

Q. That is, if a man acts badly, it is a sort of Godly discipline to make him better? A. No, Sir; I don't say that; that is your words, not mine.

Q. Well, I only supposed that to be the result of your principle. A. No, Sir; I only wish to say that God sees the end of every human being's life, and just exactly as a florist gives every little flower just exactly what it needs for its growth, and its best growth, so God, our Heavenly Father, gives every human soul just exactly the discipline, and the life, and the experience, that that human soul needs, not to glorify God, but to develop that human soul into its highest and best and noblest possibilities.

Q. Well, you believe in fore-ordination? A. Not as the Church teaches it; no, Sir.

Q. No, I don't suppose you believe in it as the Church teaches it. A. I believe in reincarnation.

Q. Well, I understand you that you are a medium, as you believe, through whom departed spirits communicate to the visible, material world? A. Yes, Sir; I am.

Q. You have no doubt about that? A. I have no more doubt about it than I have that God lives, or that you are questioning me now; it is not belief, it is knowledge; I not only know that they communicate with me, but I see them plainly; I have even seen a spirit by you while you are talking to me; I see them and hear them at times.

Q. Well, is that one of the good or bad ones? I would like to know. [Laughter.] A. I cannot tell you; only I should think it was a daughter—a young lady.

Q. Well, I have got one of that kind. Well, madam, pass from that subject. A. I am perfectly willing to linger on that subject, for I am more interested in that than I am in anything else.

Q. Well, I have no doubt of it, madam. It is very interesting listening to your ideas. It relieves us from a good deal of responsibility here. When was you divorced from Mr. Daniels? A. In the month of March.

Q. 1874? A. Yes Sir.

And when was you married to Dr. Palmer? A. In a few days afterward; no, it was a few weeks after.

Q. Oh, it is unimportant. A. It was a very short time, I know.

Have you any sympathy with the socialistic doctrines of the times, Mrs. Palmer? A. Well, if you will tell me what you mean by that, then I will answer your question.

Q. Well, I judge from the fact of your obtaining a divorce and being married to your present husband, that you believe in the propriety and sanctity of the marriage relation? A. Most certainly, and always have done so.

Q. And you have no sort of sympathy or countenance for what is called the free-love doctrines? A. No, Sir, and never had.

Q. That is, indiscriminate association? A. The only sympathy that I ever had with the doctrine of free-love is that I believe that men and women should live happily together; that is, husbands and wives should do all that lay in their power to make each other happy, and to live

happy in this life, and after both have tried and done their best, and it becomes utterly impossible in the nature of things for them to live together happily, then I believe in their separating legally, and, if they choose, reunite themselves with others, if they find any one else whom they love well enough to marry in legal bonds.

Q. Yes; you believe an honest and a serious effort should be made for a happy association? A. I most certainly do.

Q. And if that cannot be accomplished, if there is invincible uncongeniality between the husband and wife, why then you believe in the propriety of their separation? A. I most certainly do; their legal separation; and I believe in no other relation, save the relation of husband and wife. I don't believe in any promiscuity either in marriage or out of marriage.

Q. Well, take our own State for instance, where a divorce is only allowed—that is, an absolute divorce—for adultery, how would you get your uncongenial spirits apart according to law? A. Well, I don't know how to answer you, because I don't know the question you are asking me. You are supposing a question. I don't want to suppose any questions. I want you to ask me plain English. I am willing to answer anything you will ask me.

Q. Where did you obtain your divorce? A. Here, in this State.

Q. On the ground of adultery? A. Yes, Sir.

Q. Suppose a case of uncongenial association of husband and wife, where it was impossible for them to live happily together, and no pretense of adultery upon either side, have you any theory in regard to them what should be the practice of the two? A. Yes, Sir; I have.

Q. Well, what is it? A. My belief is that they should go straight to the Legislature and have an act passed that shall enable men and women to separate decently, just as they come together decently, without compelling either one or the other to become a criminal in order to be free.

Q. Well, suppose the Legislature would not grant relief, what would you do then? A. I would get up a petition that would go from Maine to Georgia, and get every unhappy man, or woman, or child to sign it, and compel the legislator—the Legislature—legislators to pass that act, such an act.

Q. Well, suppose, after all, the Legislature would not; what then would you do? A. I can't suppose an impossibility. [Laughter and applause.]

Q. But you would get rid of the association in some way? A. No, Sir; if there was no way to get away from it legally and rightfully, I would stick by it and ask God to help me to endure it.

THE WITNESS'S INTRODUCTION TO MR. TILTON.

Q. Well, that would be very honorable. I understand you to say that you became acquainted with Mr. Tilton about the last of January or first of February, 1871? I can't call it an acquaintance; I saw him.

Q. You saw him? A. Yes, Sir.

Q. Well, you were introduced to him? A. Yes, Sir.

Q. And conversed with him? A. Yes, Sir.

Q. Well, about that date you saw and conversed with him, both at *The Golden Age* office and at Mrs. Woodhull's office—business office—in New-York? A. I don't know whether it was *The Golden Age* office; Mrs. Woodhull asked me to go with her to call upon Mr. Tilton.

Q. It is not proper for me to call for her conversation; but I only want to know the point or place where you saw Mr. Tilton? A. I don't know where it was; it was said to be——

Q. I understood you to say it was at his office? A. Mrs. Woodhull said it was; I don't know anything about it; I wasn't acquainted with the city; I didn't know anything at all about the streets, and I don't know where the office was, and could not tell you to save my life.

Q. I was going to ask—— A. It won't do any good, though; I don't know where it is.

Q. It was the office of *The Golden Age*? A. I don't know, Sir.

Q. As you understood? A. *The Golden Age* wasn't started then.

Q. Well, it was at his office? A. I don't know.

Q. It was said to be his office? A. Mrs. Woodhull said it was his office—or—I don't know that she said it was his office; I would not swear to that; she asked me to go with her to see Mr. Tilton.

Q. You have sworn to-day on the direct examination, and you have now—— A. I swore that I went with Mrs. Woodhull.

Q. To his office? A. I supposed it was his office.

Q. Well, you were told it was his office, you say, by Mrs. Woodhull? A. Well, I should have to make a correction there; I could not swear that she said it was his office; I don't know; my impression is that she said it was his office; I supposed it was his office; I went there with her, and that was the impression on my mind it was his office; it might not have been his office; I could not tell you.

Q. Now, can you not, by tasking your recollection, give me some idea of the place in New-York where that was? A. Oh, I could not tell you to save my life; I went there once after that, with Mrs. Woodhull and Miss Claflin.

Q. Can you not tell me something about the appearance of the place? A. I recollect going up one flight of stairs; they were rather narrow stairs; and I recollect that there were two rooms. I don't recollect anything about the office, the first time I went there; it was only my second visit there.

Q. Well, it was the same place you recognized? A. It was the same place.

Q. That will do just as well, then. Well, can you give us any further particulars? It was up a narrow flight of

stairs, and two rooms? A. There was one room that opened out of the other; but whether there was any entrance from that office I can't tell. It seemed to be Moulton's and Tilton's office together; Mr. Moulton was there the second time that I went there; and I went there for the purpose of being introduced to Mr. Moulton.

Q. And how long was the second time after the first? A. Only a few days.

Q. Then it was in January, 1871, probably, that you met Mr. Moulton there? A. February; I think it was February.

Q. February, that you met Mr. Moulton there? A. It was; I think it was February.

Q. And was there introduced to him? A. Yes, Sir.

Q. By Mr. Tilton? A. Yes, Sir; went there to be introduced to him.

Q. You went there to be introduced to him? A. Yes, Sir.

Q. Who did you go with? A. Mrs. Woodhull, and Mr. Tilton, and Miss Claflin.

Q. You went with Mr. Tilton, Mrs. Woodhull, and Miss Claflin? A. Yes, Sir.

Q. In February, 1871? A. I cannot say that it was February; it might have been March; but I think it was February; it was cold weather.

Q. Well, I understood you to say it was a few days after the first time you went to that office? A. Yes, Sir.

Q. And the first time you say was in January? A. January or February.

Q. 1871? A. January or February, 1871.

Q. Well, I understood you to say January, and to have said so on the direct examination, and also on the cross. A. I think if you will look carefully that I said January or February.

Mr. Shearman—The last of January or the first part of February.

Mr. Evarts—The last part of January or the first part of February.

Mr. Beach—Yes; I remember that.

The Witness—Well, this that I have just been speaking of might have been some little time after; I could not tell the time; it is confused in my mind; I could not tell the second time I went there; it might have been weeks afterward.

Mr. Beach—Well, Mrs. Palmer, I never hold a witness particularly to dates or times; where did you first get acquainted with Mr. Tilton? A. That is the first time I ever saw him, the time that I went to this office, or said to be office, with Mrs. Woodhull; that is the first time I ever saw him in New-York.

Q. I beg your pardon; I was inattentive to the first part of your answer; was it at his office that you first became acquainted with Mr. Tilton? A. The first time I saw him was at Boston, at a lecture where Wendell Phillips presided.

Q. The point is, where did you first become acquainted with him? A. The first time I became acquainted with him, or spoke to him, was in this office when Mrs. Woodhull went with me to see him.

Q. So I understood; and how soon after that interview at the office where you found Mr. Tilton did you see him at Mrs. Woodhull's office? A. Oh, I think the next day.

Q. Next day; and from that time constantly on, almost daily? A. Yes, Sir.

Q. Well, you got to be pretty well acquainted with him, I take it? A. No, Sir, I did not; Mr. Tilton rarely ever had anything to say to me—scarcely noticed that I was present, apparently.

Q. Well, can you tell whether this office where you saw Mr. Tilton had the appearance of an editorial sanctum? A. I could not tell you anything about that, save that I saw a table there with some papers on it, and a desk in an inner room where I saw Mr. Moulton, and there was a little marine picture hanging on the wall—a little—I should think it was a water-color picture, a little sea view, hanging on the wall, and I was only there a few moments or a short time; that is the only recollection I have of it; I haven't a very good memory for those things; I am very absent-minded; I might come into this room and sit here an hour, and see nothing that is here scarcely—could not tell you anything about it, unless something fixed it on my mind—something definite fixed it on my mind.

Q. That is when you are in one of your mediumistic conditions? A No, Sir, it is my constant habit.

Q. Did you have a conversation, on this occasion when you were introduced to Mr. Moulton, with Mr. Moulton? A. No, Sir; Miss Claflin went there to see him on some law business that had nothing to do with the——

Mr. Evarts—That interview is not one that we have opened, Sir, and it is not one that they have a right to give.

Mr. Beach—I haven't gone into it. I will ask that, though, if your Honor permits me—if she called with Mrs. or Miss Claflin, and Miss Claflin wished to consult Mr. Moulton on some law business.

Judge Neilson—Well.

The Witness—Well, you would have to let me tell the whole story in order to get it.

Mr. Beach—I have no objection, if my learned friends do not object.

Mr. Evarts—It has nothing to do with this business.

Mr. Beach—Very well, you can tell me the character of that law business if you please?

Mr. Evarts—No, that is going into it.

Mr. Beach—I want to know what the law business was about.

Mr. Evarts—Well, that is going into it; we object.

Judge Neilson—I think we won't admit it.

Mr. Beach—Consult him as a lawyer.

The Witness—Are you waiting for me to answer?

THE FREEDOM BETWEEN THE WOODHULLS AND MR. TILTON.

Mr. Beach—No, madam, it is my own dullness. How early after your acquaintance with Mr. Tilton and intercourse with him at Mrs. Woodhull's, did he address her as "Vick," or "Vicky," and she him as "Theodore?" A. Within a week; within a very few days; I don't know but within two days; within a week, certain.

Q. Well, I am trying to learn from you, madam? A. Within a week, certainly; it was immediate; their acquaintance ripened very rapidly.

Q. Ripened rapidly? A. Yes, Sir.

Q. Then it ripened after your acquaintance with them? A. I never had much acquaintance with Mr. Tilton.

Q. Well, what acquaintance you did have—you had an introduction to him, and I understand you that this familiarity ripened after your acquaintance with Mrs. Woodhull and Mr. Tilton began? A. Yes, Sir; I was acquainted with Mrs. Woodhull—well acquainted—before that.

Q. And you observed the progress of its—— A. Yes, Sir.

Q. [Continuing]—culmination and growth, and I understand you that it was the habit—it became in a very short time the habit of these two persons to address each other in the way you have spoken, and for Mr. Tilton to indulge in these familiarities? A. Yes, Sir.

Q. They were not concealed at the office, were they? A. They were not very open.

Q. What? A. They were neither concealed nor open; it was certainly not in the——

Q. Well, you had not become very intimately acquainted, I think you said, with Mr. Tilton. A. You must understand——

Q. It was practiced openly before you, wasn't it? A. Yes, Sir; I was attending to my own business in the inner office, and was frequently there when no one else was there.

Q. Certainly, no doubt of it, and you seem to have been attending a little to others. Was Col. Blood about the office? A. Yes, Sir, almost always.

Q. Almost always; well, these familiarities must have been observed by him then? A. Most certainly.

Q. Certainly they were? A. Most certainly.

Q. To your knowledge practiced in his presence? A. Most certainly.

Q. Do you know Mr. Stephen Pearl Andrews? A. Yes, Sir, I know Mr. Stephen Pearl Andrews.

Q. Was he very considerably about the office? A. No, Sir.

Q. What? A. No, Sir; not much.

Q. Well, did you ever observe this familiar intimacy of intercourse to appear before Mr. Andrews? A. Yes, Sir.

Q. Then he must have known it? A. Yes, Sir.

Q. Well, you knew Mr. Andrews to have been an inmate of Mrs. Woodhull's house? A. Yes, Sir; part of the time.

Q. During what time? A. During this period of time that I have spoken of.

Q. Covering the intimacy and association between Mr. Tilton and Mrs. Woodhull? A. No, Sir; no, Sir.

Q. Well, during what time, then? A. During the early part of it.

Q. Well, what year—1871? A. 1871.

Q. And from the commencement of your intercourse at Mrs. Woodhull's house, Mr. Andrews was there, wasn't he? A. No, Sir; I think Mr. Andrews left there some little time before they left the house in Thirty-eighth-st.

Q. Before what? A. I think that Mr. Andrews left Mrs. Woodhull's some little time before the intimacy ceased between Mr. Tilton and Mrs. Woodhull.

Q. Well, the question was whether Mr. Andrews was not an inmate of Mrs. Woodhull's house in the early part of 1871, when you first visited there? A. Yes, Sir.

Q. Now, do you say that he left his residence in that house during that year? A. I think that he did.

Q. During 1871? A. I think that he did.

Q. And what time? A. I could not tell; I don't remember.

Q. And for how long? A. I cannot remember; he left it entirely.

Q. What? A. He left there entirely; moved away from there.

Q. You are not certain that he left before the early part of 1872—January, 1872, are you? A. No, Sir, and I could not swear that he left at all; it is only my impression.

Q. Well, these visits of Mr. Tilton to the house of Mrs. Woodhull, and familiarities there, of which you have spoken, were during the year 1871? A. Yes, Sir.

Q. And up to what time did you observe them? A. During all that year, I think.

Q. During all the year 1871? A. I think so.

Q. Well, will you please reflect, so that you can speak with some certainty upon that subject? A. I think so—1872; it of course began in January—began in the Winter; I think that it continued up to the time just before the Steinway Hall meeting; I know that it did; after that I don't know anything about it.

Q. After that you don't know? A. After that I don't know anything about it.

Q. And the Steinway Hall meeting you understand to have been in the Fall of 1871? A. Yes, 1871 or '2; I don't know—I don't remember when the Steinway Hall meeting was, whether '71 or '72, but this acquaintance continued up to the time of the Steinway Hall meeting.

Q. Just before the Steinway Hall meeting, I understood? A. Yes, Sir. Well, it was up to the time of the Steinway Hall meeting, not before it; but it ended, so far as I knew anything about it, with that meeting.

Q. Was Mr. Blood in what you called the bedroom

of Mrs. Woodhull when you saw Mr. Tilton there? A. Yes, Sir.

Q. Mrs. Palmer, you say you were present at a conversation or consultation between Mr. Tilton and Mrs. Woodhull, at the office of Mrs. Woodhull, concerning the prospectus of *The Golden Age*? A. Yes, Sir.

Q. Will you give me the date of that conference, as near as you can? A. It was, I think, in the month of February; I know that it was.

Q. The month of February, 18——? A. '71.

Q. '71? A. It was just before the starting of the paper.

Q. Well, we will see about that. Where were you residing then? A. I was residing at my friends' in Park avenue—49 Park-ave.; I was there for a number of weeks; during all that period.

Q. In what part of the office was the conference held? A. Sometimes in the front office and sometimes in the back office; it was spoken of a number of times.

Q. Mr. Blood present? A. Yes, Sir.

Q. Participate in the discussion? A. Yes, Sir.

Q. And any one else besides yourself and him, and Mrs. Woodhull and Miss Claflin, and Mr. Tilton? A. I did not partake in the conversation at all.

Q. No, I don't understand that you did; you were present and heard it? A. I cannot tell you; there was so many coming and going in the office, and this thing was spoken of openly between Mr. Tilton and Mrs. Woodhull and Mr. Blood.

Q. Madam, you are not answering my questions—unconsciously, probably. I want you to speak of any particular occasion, as I did understand you to on the direct examination, when there was a conference between Mrs. Woodhull and Mr. Tilton concerning the prospectus of *The Golden Age*. A. Well, I can tell you only one definite time; there were a number of times, but I can only tell you one, and that I can't give you the language of.

Q. Oh, no. A. I can only give you the idea.

Q. Well, that is the one at which you say Mrs. Woodhull, and Miss Claflin, Mr. Blood, and yourself—— A. I don't know that Miss Claflin was present; I would not swear that Miss Claflin was present; I would not swear that anybody was present but Mr. Tilton and Mrs. Woodhull at the one which I have in my mind now, which I——

Q. But you said Mr. Blood was present at that? A. He was present at a number of them—at a number of these conferences.

Q. Why not at this one? A. This is the only one that I can swear to anything definite.

Q. Why do you get him out of the way now? A. I don't wish to get him out of the way at all.

Q. Was he there? A. He was not there.

Q. Which room was it in? A. In the back room; I have no desire to get rid of people at all, in any of these conferences.

Well, you say there were a number of these conversations? A. Yes, Sir; it was a common thing.

Q. At which Mr. Blood was present frequently? A. Yes, Sir.

Q. Well, how are you able to distinguish this one from the rest so as to say Mr. Blood was not there? A. It was probably the first one; it might have been and it might not have been. I don't know how I am able to do it; I only recollect the fact, but I cannot tell how I do it.

Q. What? A. I say I cannot tell you how I do it; I only know that I am speaking of a fact without telling you how I do it.

Q. Well, do you say now that you have a present recollection that Mr. Blood was not present at the conversation to which you now allude in the back room? A. Yes, Sir, for there were a number at which he was not present—not only this one, but there were a number at which he was not present; it was a frequent thing for——

Q. Well, but this conversation was of the same character and to the same effect as the others, you say? A. Yes, Sir; but this one happened to fix itself on my mind.

Q. And some of them were in the back room, I suppose? A. Yes, Sir, I presume they were; I don't remember.

Q. Now, I ask what circumstance or incident there is which enables you to say that at this particular one of which you speak Mr. Blood was not present? A. At this particular one of which I am speaking now—what fixes it in my own mind—I was filling an order for stocking-suspenders, and was putting them up in the boxes and marking them, when Mrs. Woodhull and Mr. Tilton came into the room.

Q. Now, wait one moment. Was that an unusual event for you to do, to fill an order? A. No, Sir.

Q. Well, that does not seem to be a circumstance which should enable you to remember that Mr. Blood was not present? A. Yes, Sir; because it was an unusual thing for me to remain and continue my business when Mr. Tilton came into the office—into the back office; there was always a sign that Mrs. Woodhull gave me if she wished to be alone—if anyone came in; and I was in the back office, and anyone came in, I would simply give her a look to know, and bow my head to her, or some sign I would give her, to know whether she wished me to leave her alone.

Q. That happened very often, I suppose? A. Well, that I can't say, whether it was often or not; it is too long ago, and too many things intervening; I can't tell you.

Q. It does not seem to be such an especial circumstance as should enable you to say that Mr. Blood was not there? A. I don't know the question that you are asking me.

Q. I say that it does not seem to be a circumstance of so much importance as to enable you, by it, to say that Mr. Blood was not present in the room at the time? A. Well, Mr. Blood wasn't present.

Q. Well, that is a matter of simple recollection? A. Yes, Sir.

Q. Now, will you tell me what that conversation was? A. The conversation was concerning——

THE TALK ABOUT MAKING MR. TILTON'S PAPER RADICAL.

Q. No; I want to know the conversation—how it happened and how it progressed? A. Well, I don't know how you want me to answer you.

Q. I want you to give me the language used by the speakers as near as you can. A. I told you it was impossible; you must let me give it to you in my own way, or else I can't tell you at all.

Q. Most certainly; but I do not want you to tell me they were conversing about a certain thing; I want you to tell me what was said, as near as you can? A. If you will let me have my way, I will try to give it to you.

Q. Well, I have always found that I had to let a lady have her way, and I will let you. A. Thank you. I was at work filling this order for stocking suspenders, and Mr. Tilton and Mrs. Woodhull came into the room and didn't seem to pay any attention to me—my being there or not being there; the door was open; they seemed to be continuing a conversation which they had begun——

Q. Well, really, madam, won't you permit me to insist that you should not tell me what they seemed to be doing or seemed to be thinking; I don't know but you are mixing up your clairvoyant memory with your actual personal memory, and I want you to tell me as near as you can. I do not ask for the very words, but the substance, as near as you can of what was said? A. If you get my clairvoyant recollection you will be quite as apt to get the correct version as you are now.

Q. I am not throwing any reflection on your clairvoyant or spiritual powers, madam; I perceive they are very great, but we cannot take them in the relations in which we stand to each other now, and you will please give me your recollection as a witness of the language that was used by the parties upon that occasion? A. I can only give you the idea, Sir; I could not give you the language to save my life.

Q. Couldn't you give the substance of the language—the substance of what they said? A. I will try; I will do the best I can.

Q. Well? A. The substance of the language was that Mr. Tilton was about starting a paper, and that when he had started this paper he should use this paper in the interest of a new body, which should take in or embrace all of the Spiritualists, of which Mrs. Woodhull was the head, and they would unite the two papers and use them both to express the radical views of what they supposed to be the greater part of the community at large; and I don't know whether it was at that time or some other time they spoke of——

Q. Well, I want to confine it to that time; let us get all of that time? A. Well, at that time I have given you all the idea and substance of it—that they were to unite the two papers and to use them as the organs of a new party, which should take in the Spiritualists, or the Spiritualists were to be the leaders in it; there was no hope in the other parties of doing anything.

Q. No hope for the country? A. I don't know whether it was for the country, or for the leaders.

Q. Oh, or the politicians? A. The politicians.

Q. Now, wasn't there something said about the name of the party? A. No, Sir.

Q. Well, they were to found a new party? A. No, Sir; nothing said about the party, about founding a party, or about a name for a party.

Q. Well, there was something said about founding a new party? A. No, Sir; not founding a new party, but that this should be the organ of a new party—I was about to tell you that they were continuing apparently——

Q. I don't want anything about that. A. I am talking about this; they were apparently continuing a conversation which they had begun in the front office, which I did not hear.

Mr. Beach—Well, madam, I don't want your judgment about that.

Mr. Evarts—That is her observation.

Mr. Beach—No, Sir.

The Witness—I am not endeavoring to cover up anything; I want to give you the exact truth as I know how, and as far as I know it.

Q. Oh, I don't doubt you are. Can you give me anything which was said which led you to the conclusion that they were continuing a conversation commenced elsewhere? A. No, Sir; I could not; it is only my impression.

Q. Your impression? A. Not a clairvoyant impression, either.

Q. Well, didn't they indicate in some form the party designation that was to be assumed? A. No, Sir.

Q. There was to be a party formed? A. Yes, Sir.

Q. As you understood? A. I had understood it before; it had been talked of for weeks.

Q. Wait one moment; I am not asking you for anything that had been—I am asking for this; is this the conversation that you related to Mr. Shearman on your direct examination? A. I don't remember; I should have to know what my direct examination was; there was so much of it that I cannot remember.

Q. There was not so much of it; he called your attention to a conversation in which this question of the establishment of *The Golden Age* was spoken of. A. If I understood Mr. Shearman's question, it wasn't of any one particular time; I supposed it was several different times; I was not conscious that he was asking me for any one particular time.

Q. You have now given us what occurred at that conversation; do you recollect anything you had heard from

them upon the subject before that conversation? A. I don't remember whether it was before or after this particular time; I cannot tell.

Q. Do you recollect anything else that was said, either before or afterward, upon that subject? A. You have talked so long that I have forgotten what the subject was you were speaking of.

Q. It was the subject of the establishment of *The Golden Age* and the formation of a party that was to supplant all the other parties of the country? A. It was hardly the forming of a new party; it was really taking up or gathering up all the best elements of both parties.

Q. A consolidation of all the scattered elements of parties. A. Yes, and especially of the Spiritualists.

Q. Under the lead of the Spiritualists? A. Yes, Sir.

Q. With Mrs. Woodhull as the leader? A. Mrs. Woodhull and Mr. Tilton the leaders.

Q. They were to unite as leaders? A. Yes, they were to be united.

Q. And they were to combine their papers? A. Yes, Sir.

Q. Were they to amalgamate them? A. I think not; I think one was to admire the other, and the other to admire the one.

Q. A sort of mutual admiration society? A. I think so—they were mutually to sustain each other.

Q. How long had *The Woodhull & Claflin Weekly* been established then? A. I don't know anything about that.

Q. Had you read it before? A. Yes, Sir.

Q. How long had you been in the habit of reading it? A. I had not been in the habit of reading it very much; it was not a habit.

Q. Only an occasional inspection of it? A. Yes, Sir.

Q. Mr. Tilton wanted you to become an agent of this new enterprise? A. Yes, Sir.

Q. What business were you engaged in then? A. My stocking-suspenders.

Q. You declined that employment? A. Yes, Sir, I did; I had enough business of my own to attend to. I was in need of an agent myself.

Q. Before the establishment of this *Golden Age* I understood you that there was some conversation about the proof, or you saw the proof of the Woodhull article as it was published? A. Before the establishment of *The Golden Age*? No, Sir.

Q. When was it? A. It was before the publishment of the card; not a proof of it at all; it was not the proof; Mrs. Woodhull read to me the card which appeared in *The New-York World*.

Q. That was the May card? A. Yes, Sir.

Q. May of what year was it? A. May of 1871, I suppose; whenever the card came out; I cannot tell the year; whenever the year was—1871, without any doubt.

Q. I understood you to say that she showed you the proof of the scandal? A. Yes, Sir; but that was later.

Q. When was that? A. That was about two months before I went into my house in Twenty-seventh-st.; I went in there on the 1st of May; no, it was the 15th of April; I didn't go into my house in May; I went in on the 15th of April, and it was some weeks before this that Mrs. Woodhull not only showed it to me, but I saw it two or three different times.

Q. The proof of the scandal as it was afterward published? A. It might not be exactly as it was published.

Q. But the substance of the thing? A. The substance of the Woodhull-Beecher-Tilton scandal.

Q. You mean a printed office proof? A. I mean printing like newspaper proofs—like a newspaper printed on——

Q. That must have been when? A. It was in 1872.

Q. The early part of March, 1872? A. I suppose it was about two months before I went to my house; I think two months, or perhaps six weeks.

Q. February or March, 1872? A. Yes, Sir; I think so.

Q. And the substance of the article which afterward appeared in *The Woodhull & Claflin Weekly* was what you read in these proofs? A. Yes, Sir.

Q. They were shown to you as the proof from the Woodhull & Claflin office? A. I don't know where they were from; she didn't tell me where they were from.

Q. Where were they first shown? A. The first I ever saw of them was in the back office, as I gave it this morning in my direct examination.

Q. These proofs were public in the office? A. Not at all; they were kept very secret.

Q. Who was present when they were shown to you? A. No one but Mr. Tilton the first time that I ever saw them; they were never shown publicly—not to me.

Q. Mr. Blood is a *habitue* of this office? A. Yes, Sir.

Q. Did he see them? A. I don't know whether he did or not; he didn't see them in my presence; not at that time; he did afterward, after they moved into the Twenty-third-st. house; he was taken sick, and Mrs. Woodhull sent for me to come over, and again there she showed them to me.

Q. When was that? A. About May or June, after I had been in her house a good deal.

Q. May or June, 1872? A. Yes, Sir.

Q. That is not the one shown to Mr. Tilton? A. I had seen them with her at that time—the proof of the "Tit for Tat" article.

Q. Well, didn't Mr. Andrews also see them at that time? A. I don't know, Sir.

Q. The "Tit for Tat?" I don't know anything about that.

The Witness—At the same time——

Mr. Evarts—At the same time she was shown the "Tit for Tat" article.

Mr. Beach—Well, I move to strike that out.

Judge Neilson—Yes, Sir.

Q. Did you ever learn who was the author of that article? A. No, Sir; I never asked.

Mr. Evarts—Which one?

Mr. Beach—The one we are talking of—the Woodhull scandal?

The Witness—I never knew who was the author of any of these articles that were written.

THE EXHIBITION MADE OF THE PROOF-SHEETS.

Q. You may restate, if you please, the scene which you observed between Mr. Tilton—what passed between Mr. Tilton and Mrs. Woodhull. What did you see at the time that these proofs were shown to you in the back room? A. The first time I saw them?

Q. During the interview you gave to Mr. Shearman? A. Mr. Tilton and Mrs. Woodhull came in from the back room and sat down on the sofa. Mrs. Woodhull says: "Daniels"——

Q. Said what? A. She called me Daniels, instead of giving me my full name: "Daniels, there is something I want to show you." I can't remember if I made any reply. She read me a part of this scandal. I turned to her and said: "Mrs. Woodhull, if you publish that scandal, or a scandal concerning any other individual, or, in short, if you have anything to do with the private lives of any individuals whatever, I will have nothing more to do with you, and I will not work with you again. You have no right to touch the private life of any one; you are at work as a reformer, and not to go into the private lives of anybody." I don't know that any reply was made to me.

Q. Was that the whole of that interview? A. No, I think not, but it is all that I can remember.

Q. It is the same one that you gave to Mr. Shearman? A. Yes; and now I do not pretend, and I did not pretend then, to give the exact language; there might be a preposition, or a conjunction, or some word put in, or left out.

Q. But you have given on this cross-examination all that you now recall? A. Yes, Sir.

Q. I thought you said something to Mr. Shearman about an allusion to Mrs. Tilton? A. That was another affair altogether.

Q. What? A. That was another affair altogether.

Q. No, it was in this conversation? A. I think you will find, if you look back, that you are mistaken.

Q. Then it was not in this conversation? A. I think not; it should not have been if it was.

Q. I think you put it in this conversation? A. It should not have been there.

Q. Where ought it to be? A. It ought to have been another affair and another time; and I do not recall anything but the circumstances; I do not know how it came about, only that Mrs. Woodhull was talking very eagerly to some one who came into the office.

Q. There were no proofs present then? A. No, Sir; nothing to do with proofs at this time; Mrs. Woodhull was speaking of the scandal that had been bruited about concerning Mrs. Tilton and Mr. Beecher.

Q. And Mr. Tilton came in? A. Mr. Tilton—I don't know whether he came in, or whether he was there; but Mr. Tilton's face flushed clear to his hair, and he says: "Vicky, that is not true; my wife is as pure as snow, and no such relation ever existed between Mr. Beecher and my wife."

Q. I understood you to give that in the other interview on your direct examination? A. Did Mr. Shearman understand me in that way?

Mr. Shearman—It is all right; I think you stated it as you do now.

Mr. Beach—Never mind.

The Witness—If I said so, it was wrong.

Q. When was this last conversation you have spoken of? A. It was long before these proofs were ever brought out; this was in 1871.

Q. How long before? A. It was in the first acquaintance of Mrs. Woodhull and Mr. Tilton; it was before the card came out at all.

Q. Were the proofs shown after the card appeared? A. The proofs did not come out until 1872, and the card came out in 1871.

Q. And this conversation you now speak of——? A. Was before the card came out.

Q. It must have been in January or February, 1871? A. Or March or April or May—I cannot tell; along there somewhere; it was before the card came out.

Q. How long was it that you saw the proofs there before you went into your house? A. I think two months or six weeks; it possibly might have been only a month, but it was probably two months.

Q. When did you understand this scandal was published? A. In the Fall of 1872; it was a common thing; it was known by a great many before it was published at all; that is, it was circulated privately.

Mr. Beach—I move to strike out all the answer from the words, "It was a common thing."

Judge Neilson—Yes.

Q. And at the time that Mrs. Woodhull addressed you in this way, saying, "Daniels, I have something I want to show you," or to that effect, Mr. Tilton was the only person present besides yourself? A. He was; she came in and shut the door.

Q. And she showed you the proofs? A. No, she read it; she showed it to me after Mr. Tilton had gone out; she put it in my hands after Mr. Tilton had gone out.

Q. And nothing was said except what you said to her in regard to the propriety of publishing the private life of individuals? A. Yes, there was more said.

Q. Nothing that you recollect? A. Nothing that I recollect.

Q. And when she said that she had something to show you, how much did she read of the proof? A. I can't tell you, because I saw it three or four different times; I read it myself, and I can't tell which time it was that I saw the whole of it.

Q. Have you any idea of how much she read now? A. I think she read the whole of it.

Q. You think she read the whole of it, do you? A. I think she read the whole that simply concerned Mr. Beecher and Mrs. Tilton.

A. The whole of the paper? A. Not the paper; it was slips or proofs.

Q. So far as it related to Mr. Beecher and Mrs. Tilton? A. I think so; still, I would not swear she read the whole of it then, because I saw it several times, and I cannot swear which time it was that I saw the whole of it.

Q. Was there any documents incorporated in the proof she read? A. I think not.

Q. No letter? A. No, Sir, there was no letter; she brought it in her hand.

Q. Have you now any distinct recollection of any part she read, so that you can repeat it, or the substance? A. No, Sir; I would not undertake to repeat the substance, because it was absolutely the same thing as published.

Q. Wait one moment! I understand you to say that you would not undertake to repeat the substance of it now—any part of it? A. I would not, for although I have read the whole of it afterward, I would not undertake to repeat it now.

Mr. Beach [to Mr. Morris]—I don't think I want to ask any more. Is there anything else?

Mr. Morris—No, I think not.

Mr. Beach—That is all, madam.

RE-DIRECT EXAMINATION OF MRS. PALMER.

Mr. Shearman—Was Mrs. Woodhull what is commonly known as a Spiritualist?

Mr. Beach—I object to that.

Mr. Shearman—This lady has been asked a good deal about her own belief in this examination. I simply propose to show this whole circle was one.

Judge Neilson—That was under the license of cross-examination. No.

Q. I ask whether you believe in the God of the Christians? A. Most certainly I do.

Q. Do you believe in the Lord Jesus Christ? A. Most certainly I do.

Mr. Shearman—That is all.

Judge Neilson—That is all, Mrs. Palmer.

RE-CROSS-EXAMINATION OF MRS. PALMER.

Mr. Beach—Do you believe in Christ as God? A. No, Sir.

Q. You do not believe in the divinity of Christ? A. Most certainly I do; I believe that your son is not you, but he is your son; and I believe that the Lord and Master Jesus Christ is the Only Begotten Son of the Ever-Living God.

Q. You believe in the Godhead? A. Yes, Sir.

Q. In the Trinity? A. Yes, Sir.

Q. Why not believe in Christ's divinity? A. I do believe in his divinity, most certainly.

Q. If you believe in his Godhead, three persons joined in one—the Trinity—how do you separate the identity of the Father and the Son? A. Just the same as I would separate your son from you; and yet you belong to one family.

Q. Then you don't believe they are identical? A. I don't believe they are one person; I believe that God is Father, and the Holy Ghost is Mother, and that Jesus Christ is the Son. They are one family.

Q. You believe that God the Father is the parent and the Holy Ghost is the mother? A. Yes, Sir.

Q. And Christ is the Son? A. Yes, Sir; He is the God of this planet, not the God of the whole universe; but I believe that Jesus Christ is the literal God of this planet on which we live.

Q. That is, His sovereignty is confined to this earth? A. Yes, Sir; He is the literal King and Lord, the Master and Ruler and God of this planet; He created it, and rules over it and reigns over it.

Q. That you suppose must be by deputation from God the Father? A. No, Sir; I believe this is His inheritance; I believe this is His birthright.

Q. Whom does He inherit it from? A. From His Father, God; not by deputation, but because it is His inheritance, given unto Him because He is of age.

Q. Then you do not suppose that the Son has the same extent of sovereignty and power as the Father? A. Most certainly not; only on this planet; only on this planet the sovereignty of the Son is superior to that of the Father.

Q. On this planet His sovereignty is superior to that of the Father? A. Yes, Sir.

Q. And that He has no sovereign power beyond the boundaries of this earth. A. Yes, I believe he has.

Q. Sovereign power? A. Yes, sovereign power; but not to the extent that the ever-living God has.

Q. It cannot be sovereign, then? A. Yes Sir.

Q. Sovereign, and yet subject to God the Father? A. Yes, because I believe there are a great many planets, and He may have one, or two, or more planets besides this one, over which He rules also.

Q. I don't understand you to believe, then, that the Son has the same breadth and extent of sovereignty as the Father? A. No, Sir.

Q. Only over those particular planets which He has inherited from the Father, which are subject to His control? A. That is what I mean, Sir.

Q. Do you not believe the Scriptural account of the birth of the Savior? A. Yes, Sir.

Q. How, then, do you make the Holy Ghost the mother? A. In this way: I don't believe that God ever abrogated any of His laws; and I believe when He saw fit to send Jesus Christ, His only begotten Son here on this planet, in the form of man, and to become a living

man of God in one—I believe that He overshadowed Joseph, the father, and that the Holy Ghost overshadowed Mary, the mother, and that Joseph and Mary were both thrown into a deep, death-trance, where neither of them was conscious of their acts more than a dead body, and that there and then, in a perfectly natural manner, Jesus Christ was begotten of Mary, by the overshadowing of these two spirits, and that he was a Divine, holy child, begotten by the Holy Ghost and the Godhead.

Q. Was Mary the mother? A. Yes, Sir, most certainly.

Judge Neilson—I think that will do, Mr. Beach.

Mr. Beach—Yes, I guess so, your Honor.

Judge Neilson—That is all, Mrs. Palmer.

[The witness retired amidst general laughter.]

TESTIMONY OF GEN. B. F. TRACY.

Benjamin F. Tracy was then called and sworn for the defense.

Mr. Evarts—How long have you been a member of the Bar of this State? A. I was admitted in this State in May, 1851.

Q. And how long have you practiced your profession in this city? A. In this city about nine years; eight years and over.

Q. And before that, in New-York City at all? A. In New-York City something over a year.

Q. Prior to your practicing here? A. Prior to that.

Q. During what period were you the United States District-Attorney of this District? A. From October, 1866, I think, until February, 1873.

Q. Do you know the parties of this suit? A. I do.

Q. From what time and in what degree have you had acquaintance with Mr. Tilton? A. I have known Mr. Tilton by reputation for many years; I knew him personally first, I think, when he was editor of *The Union*, in 1870; since that time I have known him slightly; I ceased to know him much, I think, after he ceased to be editor of *The Union*, until after the publication of the Woodhull scandal, in 1872; then I met him again.

Q. And with Mr. Beecher, from what time and in what degree have you had an acquaintance? A. I have attended Mr. Beecher's church since 1867; I have known Mr. Beecher slightly from some time in 1868 or 1869, until after the publication of the Woodhull scandal; since that I have known him more intimately than before.

Q. And what acquaintance, and through what period, have you had with Mr. Moulton? A. I was introduced to Mr. Moulton in, I should say, the month of November, 1872; since which time I have known Mr. Moulton quite intimately.

Q. And with the other members of the firm of Woodruff & Robinson, what acquaintance have you had, and during what period? A. I made the acquaintance of Jeremiah P. Robinson when I was in the Legislature in 1862. I renewed my acquaintance with him on coming to Brooklyn in 1865 I resided in Brooklyn when I came to practice law in New York, and I have known him by occasionally meeting him, from that time to the present time. I became acquainted with Franklin Woodruff in the Fall of 1871. I should think it was—I think it was in the Fall of 1871 that I knew him first, and knew him very well from the year 1871; from that time on to the present time I have known him very well.

Q. Was this acquaintance with Mr. Franklin Woodruff a business acquaintance or a personal acquaintance? A. It was a personal acquaintance in the beginning.

Q. Now, Sir, in the month of November or December, 1872, did you come into any association or conferences with either Mr. Franklin Woodruff, or with Mr. Moulton, or Mr. Tilton? A. I did with all of them.

Q. How soon after the publication of the Woodhull scandal did the fact of the publication come to your knowledge? A. Well, Sir, if that was published—if the 28th day of October was the day that that was circulated, in the evening—that paper—I probably learned of it on the 29th of October; but it was either on the 29th or the 30th of October.

Q. Now, when first did you have any conversation with Mr. Franklin Woodruff, or Mr. Moulton, or Mr. Tilton, on the subject, and with which first? A. I first conversed with Mr. Woodruff on the subject.

Q. And how did that arise? A. A casual conversation in the street, when the subject of the Woodhull publication was alluded to—I cannot say definitely how soon after the publication, but it was some days after.

Q. And you met in the street, or were you standing in the street when he came along? A. I don't remember definitely; it was in front of my office in Montague-st.; but whether I was coming along and met him, or I was standing there and he came along and met me, I don't remember—I don't remember that.

Q. Who introduced the conversation? A. Well, as a matter of memory, I cannot say positively. My impression is that I did.

Q. And how? A. By referring to the fact that Mr. Moulton—that I hadn't observed any denial on the part of Mr. Moulton of the Woodhull scandal.

Q. Well, what passed between you and Mr. Woodruff at that time? A. Well, there was a general conversation on that subject, and——

Q. What was the substance of it—not in detail?

Mr. Beach—I don't understand that this conversation has been mentioned.

The Witness—That conversation has not been alluded to.

Mr. Evarts—This is merely introductory.

Mr. Beach—Wait one moment.

Judge Neilson—He might mention the subject of the conversation.

The Witness—It was the subject of Mr. Moulton's relation to that scandal.

Mr. Evarts—And any proper or probable denial of it? A. Yes, Sir.

Mr. Beach—Wait!

The Witness—Yes. Well, I understand it is objected to.

Mr. Evarts [to Mr. Beach]—Do you object?

Mr. Beach—No. Take it.

Mr. Evarts—Well, that conversation produced no appointment, did it? A. No, Sir.

Q. Now, when after that—— A. Well, it was considerable time after that. I can't say definitely. Mr. Woodruff came to me one day and asked me——

Q. At your office, was this? A. I cannot say that either, whether it was at my office or in the street. I know he asked me if I would consent to be consulted——

TROUBLE ABOUT WHO SHALL CROSS-EXAMINE MR. TRACY.

Mr. Beach [to Mr. Tilton]—Now, you see he is on the stand, and I cannot be here to-morrow. [To Mr. Evarts.] Can't you call some other witness?

[A whispered conference here took place between the counsel.]

Mr. Beach—The difficulty, your Honor, that I have suggested to my learned friends is this, and it has just this moment occurred to me—I am obliged to be at court over the river, in New-York, to-morrow, and must be absent from this trial. Upon the contingency of Mr. Tracy becoming a witness, his cross-examination, for personal reasons, had been assigned to me, and I cannot possibly be here in the morning to conduct it, and I suggested to my learned friends whether they could not supply other witnesses. If it was ordinary business, Sir, I desire to state I certainly should not be absent from this trial.

Judge Neilson—I have no doubt your learned opponents will accommodate you if they can.

Mr. Beach—Mr. Kernan is to be down from Utica for the purpose of arguing a motion of some importance with me, and he has telegraphed, and I cannot neglect the arrangement.

Mr. Evarts [after conferring with Mr. Shearman]—We cannot, if your Honor please, arrange otherwise than to go on with Mr. Tracy; but we shall leave it quite at our friends' disposal, when we come to the adjournment, whether they will adjourn until Wednesday morning.

Mr. Beach—Oh, no, Sir, I am not going to ask another adjournment over the day. Some other gentleman must take the cross-examination.

Mr. Evarts—Very well, we are quite willing to accommodate in any way we can.

Mr. Beach—Well, I would not ask an adjournment.

Mr. Evarts—They may take an adjournment, Sir. We will very freely adjourn. It does not make any difference to us; we can always use the day. At any rate, we will do anything that we can, if your Honor please——

Judge Neilson—That I am sure of.

Mr. Evarts—Still, we cannot very well arrange to call another witness.

Mr. Beach [to Mr. Morris]—I cannot see any reason why Mr. Fullerton should not take the cross-examination, or Mr. Pryor. [To Mr. Evarts.] I think we had better adjourn now.

Mr. Evarts—I want to relieve you——

Mr. Beach—May I ask your Honor the favor that we may lose these ten minutes remaining before the usual hour of adjournment, and adjourn now, so that Mr. Fullerton, who will take the cross-examination of the witness, may be present at the direct examination.

Judge Neilson—That seems to be quite reasonable.

Mr. Beach—Thank you, Sir.

The Court then adjourned until Tuesday at 11 a. m.

SEVENTY-THIRD DAY'S PROCEEDINGS.

AN ADJOURNMENT AFTER A SHORT SESSION.

EX-JUDGE FULLERTON UNWILLING TO CROSS-EXAMINE GEN. TRACY—TESTIMONY OF J. F. ST. GEORGE IN REGARD TO MR. TILTON'S PART IN THE COMMUNISTIC PROCESSION.

TUESDAY, April 27, 1875.

Fifteen minutes after the usual time for the opening of the proceedings, Messrs. Fullerton and Morris, and Evarts, Hill, Abbott, and Shearman entered the court-room together. Mr. Evarts addressed the court, saying that Mr. Beach was detained by the argument of a case with the Hon. Francis Kernan in another court, and Mr. Pryor, who had been asked to conduct the cross-examination of Gen. Tracy in place of Mr. Beach, was kept at home by sickness. For personal reasons Mr. Fullerton had declined to cross-examine Gen. Tracy. Mr. Evarts proposed that the examination of Mr. Tracy should be deferred until April 28, when Mr. Beach will be present. Some of the witnesses of the defense could not be present to-day; they had only one ready to be sworn, and Mr. Evarts intimated that an adjournment of the court until April 28 would be acceptable to the defense. No objection was made by the plaintiff's counsel. Mr. Morris stated that at the beginning of the trial the plaintiff's counsel had divided their work, assigning a certain part to each man. To Mr. Fullerton had been assigned the duty of conducting the greater part of the examination of witnesses. Early in the trial it was intimated to them that Gen. Tracy might become a witness. Mr. Fullerton immediately said that he could not cross-examine him, and that duty was then assigned to Mr. Beach.

The adjournment was granted by Judge Neilson. The proceedings occupied about half an hour. J. Francis St. George, the only witness examined, was questioned by Mr. Hill. He said that he had lived all his life in Brooklyn. He had been engaged in journalism for 15 or 17 years. He had known Mr. Tilton by sight about 10 years, and was a compositor on *The Brooklyn Union* when Mr. Tilton was its editor. In December, 1871, he was connected with *The New-York Standard*, and on Dec. 17 was detailed by that paper to report the Communistic procession. He saw Mr. Tilton riding in the procession in a carriage with Mrs. Woodhull, Miss Claflin, and Col. Blood. A copy of *The Standard* for Dec. 18, 1871, containing his account of the procession, was shown to the witness and identified by him. Mr. Hill attempted to introduce in evidence a paragraph of this report, but it was ruled out by Judge Neilson. The cross-examination was conducted by Mr. Fullerton.

THE PROCEEDINGS—VERBATIM.

MR. TRACY'S EXAMINATION DEFERRED.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts—If your Honor please, the arrangements of our learned adversaries in regard to the continuance of Mr. Tracy's examination, in view of his cross-examination, as they had proposed it among themselves, will not probably admit of his going on to-day. Mr. Pryor is detained by sickness of himself or his wife from coming out, and it has been expected that he might take Mr. Beach's place. Mr. Kernan is in town, and no arrangement can be made for Mr. Beach to be present to-day, but he can be here to-morrow. The witnesses that we might have prepared, or hoped to prepare, to fill the place to-day we are unable to bring forward, some of them being out of town, and we being unable to make arrangements for their examination, having waited the conclusion of Mr. Tracy's examination, which we supposed would take some time. We can occupy a little of the time with a single witness. Mr. Beach stated to your Honor that for personal reasons the cross-examination of Mr. Tracy had been committed to him; we should think, for our own part, that it is a very reasonable view of the matter, and we shall await Mr. Beach's return. That will be, however, for your Honor to determine.

Judge Neilson—Gentlemen, we will take whatever course counsel may desire.

Mr. Evarts—Very well, Sir.

Mr. Morris—It is proper, if your Honor please, I should state that from the very commencement of this trial we had assigned the different branches of the labor to different counsel. While Mr. Fullerton was to take charge principally of the examination of witnesses and their cross-examination, at a very early stage of this trial it was intimated that a contingency might arise in which Mr. Tracy would be a witness. Mr. Fullerton at once said that he could not cross-examine Mr. Tracy, and it was then arranged that Mr. Beach should cross-examine Mr. Tracy, and that has been the arrangement during the entire trial.

Judge Neilson—I can very well appreciate that. Proceed, gentlemen.

TESTIMONY OF J. FRANCIS ST. GEORGE.

J. Francis St. George, having been called for the defense and sworn, was examined as follows:

Mr. Hill—Where do you reside? A. In Brooklyn.

Q. How long have you resided in Brooklyn? A. All my life; for the last 32 years.

Q. What is your employment or business now? A. I am a journalist by profession.

Q. How long have you been a journalist? A. Well, I—

Q. Or connected with newspapers? A. For the last 15 or 17 years.

Q. Were you connected with any newspaper published in the City of New-York in December, 1871? A. I was, Sir.

Q. If so, state what one? A. *The New-York Standard.*

Q. In what capacity? A. Well, I was general utility man on the literary staff of that paper.

Q. Were you detailed, or did you in point of fact make any observations of the Commune procession? A. Yes, Sir; I was detailed by the managing editor to write up that procession.

Q. Were you out with that procession most of the day? A. Yes, Sir.

Q. And saw it while it was in line? A. Yes, Sir; I was present at its formation, and I remained with it until it was dismissed.

Q. Please give the line of the procession. A. The line of procession was formed somewhere in the vicinity of the Cooper Institute; it then marched down the Bowery to Great Jones-st., up Great Jones-st. to Broadway, down Broadway to Waverley-place, or up Broadway to Waverley-place; from thence into Fifth-ave., up Fifth-ave. to the turning point at Thirty-fourth-st., down Thirty-fourth-st. to Sixth-ave., down Sixth-ave. to Fourteenth-st., up Fourteenth-st. to the Lincoln Monument, where it was dispersed.

Q. Now, Sir, did you immediately, upon making your observations of that procession, prepare an article for *The Standard*? A. I made my notes as I went along.

Q. And wrote up the article that was published in *The Standard* the next day? A. Yes, Sir.

Q. The report of the procession? A. I did, Sir.

Q. Now, Mr. St. George, do you know Theodore Tilton? A. Yes, Sir, I do.

Q. How long have you known him? A. I have known him, I guess, for 10 years.

Q. Were you ever associated with him in any journalistic enterprise? A. No, Sir; I was employed on *The Union* at the time that he was editor-in-chief of it.

Q. How long were you so employed at the time of his connection with it? A. During the time of his editorship, I guess.

Q. Do you recollect to have seen Theodore Tilton in the procession that day? A. I do, Sir, distinctly.

Q. Do you recollect whether you saw him riding or walking? A. My recollection is that when I saw him he was riding.

Q. Where was that? A. That was on Fifth-ave., between Twentieth and Twenty-fourth-sts.; I made a particular observation of the procession as it entered Fifth-ave. and as it gradually got up to the turning point; I wished to notice what effect the procession had upon the residents of that street.

Q. Now, Sir, who was with Tilton in the carriage? A. Well, I recollect Tennie C. Claflin and Mrs. Woodhull.

Q. Was any one else with him? A. There was Col. Blood, I was told.

Q. You did not know the Colonel? A. I did not.

Q. But you did know who the other three were? A. I did know them.

Q. Did you know Col. Ryan? A. I did know him by sight; I was not intimate with him at all.

Q. Did you see him in the procession? A. I did, Sir.

Q. State where Col. Ryan was when you saw Tilton in the carriage? A. Col. Ryan occupied the first coach.

Q. Who was with him? A. O'Donovan Rossa and a Cuban exile.

Q. Now, Mr. St. George, state, if you please, if you made a memorandum of these two facts? A. I did, Sir.

Q. In reference to Tilton and Miss Claflin and Mrs. Woodhull's being in one carriage, and Col. Ryan and O'Donovan Rossa in the other? A. Yes, Sir; I was very particular in that; I tried to make it as accurate as I possibly could.

Q. And stated it in your report next day?

Mr. Fullerton—Wait a moment.

Mr. Hill—Well, if you do n't want that you need not have it.

Mr. Fullerton—I do n't want you to tell him that he stated it in his report next day.

Mr. Hill—Well, that is all. [To the witness.] See if this is the file of *The Standard* that contains your report of the procession. [Handing paper to witness.] A. Yes, Sir, I recognize that as mine.

Q. And that paragraph [pointing to a paragraph] refers to the matter I have been examining you about? A. Yes, Sir; that paragraph headed "Incidents along the line of march."

Mr. Hill—That is all.

CROSS-EXAMINATION OF MR. ST. GEORGE.

Mr. Fullerton—Where did that procession form? A. It formed somewhere in the vicinity of Cooper Institute; my mind is not clear exactly.

Q. How does it happen that your mind is not clear as to that? A. Well, things—they were in a kind of a—everything was in a turmoil of excitement right there.

Q. Do you mean in your head or in the street? A. In the street; likely to confuse.

Q. How? A. It was in such a condition as it was likely to confuse the mind of almost any person.

Q. Well, it seems as if it did confuse, as well as being likely to do it; is that so? A. No, I generally have a clear head.

Q. Then tell us out of that clear head where that procession formed? A. Well, portions of it formed on Fourth-st., and other portions on Third-ave., in the vicinity of Cooper Institute. I didn't take my notes.

Q. One moment. Tell me where it formed, in the first place. A. Well, I cannot exactly tell, Sir.

Q. Were you there? A. I was there; yes, Sir.

Q. Where? A. I was standing in front of Cooper Institute.

Q. When it was being formed? A. When the various delegations that were to participate in the parade marched up. I didn't see its formation at all until it got into Fifth-ave.; there is where I made my point of observation.

Q. You didn't see it form? A. I did not; no; the delegations came into line at various points, I think; I am not positive of that though; I did not see it form.

Q. You did not see it form? A. No, Sir.

Q. Well, not having seen it you know nothing about it, do you? A. No, Sir.

Q. How? A. I saw the various delegations march up in the vicinity, but I did not see it form.

Q. In what vicinity? A. In the vicinity of Cooper Institute.

Q. And how early did you go over to Fifth-ave.? A. I took the head of the—I followed the van of the procession, that which, as I understood, was to be the van, that was the Skidmore Guards, colored, a company of militia preceded by a German band.

Q. You marched with it, did you? A. Yes, Sir; I understood that was to take the head of the procession, and I followed them.

Q. Did you get into the line of march? A. I followed them up to—

Q. Well, one moment! I know you followed them; did you get into the line of march with them? A. Yes, Sir; no, I did not; I formed one of the sidewalk delegation.

Q. You walked on the sidewalk? A. I did; yes, Sir.

Q. Until you got to Fifth-ave.? A. Yes, Sir.

Q. Then what did you do? A. Well, I suppose I continued with them.

Q. Don't say you suppose unless you did it. A. Well, I did; I continued with them up to about Fifteenth-st.

Q. From Fourteenth-st.? A. From Waverley-place.

Q. Up to Fifteenth-st.? A. Up to Fifteenth-st. on Fifth-ave.

Q. Did you go upon the sidewalk? A. I continued on the sidewalk all the time.

Q. By the side of the delegation? A. I remained at the head of the procession until we got above—

Q. One moment! Who formed the head of the procession? A. Those colored troops.

Q. The colored troops? A. Yes, Sir.

Q. You stuck to them? A. Yes, Sir.

Q. Up as far as Fifteenth-st.? A. Yes, Sir.

Q. Then what did you do? A. Well, I thought that the procession—

Q. What did you do, not what you thought. A. Well, it was taking shape, and then I made my point of observation to note the incidents and scenes along the line.

Q. What did you do when you made your observation? A. I started from the head of the procession and went gradually back, worked back, and took a memorandum of the various participants.

Q. How? A. I took a memorandum of the various sections that were participating in the parade from the head of the procession to the lower part.

Q. To the foot? A. Yes, Sir.

Q. All the way down? A. I oscillated back and forth.

Q. How? A. I oscillated back and forth.

Q. Don't oscillate yet. Did you go to the foot of the procession? A. I did.

Q. And made your observations? A. Yes, Sir.

Q. And took your minutes, did you, as you went down? A. I did, Sir.

Q. Did you see Theodore Tilton during that period? A. I did, Sir.

Q. The first time you walked down the procession? A. The first time; yes, Sir; it was above Fifteenth-st.; I couldn't say at what point; somewhere between Twentieth, I will say, and Thirty-fourth-sts., where I made my observation, and where I made my notes.

Q. Where did you start to walk down the procession? A. Well, I started somewhere above Fifteenth-st.

Q. How far above Fifteenth-st.? A. Well, probably about Twentieth-st.

Q. Do you know where you started from? A. I do not; no, Sir.

Q. Where were you when you got to the tail of the procession? A. Well, pretty near the turning point, at Thirty-fourth-st.

Q. Walked down from Twentieth-st. and got to Thirty-fourth-st., did you? A. Yes, Sir.

Q. How? A. I walked down, and, of course, walked up as I stopped to inquire.

Q. One moment; I understood you to say that, at a certain period, you started from the head of the procession and walked to the tail of it? A. I did; yes, Sir; I will explain how I did it.

Q. And you, starting from Twentieth-st., got to the tail of it at Thirty-fourth-st. by walking down? A. I did, Sir; I can explain how I did it.

Q. Well, I think it would be interesting to know? A. Well, Sir, there was an Assistant Marshal at the head of all these sections. I accosted him, asked him the name—

Q. I don't want you to tell me what you said? A. While I was making my—interrogating him as to the number of men under his charge, I walked up with him, and then retraced my steps back again, until I accosted some one else, and then walked up again and down again, and finally the procession reached Thirty-fourth st.

Q. Now, will you tell me in what part of the procession Theodore Tilton was? A. He occupied a coach.

Q. What part of the procession? A. He was at the tail-end of the procession.

Q. At the tail-end? A. Yes, Sir.

Q. Then where did you first see him? A. Well, between Twentieth-st. and Thirty-fourth-st. I don't know distinctly where.

A. Your language was, in your direct examination, Mr. St. George, "My recollection is that I saw him riding?" A. Yes, Sir.

Q. Is that as far as you can go? A. He was an occupant of a coach.

Q. Is that as far as you can go? A. Between Twentieth and Thirty-fourth-sts.

Q. No, I am not talking about Twentieth-st. That is as far as you can go in stating the fact that he was in a carriage—that your recollection is that he was in a carriage? A. I recollect very distinctly.

Q. Do you swear positively? A. I do, Sir.

Q. Positively that he was in a carriage? A. I do, Sir.

Q. Do you know who was in the carriage with him? A. Yes, Sir; I recognized Miss Claflin and Mrs. Woodhull.

Q. They were both in with him, were they? A. Yes and I was told—

Q. No, no; you were told? A. There was no other occupant.

Q. Well, didn't you know Miss Claflin? A. I did; I knew both of those ladies

Q. And Mrs. Woodhull? A. Yes, Sir.

Q. And they were in a carriage with Theodore Tilton? A. They were; yes, Sir.

Q. You swear to that, positively? A. I do, Sir.

Q. And who else was in the carriage? A. Col. Blood, as I learned upon inquiry; I did not know him, though.

Q. Have you seen him since? A. I have never, Sir; I would not recognize him.

Q. Had you ever seen the man before that day? A. I did not, Sir; never.

Q. Where was it that you saw Gen. Ryan? A. I saw Gen. Ryan, and took particular notice; he occupied the first coach at the tail-end of the procession.

Q. The first coach? A. Yes, Sir.

Q. How many coaches were there? A. I could not state that.

Q. Did you see more than two? A. I could not state that, Sir; there may have been more; my report says there were more.

Q. No; if you please, I wish you to leave that report out; I have no doubt it is a very interesting article, but we don't want it here now. Can you tell me whether there were more than two coaches? A. I cannot.

Q. What do you mean by a coach; an open carriage? A. An open barouche; yes, Sir.

Q. Then, these people were riding in open barouches, were they? A. Yes, Sir.

Q. And you don't remember but two? A. I do not.

Q. Well, did you see any other noted individuals in that procession that day? A. I saw a number; yes, Sir; but I do not remember their names.

Q. You can't call their names now? A. No, Sir; I saw a number prominently identified with the labor movement, the International movement.

Q. And you can't state whether any other individuals were riding in carriages that day other than those you have named? A. No, Sir, I cannot; I recognized only in the first carriage Gen. Ryan and O'Donovan Rossa.

Q. They were in the first carriage, were they? A. They were in the first carriage; yes, Sir.

Q. And Mr. Tilton was in the second one? A. In the second; I would not say the second—I would not say positively; he was in another coach; I would not say it was the second one.

Q. Well, did you see Mr. Tilton more than once on that day? A. I did; I saw him again on Sixth-ave.

Q. What part of Sixth-ave.? A. I could not say what part; from Fourteenth-st. to Thirty-fourth-st.; I could not say what part.

Q. Well, where was he then? A. He was an occupant of a coach then.

Q. In a coach? A. Yes, Sir.

Q. Who were with him then? A. The same ladies; the same occupants.

Q. Did you see him more than twice? A. I did not; my attention was drawn from them to other portions of the procession.

Q. You only saw him twice, then? A. Only twice.

Q. Did you see Gen. Ryan more than once? A. I did not.

Q. Only once? A. Twice; yes, Sir; I saw him twice.

Q. Well, did you see him again when you saw Mr. Tilton? A. I did; yes, Sir.

Q. And were the same persons in the carriage with him? A. Yes, Sir.

Q. Did you write out your notes? A. Oh, I just jotted down—

Q. Did you write out your notes? A. I did not write out my notes there; I merely jotted down a little memorandum.

Q. Now, Mr. St. George, wont you answer my question and then stop? A. I will.

Q. I didn't ask you whether you wrote them out there; did you write them out at all? A. I did, Sir.

Q. Where? A. At the office of *The Standard*.

Q. Any one assist you? A. No, Sir.

Q. How? A. No, Sir.

Q. And the article was published as you wrote it? A. It was.

Q. How long after you took these notes before you wrote them out? A. Well, probably two hours; two hours, I think.

Q. After you took the notes? A. After I took the notes.

Q. Have you got the original notes? A. I have not.

Q. What became of them? A. They were destroyed immediately after the preparation of the article.

Q. Did you destroy them? A. I did, Sir.

Q. Now, how intimately were you acquainted with Theodore Tilton? A. Well, I never was intimately acquainted with him; I never conversed with him but a few times in my life; I don't know that he would recognize me at all.

Q. Had you a speaking acquaintance with him? A. None, Sir.

Q. What was your position on *The Union* when he was the chief editor? A. I was in the mechanical department of *The Union* at that time; I frequently wrote a few articles; sometimes I would have some little business.

Q. Tell me what your position was? A. I was a compositor at that time.

Q. A compositor? A. Yes, Sir.

Q. In the office? A. Yes, Sir; and a writer also.

Q. How? A. I frequently wrote for the paper at that time.

Q. How intimately were you acquainted with Gen. Ryan? A. I was not intimately acquainted with him; only knew him by sight.

Q. Had you a speaking acquaintance with him? A. None, Sir.

Q. Well, Mr. St. George, to whom did you communicate this fact? A. Which fact, sir?

Q. The fact that you have testified to? A. I didn't communicate to any one; I was called upon in relation to the matter; I was subpenaed; I don't know how the information was obtained that I wrote that article.

Q. How? A. I don't know how the information was obtained that I wrote that article.

Q. When were you subpenaed? A. On Saturday last.

Q. You didn't communicate it to any one, the fact that you— A. I did not, Sir, no; I hadn't the remotest idea of ever appearing in this court-room.

Mr. Fullerton—That is all.

THE STANDARD ARTICLE RULED OUT.

Mr. Hill—I offer to read in evidence the paragraph referring to this matter of which he has spoken—that is, in regard to Gen. Ryan and Mr. Tilton—from this article.

Mr. Morris—We object to it.

Mr. Hill—A memorandum made at the time? It is an article written from notes made at the time.

Mr. Morris—That does not make it evidence.

Judge Neilson—The witness on examination has a right to use his notes, to refer to them to refresh his recollection, but that is the extent of it. It is a cardinal rule of evidence that no witness can be allowed to say that he heretofore has made the same statement that he makes now by way of corroborating what he now states. If the counsel consent you can read it.

Mr. Hill [After submitting the article to Mr. Fullerton.] —Does your Honor rule it out?

Judge Neilson—Yes, Sir.

Mr. Evarts—The arrangement of our testimony does not permit us now to offer any more, unless we proceed with the examination of Mr. Tracy.

Judge Neilson—Yes. What shall we do? Shall we adjourn.

Mr. Evarts—I have already intimated to your Honor that I think the other side are desirous of that.

Judge Neilson—Yes. Get ready to retire, gentlemen. Please attend to-morrow morning at eleven o'clock.

The Court thereupon adjourned till Wednesday morning.

SEVENTY-FOURTH DAY'S PROCEEDINGS.

GEN. TRACY'S CONSULTATION WITH MR. TILTON.

TESTIMONY OF ONE OF MR. BEECHER'S COUNSEL—GEN. TRACY'S CONNECTION WITH THE CASE IN 1872—MRS. E. J. OVINGTON RECALLED BY THE PROSECUTION—COMMUNICATIONS BETWEEN MR. CLEVELAND, MRS. TILTON AND HERSELF ON THE EVENING OF MR. TILTON'S APPEARANCE BEFORE THE COMMITTEE.

WEDNESDAY, April 28, 1875.

The direct examination of Mr. Tracy was continued by Mr. Evarts. His testimony related mainly to the consultation held on Sunday afternoon, late in 1872, at Mr. Moulton's house, between Mr. Moulton, Mr. Tilton, and himself. He had been asked by Mr. Woodruff whether he would consent to take part in a consultation in relation to the Woodhull publication. Mr. Woodruff thought that the story was injuring Mr. Moulton and the firm. On that occasion Mr. Moulton at first showed him the "letter of apology" or "contrition," which he said was a memorandum, or notes, of a conversation which he had had with Mr. Beecher. He next showed him Mrs. Tilton's retraction and also her letter explaining her retraction. Mr. Tracy repeated what he had then said in regard to these documents. Mr. Moulton had said that Mr. Tilton had come to him very much offended because Mr. Beecher had obtained the retraction from Mrs. Tilton; that he had gone and procured the paper from Mr. Beecher, but that the statement in the Woodhull publication that he had done so by threats was not true. Mr. Moulton had told him that the retraction implied that Mr. Tilton had coerced the letter of confession from his wife, and that was what had given great offense to Mr. Tilton. Mr. Tracy said that he asked Mr. Moulton if Mr. Tilton charged Mr. Beecher with adultery, and Mr. Moulton said "no." He then asked him what the charge was, and Mr. Moulton replied that he would rather that Mr. Tilton should state that in his own language. Mr. Moulton then brought Mr. Tilton into the room. Mr. Tilton asked Gen. Tracy whether the etiquette of the profession would allow him to become Mr. Beecher's counsel, if a legal controversy were to arise, after Mr. Tilton had stated his case to him. Mr. Tracy replied that, setting aside the question of etiquette, he would not feel at liberty to become counsel for the other side. The witness then went on to describe how Mr. Tilton had read to him from a manuscript,

supplementing it with oral explanations, and was about to tell what the general tenor of what Mr. Tilton had read and said was, when he was stopped by an objection from Mr. Beach. Mr. Evarts attempted to show that what Mr. Tilton had read to Mr. Tracey was in whole or in part the document known as the "True Story." This met with strenuous opposition from the plaintiff's counsel, but the "True Story" was shown to the witness, who was allowed to use it in order to refresh his memory. He remembered that the documents contained in the "True Story," and some of its statements were identical with those which had been read, or made to him by Mr. Tilton. He was unable to remember the language which Mr. Tilton had used. During this conversation Mr. Tilton told Gen. Tracy that Mrs. Tilton was a pure woman. Mr. Tilton explained why he could not give a direct denial to the Woodhull publication. He said it contained various statements which he could not deny. Gen. Tracy advised him to make a denial of the story and destroy the documents. This Mr. Tilton refused to do.

Gen. Tracy testified that he told Mr. Moulton that Mr. Tilton ought to go to Europe for three or four years until the effects of his relations with Mrs. Woodhull wore off and he could build himself up again here. Mr. Moulton did not say that the essential points of the Woodhull publication were true. Mr. Tracy denied with emphasis that he had said that this was a case in which lying would be justifiable. He said it was barely possible that in the excitement of the discussion he had said in substance that if the Woodhull publication affected his family he should take the responsibility of a lie in denying it. He said he was confident he never spoke of Mr. Moulton's going to Europe.

Toward the end of the session, heated debates arose between Mr. Evarts and Mr. Beach, the former attempting to introduce the testimony of the witness in reference to interviews between himself and Mr. Moulton, and the plaintiff's counsel opposing on the ground that Mr. Moulton and Mr. Tilton were not legally identified, and that the latter could not be held responsible for the unauthorized acts and statements of the former. This testimony was excluded. The larger part of Mr. Tracy's testimony was given spontaneously, and comparatively few questions were asked. His manner was very earnest, and his language forcible.

Immediately after recess the prosecution recalled Mrs. E. J. Ovington, and Mr. Fullerton questioned her in reference to her note to Mr. Cleveland on the evening of July 10, 1874, when Mr. Tilton was before the Investigating Committee, and Mr. Cleveland's answer, and the arrival of Mrs. Tilton at her house on the next day. Mrs. Ovington explained that she had promised Mrs. Tilton to let her know when Mr. Tilton went before the Committee. She wished to state why this request had been made, but was not allowed to go on. The notes which passed between Mrs. Ovington, Mrs. Tilton, and Mr. Cleveland on that evening were then introduced in evidence by Mr. Shearman.

THE PROCEEDINGS—VERBATIM.

GEN. B. F. TRACY RECALLED.

The Court met at 11 a. m., pursuant to adjournment.

Benjamin F. Tracy was recalled and his direct examination resumed.

Mr. Evarts—Mr. Tracy, we had just spoken of an occasion on which Mr. Franklin Woodruff, after his casual conversation with you, had an interview; will you state now when that occurred, and how it occurred, as you were commencing to do. I see the answer was interrupted by the occurrence of the adjournment? A. I cannot state the time when it occurred with any precision; it was some time after my first talk with him in the street; he came and asked me if I would consent to be consulted on the subject of the Woodhull publication; he said that many people thought that Mr. Moulton ought to make some answer to that publication in a public card, and that it was hurting Moulton, and, he thought, hurting the firm, and he had had a talk with Mr. Moulton about it, and had suggusted to him to consult me on the subject, if I would consent to be consulted; I told him that I would on one condition—or, he said before I spoke that he wanted it understood that it was not to be a professional consultation, but a friendly one; that there was to be no compensation for the consultation, but the facts which were to be communicated to me were to be kept by me with the same sacredness as if the consultation was a professional consultation, but he wanted me to be consulted, if I would be, as a friendly act to the parties. I said I would do anything I could to aid in the matter, but it must be on one condition and understanding—fully understood, that the consultation was to be in no respect hostile to Mr, Beecher. Mr. Woodruff knew my position and feelings toward Mr. Beecher in this matter, and he said: "Certainly not;" it was in the interest of Mr. Beecher as well as of Mr. Moulton that the consultation was desired; and I said, with that understanding, I would be of any service that I could to the parties.

Q. Well, was that all that occurred between you at that

time? A. Except that he said he would bring Mr. Moulton around and introduce him to me. I did not know Mr. Moulton at that time; had never seen him, to my knowledge.

Q. Was there at that interview any discussion concerning the substance of the matter of the Woodhull scandal, or of any denials, or forms of denials? A. Not in detail. I think that Mr. Woodruff in that conversation referred to some papers that were in the possession of Mr. Moulton; and the character of those papers may have been referred to in that conversation, but if so, generally. I think I learned the fact—possibly heard of it before in the streets during the discussion of the matter—that there were supposed to be papers in Moulton's possession, and I am quite confident I learned that fact definitely from Mr. Woodruff at that interview, that Moulton had papers which it would be necessary for me to see. I think it was in that connection that he made the request that whatever was communicated to me should be kept as sacredly as if it was communicated in the confidence of a professional engagement.

Q. Was anything said in this conversation concerning any line or mode of denial? A. Not between me and Woodruff.

Q. [Continuing.] Or of the difficulty of denial, or anything of that kind? A. No, I think not.

THE FIRST MEETING AT GEN. TRACY'S OFFICE.

Q. Now, what next occurred in this matter? A. Very soon after that, it may have been the next morning, but one morning very soon after that interview between myself and Mr. Woodruff, he and Mr. Moulton came into my office about 9 o'clock in the morning, and he introduced Mr. Moulton to me.

Q. Before that time he was not personally known to you? A. No, Sir; that was the first I had ever seen Mr. Moulton to know him; I think it was the first time I had ever seen him at all.

Q. This was at your office? A. At my office in Montague-st.

Q. What was the interview there? A. The subject of the introduction was referred to—the conversation that I had had with Woodruff was referred to, and he came to introduce Mr. Moulton to me, and to make an appointment for an interview between Moulton and myself in regard to the subject of this publication, and what answer should be made to it.

Q. Was the publication then present before you? A. It was not.

Q. Were there any papers brought by Mr. Moulton, or otherwise present, connected with this matter? A. No, Sir.

Q. What was the further substance, if any, of that conversation? A. The conversation was entirely general, such a conversation as would ordinarily occur on such an occasion; it was the introduction of Mr. Moulton to me; there were some remarks incident to such an introduction, and then the subject of the conversation was alluded to, and the fact——

Q. The subject of the former conversation? A. No, the object of the introduction was alluded to, and the fact that they wanted to make an appointment with me, where the papers could be present and time had for consultation and consideration. The scandal was alluded to in a general way, but nothing definitely or specific, that I remember.

Q. Was there anything said in this conversation concerning any proposed line or mode of meeting or denying the—— A. Nothing except the question that they wanted to submit to me was whether it was wise to deny—to make an answer to the publication in a public card, and if so, the form of that public card, and who should join in it, and how it should be made.

Q. To proceed no further than that? A. No, Sir.

Q. That matter being reserved for the interview. Was there anything said at this conversation about it being necessary that the papers should be present for the interview, and where, if any, was the interview appointed to take place? A. It was; when they stated the object and purpose of the interview, I said: "Of course, I can say nothing on this subject until I see the papers, Mr. Moulton, which I understand you have in your possession." He said he had papers; perhaps he had said that he had papers that it would be necessary for me to see, before that, but I certainly said in that interview that no opinion could be expressed one way or the other concerning what action ought to be taken, without an examination of the papers which he had; and I understood at the time that he had a statement or communication from Mr. Beecher on the subject, and one also from Mrs. Tilton.

THE CONSULTATION AT MR. MOULTON'S HOUSE.

Q. Was an appointment made? A. An appointment was made for the next Sunday afternoon, at Mr. Moulton's house.

Q. Did you attend there? A. I did.

Q. Now, before going to that meeting, and, of course, therefore, before any of these interviews of which you have already spoken, had you had any communication with Mr. Beecher on the subject of the consultation or interviews to which you were invited? A. No, Sir.

Q. When you went there, therefore, you had nothing to say with Mr. Beecher, and had no instructions or authority of any kind from him? A. None whatever.

Q. Now, Mr. Tracy, that interview, which has been made the subject of evidence—I wish you would state how the matter went on; what hour of the day did you go there, and how long did that interview last? A. I went there immediately after my Sunday dinner; I can't

speak definitely as to the time, but I dine Sunday from one to half-past one, and went soon after that to Mr. Moulton's house; I am confident I reached Mr. Moulton's house between two and three o'clock that day.

Q. And how long were you there before leaving the house? A. I left the house not earlier than 10 o'clock, and perhaps as late as 11 o'clock, that night.

Q. Now, at the first intercourse there who were present? A. When I went into the house I found Mr. Woodruff there, I am certain. I have a faint impression that Mr. Tilton was there also, but of that I would not be certain. Mr. Woodruff and Mr. Moulton—Mr. Moulton and myself, and I think Mr. Woodruff, soon after repaired to the study in the fourth story. I am quite confident Mr. Woodruff went with us, but of that I am not absolutely positive. On reaching the study in the fourth story——

Q. Mr. Tilton did not go with you? A. Mr. Tilton did not go with us into the study, if he was in the house. After reaching the study, Mr. Moulton went, I think, to a tin box that he had, and took from it some papers. The first paper that he showed me was the paper then known as "The Apology," now called the "Letter of Contrition," and he showed it to me—gave it to me into my hands. I looked at it, and began to read it.

Q. Is this the paper? [Handing witness a paper.] A. That is the paper.

Q. Just give us the number of the exhibit, Mr. Tracy, if you please. A. Exhibit No. 2. He handed me the paper, and I began to read it. The first thing that attracted my attention was the character of the handwriting, and I said to him, "Mr. Moulton, is this Mr. Beecher's handwriting?" He said, "No." I said, "Whose is it?" "It is mine." I went through it that way [turning the leaves quickly]. I said, "How do you write a letter to yourself?" And at the time I went through it that way [illustrating], I said, quick, "It is not signed." He said, "Yes, it is." And just at that instant my eye caught this indorsement or memorandum at the foot of the sheet, not seeing it as I looked at them first in that way. He said, "Yes, it is signed by Mr. Beecher;" and I saw the form of the signature of Mr. Beecher.

Q. What did he say? A. He said in that connection, "It is a memorandum, or notes of a conversation I had with Mr. Beecher." I then read the paper over, sentence by sentence, and studied it for some few minutes—I don't know how long, and I said, "I don't see that this paper prevents a denial of the Woodhull publication. That publication charges that Mr. Beecher has lived a life of adultery with Mrs. Tilton for years. This paper states, I see, that 'she is innocent, sinned against, bearing the transgressions of another. Her forgiveness I have.'" I said, "It seems to me that that language would not be used of a woman with whom a man had lived in adultery for years." Mr. Moulton said nothing. He then showed me—the next paper was the retraction of Mrs. Tilton.

Q. Is that the paper? [Handing witness a paper.] A. That is the paper; Exhibit No. 6.

Q. No. 5? A. It is 5. It was first marked 6, and changed to 5.

Q. Well, did you read that? A. I read that.

Q. What did you then say to him upon reading that? A. I don't remember whether I said anything to him on that subject before he showed me the explanation of Mrs. Tilton. He showed me that in about the same connection.

Q. Now, about this paper, did you make any comment about what the offense or charge in that paper was? A. I did immediately on reading the paper, or very soon after—I cannot say the precise order in which I made the comment——

Q. What comment did you make? A. I made it sometime during the conversation—a comment——

Q, At this stage what were you looking at, when you made this comment?

Mr. Beach—He says he does not remember at what stage he made the comment.

Mr. Evarts—Was it while you were looking at this paper? A. Yes, it was while I was looking at this paper; it was while I was looking; he said after I had read what is the postscript to this retraction——

Q. What comment did you make? A. I said during the conversation, or about that time, that this paper would simply seem to imply that Mr. Beecher had been attempting the virtue of Mrs. Tilton without success, or some general remark of that kind.

Q. What did Mr. Moulton say, if anything, about that? A. I don't remember that Mr. Moulton made any specific reply to my remark at this stage; my recollection of Mr. Moulton's position at this stage of the interview was that it was one of silence, showing me the papers, listening to my remarks and criticisms upon them without saying anything, until I asked him a question further on in the conversation.

Q. Well, did you at this stage of the conversation ask him concerning the history and origin of that paper? A. I did.

Q. What passed between you on that subject? A. I asked him the history of the paper; he said generally that after Mr. Tilton had accused Mr. Beecher, Mr. Beecher went to Mr. Tilton's house, while Mr. Tilton was absent, and obtained this paper from Mrs. Tilton; and that on Mr. Tilton going home and learning that fact, his wife gave him an explanation of this paper, which he also showed me.

Q. Look at this and say if that is the third paper that was shown you? A. Yes, Sir, that is the paper.

Mr. Evarts—That is Exhibit 6.

Mr. Shearman—Yes, Exhibit 6.

Q. Now, Sir, did Mr. Moulton say to you anything concerning this retraction of the wife, and Mr. Tilton's intervention and what had been done about it? A. He

did; he said that Mr. Tilton came to him the next day, I think he said.

Q. After this? A. After this retraction was obtained by Mr. Beecher, very much offended that Mr. Beecher had obtained such a paper from his wife; Mr. Moulton said that he went round to Beecher's and obtained the paper from Mr. Beecher, and I then alluded with him to the pistol scene.

THE PISTOL SCENE DESCRIBED TO GEN. TRACY.

Q. As mentioned in the Woodhull publication? A. The Woodhull publication, in connection with his obtaining from Mr. Beecher this retraction; and that is the first that I remember of Mr. Moulton beginning to talk to me during that interview—when I asked him about the pistol scene in connection with this paper; he went on to state to me that he had—he said the statement in the publication that he obtained this by a threat from Mr. Beecher was false; that he went to Mr. Beecher and asked him for the statement, and he told him that Mr. Tilton was very much offended at him for having obtained this paper, and he told him he thought he had done a very unwise and very wrong thing in obtaining such a paper from Mrs. Tilton under the circumstances; that he asked him to return it; that Mr. Beecher first objected, saying that he wanted it for his protection, and he did not see why he should surrender it.

Q. Protection under what circumstances? A. In case the charge should be repeated; Mr. Moulton said he told him that if he would give it to him, he would keep it for him, and he would keep it with Mrs. Tilton's letter to her husband, which I had learned during this conversation had been given by Mrs. Tilton to her husband; that he would keep this retraction with that letter.

Q. You do not mean this letter? A. No. I mean another letter.

Q. What letter? A. I mean the letter that is referred to in the retraction as inculpating him.

Q. The letter of charge? A. The letter of charge, or whatever it was; I don't think the character of it was then mentioned.

Q. The letter to which the retraction referred? A. Yes, Sir.

Mr. Beach—To which the letter of retraction referred?

The Witness—Yes, Sir.

Q. That refers to the first letter of apology, doesn't it? A. A letter "inculpating my friend."

Mr. Shearman—It refers to the letter of Mrs. Tilton's, dated Dec. 29.

The Witness—I suppose it is the letter that now turns out to be the 29th, although the date of the letter did not appear then, because it was not present.

Mr. Evarts—Well, there is no difficulty about that.

Q. Well, that letter he would keep, which——

Mr. Shearman—The one that has been destroyed.

Q. Well, that he would keep the retraction, with the charge to which it referred? A. Yes; and he said in that connection, in saying to Mr. Beecher, "I will keep it as sacredly as I do the other paper—the letter;" he said, "I put my hand"—I understood him to say (and from his gesture I got the impression that his pistol was carried in a pocket on the hip)—but he said he put his hand on his pistol and said to Mr. Beecher, "I will protect it with my life;" and he said that was the only connection in which he referred to a pistol at that interview—he made no threat to Mr. Beecher, and never referred to his pistol except in saying, "I will protect the paper, if you give it to me, with my life."

Q. Did he state explicitly that he did not threaten either in manner or in words? A. He did, as I understood him; and he said that he—I asked him then—I said then, "The charge in the Woodhull publication is entirely false in this respect?" He said it was; no threat or anything of the kind.

PARTS OF MRS. WOODHULL'S STORY DENIED.

Q. Now, did you ask him where the letter of charge, or accusation, of Mrs. Tilton was? A. I think that was spoken of, and he said it had been returned to Mr. Tilton and, I think, he added, destroyed; at all events he told me that it was not present there, and gave me some reason for its not being present.

Q. Did you discuss with him the question that had been suggested as arising between him and Mr. Beecher as to whether Mr. Beecher had done wrong in getting this retraction? A. There was a reference to that; I said I didn't see why he should charge Mr. Beecher, or that Mr. Beecher had done wrong in getting the retraction; I could not see that a man would not be justified in obtaining a retraction from a woman who had given a letter which had become the subject of accusation against him; and then he called my attention to what I had not perceived in the retraction; he said, "The retraction is something more than a mere retraction; it implies that Mr. Tilton coerced the letter from his wife, and that was what gave great offense to Mr. Tilton."

Q. Were any other papers than these three shown to you by Mr. Moulton at the time? A. Not at this time.

Q. Then how did the further consideration of the Woodhull scandal come up? Was the paper containing that scandal before you at the interview, and brought out? A. I think it was—it was; the next subject that I remember as having been alluded to by Mr. Moulton and myself was that part of the publication which represents that he and Mr. Tilton went with Mrs. Woodhull into the presence of Mr. Beecher, and there Mr. Tilton made a speech to Mr. Beecher, urging him to preside at the Steinway Hall meeting; I asked him if that scene occurred as stated in the Woodhull publication, and he said it did not.

Q. What language did he use, or what form of expression, in substance? A. He said it was false.

Q. Was the part of the paper containing this last statement read and considered between you when you were thus discussing that point? A. That I cannot say positively—of course the scandal was familiar to all of us at that time—the publication—the different parts of it; it was either read, or else I remembered it so distinctly as to be able to allude to it, and he remembered it so as to answer; we understood each other on that subject; whether it was done by reading, or whether it was done by recalling it from memory, I cannot now say.

Q. And he said that the scandal was untrue in that respect? A. In that respect, he said, the scandal was untrue, or false—I am not certain which word he used.

Q. Did you make any suggestion——

SOME LEADING QUESTIONS OBJECTED TO.

Mr. Beach—It seems to me, your Honor, if the counsel will permit me, that this mode of examination is somewhat leading—precise and suggestive questions, made by the examining counsel to a lawyer upon the stand, instead of pursuing the ordinary course of asking him to state the conversation, the interview.

Mr. Evarts—Oh, very well; if we ask him to relate all the conversation it would occupy several hours.

Mr. Beach—Well, he will relate what he recalls of it, I take it.

Judge Neilson—I think that would be as well, Mr. Evarts.

Mr. Evarts—Well, I, of course, should be very glad to save myself the trouble of asking.

Mr. Beach—Yes; there is not much trouble when the questions are prepared!

Mr. Evarts [to the witness]—Was any suggestion or inquiry made concerning any source of information that the Woodhulls had?

Mr. Beach—The gentleman does not seem to pursue your Honor's suggestion in regard to the mode of examination of this witness.

Mr. Evarts—I don't think there is anything improper in my question. I shall endeavor to avoid anything that is improper.

Judge Neilson—The learned counsel suggests that the more correct method would be to ask Mr. Tracy to state what occurred in the conversation; what was said—of course reserving your right to interrogate him as to specific matters afterward.

Mr. Evarts—If your Honor please, I have no doubt that my learned friends are quite right in thinking that there should be no suggestions, on my part, of the answer; but I don't think it is contrary to the usual method, either to show the facts, or to the ordinary proprieties, in the course of an interview which embraces various topics, that there should be an orderly inquiry concerning the various topics. That has been the effort on my part, and that alone.

Judge Neilson—No; it is proper for counsel to indicate to the witness the particular branch of the subject which he wishes him to state; otherwise he might extend it too far.

Mr. Evarts—This last question of mine is of that nature.

Mr. Beach—Your Honor has repeatedly indicated in the course of this trial, and you have applied the rule to us, that in the examination of a witness concerning an interview at which he was present, and other parties, the proper mode of examining, after drawing attention to the preliminaries of the interview, would be to ask him what transpired, and get from the witness in advance his spontaneous recollection of the interview, so that we may judge somewhat of the accuracy of his memory in regard to it, and then if anything has been omitted, in the judgment of the examining counsel, to put to him specific questions as to the subject which had been discussed at the interview; and I submit to your Honor that that course is eminently proper in the examination of the present witness—one of the active and leading counsel upon the part of the defense, and who is quite competent to express his present recollection of the occurrences at the interview which he has related.

Judge Neilson—It seems to me that is the proper course, Mr. Evarts.

Mr. Evarts—I do not think we understand one another on that subject, if your Honor please. It is very easy to talk of a single point of discussion in an interview relating to that point; but here is a conference that extended through several hours, in regard to which there are at different times different persons present, and in respect to which the production of the conversation as it actually occurred is the object on both sides; and all that I have a desire for is that the progress of the narrative shall be in its actual order, not subject to the momentary force of recollection of a prolonged interview. I agree that two men might have a talk on a particular subject, and there is no occasion for any other mode of distinguishing or discriminating than would arise in the method that has been suggested; and I shall endeavor to observe the rule of examination which your Honor has intimated, and as I understand it.

Mr. Beach—It is undoubtedly desirable, if your Honor please—I do not impute anything in the way of impropriety in the object of my learned friend—but it is undoubtedly desirable that we should get the interview as nearly as possible in the order that it occurred, and the question is whether we shall be more likely to get it from the present unaided recollection of the witness, or by a lead on the part of the counsel, following a minutely prepared statement, in support of any theory which may have been advised in regard to this conversation. I prefer to take, and I suppose from your Honor's observation that you think that is the proper course—I prefer to take

the unaided, the unrefreshed recollection of the witness while on the stand, rather than the suggestion and leadership of the counsel examining.

Judge Neilson—That is the course we have pursued hitherto, and I see nothing to prevent its being pursued now.

MR. MOULTON DENIES BEING MRS. WOODHULL'S INFORMANT.

Mr. Evarts—Now, Mr. Tracy, will you answer the question? A. After Mr. Moulton had stated to me that this last part—this part of the Woodhull publication last referred to—was true, I said: "Of course, then, Mrs. Woodhull never got any information from you of this kind." He said: "Certainly not; I never informed her a word of anything she has published in that publication." As nearly as I can recall the conversation in the order in which it occurred (but that I hardly attempt to do—to state orderly how each part of the conversation succeeded the other), but as near as I can recall, the next thing that occurred was, I asked Mr. Moulton: "Well, did Mr. Tilton ever give Mrs. Woodhull this information?" His reply was: "I don't believe he ever did; I don't believe he ever said a word to her on the subject of Mr. Beecher's relations with his wife." Then I asked Mr. Moulton: "Well, what does Mr. Tilton charge Mr. Beecher with? Does he now charge him with adultery?" He said, "No." I said: "What is the charge?" He said: "I would rather Mr. Tilton would state that to you in his own way, if you will consent to hear it." And he asked me if I had any objection to hearing a statement from Mr. Tilton. I said I had not, if Mr. Tilton felt disposed to make it. I then learned for the first time Mr. Tilton was to be present at that interview. I am sure he said to me either that he had Mr. Tilton come to the house, or that he had notified him to come, with reference to this interview.

GEN. TRACY ON PROFESSIONAL ETIQUETTE.

—And he went out of the room, was gone some few minutes, and returned with Mr. Tilton, and Mr. Tilton and I spoke, and then I think Mr. Tilton proceeded with the conversation—took up the conversation from that point, and said something about my having been called into this case without his knowledge, or consent, or approval. He said: "Mr. Tracy, I will ask"—or he said: "I am about to (I am not sure which)—to make a statement to you about my case against Mr. Beecher; I dont know what the etiquette of your profession allows. If I make a statement of my case against Mr. Beecher to you, and Mr. Beecher and myself should afterward come into collision, would the etiquette of your profession permit you to be counsel for Mr. Beecher?" I replied, "Mr. Tilton, without discussing what the etiquette of my profession would or would not allow, I say to you that if a person having a controversy with another, comes to me and makes a statement of his side of the controversy, and the parties should afterward come into collision on that case, I should not feel at liberty to become counsel for the other party."

MR. TILTON DISPLAYS THE "TRUE STORY."

—Thereupon, Mr. Tilton unfolded, as I remember, the covering of a manuscript which he brought with him into the room, and began to read a statement; the manuscript was in loose sheets, detached, and was much erased and underlined, and while it was generally written on one side of the sheet, parts that had been erased and rewritten were in some instances, as I remember, as he turned them over, written on the other side of the sheet; and he read and talked about his relations with Mr. Beecher and Mr. Bowen; he stopped to elaborate points that he had made in writing and to make explanations, and he talked and read; it is impossible for me to discriminate between what was written and what was conversation, but as I remember the story I have a recollection; the general tenor of it was in effect what——

Mr. Beach—Wait one moment, Sir; I object to that statement.

Judge Neilson—They want the language, as far as you remember it, Mr. Tracy, and, so far as you do not remember it, the substance.

Mr. Fullerton—He is going on to say what was in the written statement.

Mr. Evarts—Yes; he was.

Mr. Beach—He was going on to say worse than that. He was not going to say what was in it, but, as near as he could remember, it was like something else.

Judge Neilson—Well, the witness, as he now remembers it, will state it.

Mr. Evarts—I will ask him the question, so that you may make your objection.

Judge Neilson—Counsel understood the witness to be stating generally an inference which does not depend on his own knowledge.

Mr. Evarts—Oh, I think the objection was a proper one. [To the witness.] What I was going to say was to obviate their objection. Was this paper or collection of papers read through, or apparently read through, by Mr. Tilton? A. It was.

Q. Can you repeat that paper as you heard it read? A. Oh, no, Sir; the reading of it occupied, and the talk in connection with it occupied, a considerable time; I should say a long time.

Q. Well, about how long? A. Well, I should say not less than an hour in continuous reading; but Mr. Tilton's explanations and talk, I should say, something like an hour.

Q. You have examined the "True Story," that has been produced at this trial, so far as it has been produced in

the shape in which it has been produced, Mr. Tracy? A. I have.

Q. From your recollection of the paper as read to you, and your knowledge of this paper so far as it is in evidence, are you able to say whether the paper read to you on that night was, in whole or in part, the paper that is produced here; or whether the paper produced here, in whole or in part, is the same as the paper that was read to you?

Mr. Beach—Objected to, Sir.

Mr. Evarts—That is objected to.

Judge Neilson—I think he can answer that.

Mr. Evarts—I should think so: we have had it substantially from the other witnesses in that way.

Mr. Beach—Haven't had it at all from anybody in that way. Isn't it for him to relate what was said, what was read at the time?

Judge Neilson—Doubtless.

Mr. Evarts—Of course, if he can.

Mr. Beach—If he cannot do it, that is a misfortune; his recollection is at fault. Is it proper to prove what a party read or said by a comparison, through the recollection of the witness, with another paper, not then present—not pretended to be then present—a mere copy of which has been here produced? It seems to me that cannot be permitted, Sir. Again, Mr. Tracy says he cannot discriminate as between the paper that was read—that is, the utterances of Mr. Tilton giving the contents of the paper—and his spontaneous commentaries or remarks upon it as he went along. We shall get, then, not all that he said by the testimony of the witness, but the comparison of it with what is called the "True Story," which has been put in evidence. Now, the objection to this is that it is the duty of the witness, in relating that conversation, to give us his recollection of it as it occurred, and he cannot give us the conversation as to which he is examined by saying at it was, in substance, like a publication in the newspapers or in a book, or any other document; that is a comparison by a standard, not giving the recollection of the witness as to the actual occurrences at the interview. I submit that this mode of producing what was said or done, or read, by Mr. Tilton at the time of this conversation is inadmissible. We can only get it by the recollection from the witness of the substance of what was said, according to his present recollection. He can proceed and give the substance. I don't know but he might be permitted to take this "True Story," which is produced in evidence, as a memorandum for the purpose of refreshing his recollection, and saying that this and that was done; but to adopt this "True Story" in evidence otherwise, or by other means, which is a mere copy of the supposed "True Story," as a standard by which the witness shall say what Mr. Tilton spoke on that occasion—in accordance with this paper, or this standard, is unprecedented, I submit, if your Honor please.

Judge Neilson—When I made the intimation I had in view the simple idea that if there were a letter or paper the witness might be asked whether he had seen—whether that letter or paper had been shown to him.

Mr. Beach—Oh, yes.

Judge Neilson—In which case, of course, you hand the paper to the witness. But this is more complex.

Mr. Evarts—I assumed—if your Honor will allow me a moment—I assumed that my learned friend would consider Mr. Tracy's knowledge of the "True Story" as produced in evidence as sufficient, without producing the exhibit itself. [Handing witness TRIBUNE copy of the "True Story."]

Judge Neilson—No doubt. But the jury are entitled to the recollection of this witness as to what was said or what passed.

Mr. Beach—Well, if the question applies to that it does not remedy the difficulty.

Mr. Evarts—I know; the objection is met.

Mr. Beach—Now, I am perfectly willing that Mr. Tracy should refresh his recollection by looking at that pretended "True Story"—pretended copy of the "True Story." But then, Sir, when he looks at the memorandum he must testify from his recollection as to what was said by Mr. Tilton upon that question.

Judge Neilson—Yes, thus refreshed, or not refreshed, so that you get his recollection; that is the point.

Mr. Evarts—Your Honor will perceive that the question which I framed, I think (or intended to,) correctly, was a preliminary question asking him whether he was able to state, which of course he will answer according to his recollection whether he is. If he is not able to state, then, his imperfect recollection, or his complete recollection, as it may turn out, will be the subject of a further inquiry.

Judge Neilson—Well, you recognize this, of course, that they have a right to exact his recollection of what was said.

Mr. Evarts—Oh, I agree to that.

Judge Neilson—Because, as to all witnesses, it is desirable to see how much the witness does recollect, and how much he does not.

Mr. Evarts—I take it we all know that if, for instance, an author is inquired of as to his being the author of a composition which was published in one of our reviews or newspapers, you cannot expect him to have committed to memory his draft, and yet it is the most direct and explicit evidence upon looking at the publication—"That is the paper that I wrote."

Mr. Beach—It is quite a different thing from asking a third party whether that was the paper he wrote, according to his declaration, if made at the time.

Mr. Evarts—Well, the third party has heard it read from the draft.

Judge Neilson—Now, the witness has the benefit of seeing this paper, I think you should interrogate him as to

his recollection of what was said and read there on that occasion.

Mr. Evarts—I think your Honor will perceive that my question is really (as I meant it to be) whether he can state. Then he can answer yes or no.

Mr. Beach—Let us see what the question is first.

Mr. Evarts—Mr. Stenographer will you read the question?

The Tribune stenographer—No, Sir; the gentleman who just left the court took my notes with him.

Mr. Evarts—I will renew the inquiry. [To the witness.] You have before you Exhibit No. what? A. "D, 114."

Q. D, 114, being a printed production of the "True Story" so far as in evidence. Upon looking at that, are you able to say whether the statement, as read to you by Mr. Tilton on that night, is this statement as you see it there, or any parts of that that you recognize as being in this statement as read to you by Mr. Tilton? A. Parts of it, certainly——

Mr. Beach—Wait one moment. That is not an answer to the question.

Mr. Evarts—Are you able to state?

Mr. Beach—The question is whether you are able to state——

Mr. Evarts—Are you able to state whether that is the same paper or parts of it? A. I am.

Q. Or whether parts of it are? A. I am, in a qualified sense, able to answer your question that I am.

Q. Well, what parts of this paper now before you do you remember as having been read to you by Mr. Tilton? A. Well, I cannot carry in my mind all this paper; I have not read it through; I can only say, from general recollection, that I remember some documents that were in it being embraced in this paper that Mr. Tilton read, and I remember some themes discussed; I remember generally the drift of that statement, but I should have to go over this, item by item, before I could answer your question accurately.

Q. Well, as to the commencement—have you any recollection on that subject? A. My recollection is that the statement that he read to me that day began substantially as this——

Mr. Beach—That I object to.

Judge Neilson—Oh, tell us what your recollection is, Mr. Tracy. A. My recollection is that the statement that he read that day began by an allusion to the publication of the Woodhull paper during his absence from the State.

Q. Yes? A. And I recollect that he also alluded to the fact that when he arrived home, his first impulse was to write a card denying it or denouncing it in some way; I do not remember the phraseology; I remember that Mrs. Morse was introduced, his mother-in-law, in that statement; I remember generally, that the statement was a detailed narrative.

Mr. Beach—Wait; I object to that.

The Witness—Let me understand. Is it desired that I should go over this, paragraph by paragraph, to see what I do or do not recollect?

Judge Neilson—No; it is desired that you should tell us what you recollect was said and read that evening, refreshing your recollection, if need be.

Mr. Evarts—So far as you can with the aid of that paper, if it recalls to your mind and memory what occurred that evening.

Mr. Beach—Yes, but I don't want the witness to make that paper testify instead of himself, and read it from that.

Judge Neilson—No; you want his recollection of what was said and read.

Mr. Evarts—He will not read it from the paper.

Mr. Beach—I don't know whether he will or not.

Mr. Evarts—He has not been asked to.

The Witness—Well, of course, this putting this paper in my hands has not refreshed my memory, for I nave not read it.

Mr. Evarts—You are to look at it.

Judge Neilson—Well, Mr. Tracy, it seems to me it would be very easy for you to state, so far as you do remember, what was said and read there on that occasion, and then matters omitted will be called to your attention afterwards.

The Witness—If your Honor please, it is utterly impossible for me to repeat that paper that he read there; I cannot do that—I can only state the points touched upon by that paper, andits general drift, by stating the substance of it; that is all I can do. I can go over this paper, passing each paragraph in review, and tell you whether I recollect that that was alluded to, or was not alluded to.

Judge Neilson—Well, that is not what is desired. You should give, as it seems to me, what you remember was said, either by conversation or reading, as far as you do remember, on that occasion, and then further if the paper need be used——

The Witness—Does your Honor mean to suggest that I can repeat the language of the paper on the subjects that the paper touched on?

Judge Neilson—Not the language of the paper, no, Sir; but what was said and read according to your best memory, same as you would treat every witness when you examine him.

Mr. Evarts—Well, Mr. Tracy, pursue that method now; what do you remember as having been included in this statement as read to you that night by Mr. Tilton? A. You mean the subjects included in it, Mr. Evarts?

Q. Yes, the subjects? A. Well, I remember that his relations with Mr. Bowen were treated of in that paper; I remember that his breach with Mr. Bowen was set out in that paper; I remember the letter of the 26th of December that was written by him at, as stated, at the suggestion of Mr. Bowen to Mr. Beecher was in that paper; I

remember that the letter of Jan. 1, written by Mr. Tilton to Mr. Bowen, was in that letter with a statement.

Q. Jan. 1, 1871? A. 1871, with a statement of its history; I remember that it quoted a paper——

[At this point, Mr. Evarts being engaged in consultation, the witness ceased speaking.]

Mr. Evarts—Well, you can complete this.

The Witness—I know that the paper contained a statement of a writing from Mrs. Tilton informing her husband, that her friend, Henry Ward Beecher, had solicited her to be a wife to him with all that that implied. I recollect the statement as given that day to be substantially the statement here.

THE OMISSIONS IN THE PRESERVED COPY OF THE "TRUE STORY."

Q. Now, this paper here does not purport to be a full reproduction of any documents; there is a gap in it as we all know. Do you remember anything that was in that paper, as read to you, that is not in this paper here? A. I think I do; I remember that that paper—in that paper was quoted all or a part of what is known as "The Apology" or "Letter of Contrition;" I cannot say whether it was all or a part.

Q. That is this Exhibit No. 2? A. Exhibit No. 2; and I know that Mr. Tilton either read or spoke, in connection with that letter, a sentence complimentary to his wife for having resisted the amorous pleas of her pastor; I remember that phrase.

Q. Well, Sir, you heard the document read? A. I did.

Q. After it was read, please state, so far as you recall, what then occurred in the way of conversation? A. I listened to the reading of this document, and when it was through I asked Mr. Tilton, "What is your purpose, Mr. Tilton, in drafting such a document as that?" He said he was trying to see whether he could frame a successful answer to the Woodhull publication. I asked, "With a view of publishing it?" He said that that was to be a matter for consideration; if he could frame an answer satisfactory to himself, he proposed then to submit it to Mr. Beecher, and if Beecher should be satisfied with it, then to publish it. "Well," I said, "do you think Mr. Beecher will be satisfied with such a publication as that?" He said he didn't know; that was the question. "Well," I said, "I don't think he will." He said, "He will have to be satisfied with what is the truth." I said, "Certainly, but the question is whether that is the truth; your wife says in her retraction that your charge against Mr. Beecher is not true."

MR. BEECHER ACCUSED OF MEANNESS.

—At that Mr. Tilton became somewhat excited, and spoke vehemently against Mr. Beecher for having obtained that paper from his wife under the circumstances. He said that it was a very mean thing for Mr. Beecher to do; that his wife was sick and unable to resist his demands, and that he took advantage of her weakened condition and dictated to her that answer, and got her signature to it, and that his wife had taken it back, and Mr. Beecher had admitted that the charge which he then made against Mr. Beecher was true. I asked, "Where has Mr. Beecher admitted that?" "Why," he says, "in that Letter of Apology—in that letter or paper." I said, "Mr. Tilton, I don't think that you can say that Mr. Beecher has made any such admission in that paper." I then—I think I then took up that paper and went over it again; I know I did after the statement—after Mr. Tilton had made his statement. Whether I did it immediately on his finishing it, or further on in the conversation, I cannot remember; but I went over that "Letter of Apology" again carefully, and I said to Mr. Tilton: "The language of this letter or this paper is so general that I do not see that you can apply it to anything specifically, and your wife has said that Mr. Beecher never made any improper solicitations to her." In that conversation, while he was excited, in denouncing Mr. Beecher, he said Mr. Beecher was an adulterer and he could prove it; I remember that phrase, and I said to him, "With your wife?" and he replied, "No, but with another woman," or "women"—"other women"—I am not certain which phrase he used. We continued the discussion of that proposed answer of his to the Woodhull publication.

MR. TILTON DENIES BEING MRS. WOODHULL'S INFORMANT.

Q. Now, Mr. Tracy, I will ask you a question here. Previous to this discussion in which Mr. Tilton made this statement that Mr. Beecher was an adulterer and he could prove it, as you have just repeated it, had there been or was there a conversation between you and him as to what the charge that he made against Mr Beecher was or what it was not? A. Yes, Sir.

Q. Please state that? A. After he had finished the reading of this paper, I said to him in substance—I don't remember the phraseology—"Your statement, Mr. Tilton, settles one thing—that you did not charge Mr. Beecher with adultery." He said, "No, my wife is a pure woman;" I remember that phrase and that sentence occurring.

Q. In that connection, or in this interview, was anything said between you and him as to whether he had conveyed to Mrs. Woodhull any such charge? A. Yes, Sir.

Q. What was that? A. I asked him in that connection—somewhere in that connection—whether he had ever stated to Mrs. Woodhull what she said he stated in that—in her publication; he said he never had; he never had given that woman one word of that information; that in that respect that information was entirely false, or that publication was entirely false; we went on with the

discussion of that paper as a proposed answer to the Woodhull publication, and the discussion was a very long one; it is impossible for me to repeat or narrate all that was said *pro* and *con* on that matter; there were various views of it suggested which I recollect, but it is impossible to recall in the order in which they occurred.

Q. Please state them as they come to your mind. A. I remember of saying to him—asking him at one point of the conversation, "Mr. Tilton, tell me what are your present feelings toward Mr. Beecher," and he either said "They are kind and friendly" or "They are not unkind or unfriendly;" I can't say which form of expression he used; I said, "What is your motive in making an answer to the publication? Do you want to make an answer that will settle it and bury it, or do you want to make an answer that will continue this discussion?" He said he wanted to bury it and get it out of the way; well, I asked him if he thought that publication would do it; well, he—I don't recollect that he was clear in his answer in that respect; he said he thought it was the best that could be done under the circumstances; I said, "Why not deny this publication, Mr. Tilton? You say that you never gave this woman this information; you say that you never charged Mr. Beecher with adultery; now, why don't you deny the publication simply, and say that it is false; content yourself with a simple denial instead of such a statement as this?" He said—he gave two reasons in answer to that question; in the first place, he said, "That is precisely what these women want me to do," or "this woman wants me to do. If I come out and deny this publication, and say it is false, that accuses them of having published a libel, and they will bring an action in the courts, and we will all be subpenaed, and we shall have to tell as witnesses, precisely what the facts are, and that will bring out the facts just as I propose to publish them, and I may just as well publish them this way as to have them brought out in a litigation." I attempted to ridicule the idea of their bringing a libel suit if he answered that card by a simple denial, and said, "An action for libel won't lie; that is ridiculous to talk about an action of libel in connection with the denial of this publication." His reply was, "Well, they can bring it, can't they?" I said, "Yes; they could bring an action, of course." "And they could subpena the witnesses?" "Yes." "Well," says he, "they don't care whether they succeed or not; it will serve as a pretext to get the facts before the public, and therefore I have carefully framed an answer—tried to—which shall not be liable to the charge of libel, and yet which shall state the facts as they are." Another reason he assigned was that he thought the charge of Mrs. Woodhull was too circumstantial and particular to be answered by a general denial. He said that if the parties implicated in it simply denied it, that people would not believe the denial, that they would believe there was something more of it, and they had got to have a statement of what the truth was, and when they saw what the truth was they would say, "Well, we knew there was something in this, and now we know what it is," and they would be satisfied with it, but with a general denial they would not be satisfied. Those were the two reasons which he assigned for this form of statement. I argued against that, and argued in favor of a denial. He said, "I cannot deny"—he assigned no reason, but he said, "I cannot deny that truthfully; I cannot say that this whole Woodhull publication is false—in other words—" he said, "I cannot say it is a lie," and he there brought in his illustration of *The Police Gazette*. He said, "You may take a *Police Gazette*, and you may know that there are a hundred lies in the newspaper, in that paper, but you cannot say that that whole paper is a lie, because it may contain a hundred truths. Now," he says, "while this publication of Mrs. Woodhull is generally false, there are things in it that I cannot say are untrue;" and during the course of the conversation he went on to specify, and did specify some things that he said he could not say were untrue, and therefore he could not publish a card truthfully which said that that paper was a lie or false. I argued against that as well as I could; I said to him that, "Your illustration of *The Police Gazette*, Mr. Tilton, is not true, it seems to me. This publication is a continuous story, and it hinges upon two facts; first, this statement that Mr. Beecher has committed adultery with your wife; and, second, that you gave that information to Mrs. Woodhull. Now, if the story is false in those two particulars, you can truthfully deny it by simply saying it is false, and not saying that you say—tell the truth."

WHAT MR. TILTON COULD NOT DENY.

Q. Mr. Tracy, I will ask you a question. You spoke of his stating some facts—of his referring to some items in this paper that he could not deny; can you state what those items were? A. I can state some of them, Sir. He says: "I cannot deny that Mr. Beecher went to my wife and obtained this retraction; that I cannot deny. I cannot deny the facts of my own knowledge what she says Mrs. H. B. Stanton said to her."

Q. That is Mrs. Woodhull? A. Mrs. Woodhull said Mrs. H. B. Stanton said to her: "I cannot deny of my own knowledge what she says Mrs. Davis said to her. I cannot deny this extract of a letter which purports to be from Mrs. Davis to Mrs. Woodhull," and he instanced several particulars that he could not deny—more than I am able to recall, and thus fortified his argument that he could not say that that publication was a lie. The conversation, the discussion, went on until supper time, and we went down to tea, as I remember; and after tea we went up and renewed it again, and it continued on from then until 10 o'clock.

Q. Do you remember whether anything was said upon the——

Mr. Beach—Has he given all that he recollects now of this conversation?

The Witness—I have not given all I recollect.

Mr. Beach—I think we had better get it, Sir.

Mr. Evarts—Well, I propose to, but not at this moment.

Mr. Beach—Well, I understand your Honor to rule that we were to get the continuous recollection of this witness as to that interview.

Judge Neilson—Certainly.

Mr. Evarts—I propose, with your Honor's permission, to ask the witness a question now with respect to the portion of the interview that is apparently closed, and I do not know that it is necessary to wait for the end of the other portions of the interview. [To the witness.] You have said that there were some other facts, or parts of Mrs. Woodhull's articles that he could not deny—some which you have not repeated?

Mr. Beach—And which he could not recall.

Mr. Evarts—And which you cannot recall. Now, I ask you, do you remember whether in this connection he spoke about presiding at the Steinway Hall meeting? A. I do; I remember he said that he could not deny that he had presided at the Steinway Hall meeting.

Q. Do you remember his saying in this connection anything about a denial of the publication of the Woodhull card? A. In *The World*—I remember that. The paper was gone over quite carefully, what he could and what he could not deny.

Q. Now, go on with the interview farther, so far as you recollect it. A. Toward the close of the interview or during—I remember another point now that occurred during this discussion. I discussed with Mr. Tilton the probability of the truth of his wife's statement in regard to the charge of improper proposals. I remember saying to Mr. Tilton in that connection, "Mr. Tilton, I can understand how you may believe Mr. Beecher has been guiity of that offense, and I can understand possibly how your wife may have conceived that he had intended to make to her an improper suggestion; but now, isn't it more probable that this statement of your wife that Mr. Beecher made an improper proposal to her is the result of a misunderstanding on her part, that she has misconstrued some remarks of his into an improper suggestion, or that she has repeated something to you which you have construed into an improper suggestion on the part of Mr. Beecher, and that that is the origin of this whole matter?" He thought not. He thought there was no mistake about it. I said, "Mr. Tilton, do you pretend to say that Mrs. Tilton, in the language she has given you, quotes precisely the language which Mr. Beecher used to her?" He said, "Yes, certainly." I said, "Do you say—do you say that Mr. Beecher said to Mrs. Tilton, 'Mrs. Tilton, I desire you to be a wife to me, with all that that implies'—do you say that Mr. Beecher used the last phrase 'with all that that implies,' to Mrs.—to your wife?" He said, "I won't say that he used those precise words to her, but that was an inference from the suggestion that she was to be a wife to him." "Well," I said, "if that part of it is an inference, Mr. Tilton, why may not all of it be by inference from what he said?" I pressed upon him the suggestion that as his wife had denied the improper solicitation, now if Mr. Beecher denied it, and he made this publication that he thought—that he was thinking of making, I thought the public would be likely to accept the explanation that this matter arose from Mrs. Tilton misunderstanding what Mr. Beecher had said, or she having repeated some remark that Mr. Beecher had made to her to her husband, who had misunderstood it, and that that was the origin of the difficulty. And we discussed the question whether, if he was friendly to Mr. Beecher, or not unfriendly to him, whether it would not be wise to consider whether that was not the truth, and whether the public would not be more likely to accept that explanation and be satisfied with such a statement, than they would with a statement which, in my judgment, Mr. Beecher must certainly deny, if made, and which his wife had already denied. That phase of the matter was discussed, and I pressed that publication strongly upon Mr. Tilton, and at great length during that discussion. I presented my views of that matter to him, that that might be a satisfactory explanation and one which the public would accept, if made by him; but at the close of the conversation, I remember that Mr. Moulton asked me what I would propose as a solution of the matter, and I then asked them again, or said to them, "That depends upon what you want to accomplish; if you want to bury this scandal, and extinguish it, I think I can propose a plan that will accomplish it." They asked what it was; and I stated it.

MR. TILTON WANTS THE PAPERS PRESERVED.

—I said, "You want to deny that publication, declare it to be a lie, and destroy the documents that you have here." Mr. Tilton at that remark of mine, turned and said, "I will not permit the destruction of the documents—of these documents. If these documents were destroyed, Mr. Beecher would turn on me, and rend me." I said, "Mr. Tilton, I can conceive no possible object which Mr. Beecher could have to revive this scandal, or this story. It seems to me that every consideration must lead him to wish it buried, and buried out of sight, and if it is once buried I can imagine nothing that would induce *him* to revive it, for the purpose of spiting you." Well, he said, he thought he would, or if he didn't, members of Plymouth Church would. I said, "What have members of Plymouth Church got against you? What motive can they have for reviving this?" He said that the members of Plymouth Church felt that he had been slandering or injuring Mr. Beecher; and in that connection he stated

that in 1871, I think it was, when this thing was discovered, he had spoken harshly of Mr. Beecher—that he had felt harshly toward him, and had spoken very harshly against him, and members of the church thought that he had been slandering Mr. Beecher, and it was these documents—I won't say that he said that—he said. if these documents were out of the way Mr. Beecher would not restrain the members of Plymouth Church who wanted to attack him. That led me to make this further suggestion to Mr. Tilton. I said, "To meet that, Mr. Tilton, how would it do if you and Mr. Beecher and your wife can agree as to what the real facts are in this case; how will it do for you and Mr. Beecher to go before one or more eminent citizens of Brooklyn, who are strangers to this controversy now, and in whom the public have confidence, and there make a mutual statement of what the real truth is in this matter, and out of which all this story has sprung, and then destroy the documents. I said that course will prevent either one from ever going back upon the other, because he will be bound by the statement that he has made to this person, or these persons, who always can state what the fact was, and Mr. Beecher cannot go back on you nor you on Mr. Beecher; and it seems to me that that will bury this whole controversy, if you want to bury it." He thought not; he differed with me; and the result was we came to no conclusion that night, so far as the publication of a card was concerned, or so far as answering this Woodhull scandal by a publication to be made by one or more of the parties. I don't know when Mr. Tilton left that interview, whether he left it before I did or not. I know I stayed late, and I cannot say that Mr. Tilton was there when I left or not. My impression is that he left before I did. I know there was a conversation between Mr. Moulton and myself that night—whether it occurred in Mr. Tilton's presence or not I cannot positively say—on the subject of what could be done for Mr. Tilton, and how he could be restored to the confidence of the people again and put upon his feet.

A TRIP TO EUROPE ADVISED FOR MR. TILTON.

Q. Well, what was said between you and Mr. Moulton on that subject? A. Mr. Moulton asked me, in substance, what, in my judgment, could be done for Mr. Tilton, if this matter was buried in this way. I said that I thought the only course for Mr. Tilton was to go to Europe; that, in my judgment, his connection with the Woodhull woman, the writing of her life, and then the publication of this scandal, had so shaken the confidence of the public in Mr. Tilton that it would be impossible for him to rebuild himself here; that I did not think that any prominent newspaper could take him on the editorial staff; but, I said, he is a ready and able writer; if he goes to Europe and gets out of this locality and atmosphere, the public will cease to associate his name with Mrs. Woodhull; he can become a correspondent of one or more newspapers, and he can write letters that the public will read and discuss, and he will come to be talked about as a writer upon European affairs, and after three or four years' absence I think this matter will be so far forgotten that Mr. Tilton can come home and take a position upon the editorial staff of any of the prominent newspapers of the country. In my judgment that is the way that Mr. Tilton can rebuild himself in the confidence of the people, and it is the only way.

Q. Did Mr. Moulton reply in any way to that? A. I don't remember that he made any definite reply to that.

MRS. MORSE NAMED AS MRS. WOODHULL'S INFORMANT.

Q. Now, Mr. Tracy, in this interview was any suggestion or inquiry made as to the sources of Mrs. Woodhull's information, affirmatively? A. There was. I asked that question. When Mr. Tilton said he had not informed—given Mrs. Woodhull any of this information, I said to him: "How do you think she got it then?" He then referred to Mrs. Morse again, and said that he supposed she had got it from Mrs. Morse, his mother-in-law, and he again dwelt upon the peculiarities of Mrs. Morse, and said that Mrs. Morse was in the habit of repeating to neighbors, out of her hatred for him, Mr. Tilton, in substance as follows: "Why! don't you believe," or "don't you think," that Theodore charges Elizabeth with having been doing this or that with Mr. Beecher, or of stating this thing or that thing; that that was the form in which Mrs. Morse had propagated these stories, by accusing Mr. Tilton of having charged such and such things, and that it went from ear to ear in that way, and he supposed it had reached Mrs. Woodhull, and that she had gathered it up and magnified it into the present publication.

Q. Was anything said as to Mrs. Morse's having communicated the facts of the intercourse between Mr. Beecher and Mr. Moulton and Mr. Tilton, with regard to the pistol scene, or anything of that kind? A. I don't think there was.

Q. Now, in the course of this interview, Mr. Tracy, when the subject of the publication of this paper that was under consideration for publication was up, was anything said as to whether Mr. Beecher could stand such a paper as that? A. I have already alluded to that, Mr. Evarts, I think. I stated to him that I didn't see how Mr. Beecher could stand such a paper as that, and I didn't believe he would; and it is in that connection that Mr. Tilton said he would have to stand what was true; and I said: "That is the question, Mr. Tilton, whether this is true; your wife has denied it; now, if Mr. Beecher denies it"——

THE POLICY OF SEPARATE DENIALS.

Q. Well, if you have already stated it you need not repeat. Now, in the course of this conversation was there a consideration or suggestion talked of between you and Mr. Tilton—between you and Mr. Moulton and Mr. Tilton—as to how this whole scandal of Mrs. Woodhull, as published by her, might be treated by separate denials? A. There was.

Q. What was said on that point? A. In discussing how it could be denied, among other ways, I suggested that each party might deny specifically the scandal so far as it implicated them in it or referred to them; and in that connection I referred to the fact that Henry B. had already denied the scandal.

Q. In some publication? A. In some publication as I understood; and I said that had done great good—her denial had done great good. I said: "Now, Mr. Moulton says that that statement, so far as it refers to him as an actor in this scandal, is untrue. He can publish a card saying in substance that so far as his name is mentioned in that scandal it is untrue. Then you can publish a card saying that so far as that scandal refers to you as an actor, you can brand it as false. If you do that, in my judgment, it will kill the scandal."

Q. What was said by him, if anything, in that connection? A. In that connection in—no, he said he could not—he would not deny it in that way; that he thought the only form of denial which could be made would be to tell the true story, and contradict the false story by simply telling the true one; that he would not brand that story as a lie, for the reasons which I had recounted. In that connection of denial I remember that Mrs. Davis was alluded to—Mrs. Paulina Wright Davis—and in that connection Mr. Tilton either read to me the letter from Mrs. Tilton, or the statement of Mrs. Tilton, in regard to the relations of Mrs. Davis to her family, or he stated them, I cannot say which; but in that interview I received the information that Mrs. Davis could and would deny the scandal—her part of that scandal, and that her case would be covered also by these specific denials. Mr. Tilton said that the scandal, so far as it represented Mrs. Paulina Wright Davis as an intimate friend of his family, was untrue, and he gave me the particulars of her acquaintance with the family.

Q. Was anything said at that interview about the continuance, or possession, of these papers in existence being a danger of an explosion? A. I think it was at that interview—I cannot say positively whether it was at that interview or a subsequent interview with Mr. Moulton, but I think it was at that interview—I think I said it that evening to Mr. Moulton, before I left.

Q. What was the observation? A. In regard to his keeping—being the custodian of these papers and the impossibility of permanently extinguishing this scandal so long as those papers were kept in existence. I said in my judgment it would be utterly impossible to keep this scandal from the public, or to extinguish it, so long as these documents were kept in existence; that it was impossible for these parties to maintain an armed neutrality toward each other. I remember using that expression; I said that if these documents were kept in existence something would occur to bring about a collision, and I said to Mr. Moulton, "I don't believe you can remain the custodian of these papers without its involving you; I would no sooner keep these papers in my house," I said, "than I would keep a powder magazine there;" I remember that expression.

Q. Now, Mr. Tracy, I call your attention to a statement which the witness, Mr. Woodruff, has made concerning this interview, or the interview this evening, that you have been speaking of; Mr. Woodruff says that Mr. Moulton immediately proceeded to tell Gen. Tracy all about the case.

Mr. Beach—What page do you refer to, Sir?

Mr. Evarts—344. And then being asked by the counsel, "What did he tell him; just repeat it now?" The witness says: "And his connection with the case; he told him [that is, Mr. Moulton told Mr. Tracy] that the essential points of this Woodhull scandal were true?" A. Mr. Moulton made no such statement to me.

Q. Did he make any such statement in substance or in effect? A. He did not.

Q. Did he tell you that the essential points of this story, as published in the paper, were true? A. He did not. He and Mr. Tilton both told me, when they were together, during that conversation——

Mr. Beach—You are not answering the question now, Sir. You are volunteering.

The Witness—I think not.

Mr. Beach—Well, I think you are, and I beg you not to do it.

GEN. TRACY'S ALLEGED REMARK ON LYING.

Mr. Evarts—Was any general statement made by Mr. Tilton or Mr. Moulton on that subject? You have given the conversation? A. The general statement they made to me was that the story as told by Mrs. Woodhull was essentially false.

Q. Now, Mr. Woodruff subsequently in his testimony says that he objected to making any statement in a public card; that he, Mr. Woodruff, objected to Mr. Moulton making any, and in objecting said, "I would protest against; that I would not, as he was a partner of mine—that I would not allow it; I thought it would be very wrong to make any such statement of a story that he knew was true—deny it in a public card." And then this is imputed to you——

Mr. Beach—Where is that paper?

Mr. Evarts—Page 345; at the top of the first column. [Reading.] "Gen. Tracy replied that he did not recom-

mend lying, but he thought in some cases—in this case particularly—that a man would be justified in denying that story." He gives that as an occurrence at this interview of which you speak. Did you say anything of that kind? A. I did not. Mr. Woodruff did object——

Mr. Beach—Wait one moment.

The Witness—What is the remark?

Mr. Beach—I asked you to wait one moment. You have answered the question.

The Witness—Ah!

Mr. Evarts—Now, was any part of this that I have read to you as coming from Mr. Woodruff, an occurrence at that interview? A. It was.

Q. What did he say? A. Mr. Woodruff did object to their denying the story in a public card.

Q. Well, what did he say? A. He (Mr. Woodruff) so far as I remember his participation in the conversation, took Mr. Tilton's view of the case.

Mr. Beach—That I object to, and move to strike out.

Judge Neilson—Yes.

Mr. Evarts—What did he say, so far as you recall—the substance of it? A. Well, he said, in substance, that they could not deny the whole of that story; that, part of the story being true, it would not be the right thing to publish a card saying that it was a lie, saying that it was false; and he did object to their publishing a card. I remember Mr. Woodruff's objection to their publishing a card.

Q. And was anything then said as to Mr. Moulton's having verbally denied it? A. There was. They had been denying it——

Q. What was that? A. They had been denying it before that interview, and were to continue denying it privately. The only question discussed there was whether it should be denied in a public card, and if so, what the form of that card should be, and who should sign it.

Mr. Evarts—It is now 1 o'clock.

The Court here took a recess until 2 p. m.

MRS. OVINGTON RECALLED FOR CROSS-EXAMINATION.

The Court met at 2 p. m., pursuant to adjournment.

Mrs. Maria N. Ovington recalled, and cross-examination resumed.

Mr. Shearman—Mrs. Ovington has been recalled, if your Honor please, at the request of the other side, for further cross-examination.

Mr. Fullerton—Mrs. Ovington, you stated when you were upon the stand before, I think, that Mrs. Tilton came to your residence on the morning of the 11th of July, 1874? A. Yes, Sir.

Q. And that she rode with you to Coney Island on the day previous, the 10th of July? A. She did.

Q. What time in the afternoon or evening of July 10th did you leave Mrs. Tilton? A. I think it was about 5 o'clock; it was near or about 5 o'clock.

Q. And where did you part with her? A. At 174 Livingston-st.

Q. Her residence? A. Yes, Sir.

Q. Do you recollect whether or not Mr. Tilton was before the Committee that evening? A. He was.

Q. Do you know where the Committee met that evening? A. At Mr. Storrs's.

Q. Did you know, when Mrs. Tilton and you parted, that Mr. Tilton was to be before the Committee that evening? A. I did not, Sir.

Q. Did you learn it at any time during the course of the evening of the 10th? A. I did, Sir.

Q. And how did you learn it? A. There were one or two friends, I think, in, as was the custom. Mr. Cleveland called, and I asked him if Mr. Tilton was to be before the Committee—if he knew when he was to be there; he said he believed he was to be there that evening—he thought he was.

Q. Did you make any request of Mr. Cleveland at that time? A. No, Sir; I don't think that I did; I don't remember that I did.

Q. Didn't you request him to inform you of the fact if Mr. Tilton went before the Committee? A. I might have done so, but I don't think I did.

Q. Did Mr. Cleveland inform you of the fact that evening? A. He did, at my request.

Q. At your request; well, that is what I was asking you—if you requested him? A. Not when he was at my house. You have gone ahead a little fast.

Q. Did you request him to communicate with you during that evening in case Mr. Tilton went before the Committee? A. I don't think I did; I afterward wished that I had, but I don't think that I did.

Q. I think you don't comprehend the full sweep of the question, Mrs. Ovington. Did you request him on that evening to communicate with you in case Mr. Tilton did go before the Committee? A. I don't think I did, but I think I can explain to you what you wish to know. When Mr. Cleveland called, I asked him if Mr. Tilton was to be before the Committee that evening—if he knew whether he was; I think he said he thought he might be, but didn't know; I don't remember the answer, but at any rate I felt an anxiety to know, and wrote Mr. Cleveland a note asking him if Mr. Tilton was before the Committee.

Mr. Shearman—Wait a moment, Mrs. Ovington.

Mr. Fullerton—That was embraced in my question, whether you made the request of Mr. Cleveland? A. I thought you meant whether I made it in his presence.

Q. No, that evening. A. I wrote a request; I did not make it—not verbally; I wrote one.

Q. You made it in writing? A. I wrote one—yes, Sir.

Q. And by whom did you send that note? A. The telegraph messenger—District Telegraph.

Q. What time in the evening was that done? A. I could not say exactly; between 8 and 9, I think; I have the record at home; I can show it to you.

Q. How soon after the writing and sending of the note did you receive a reply from Mr. Cleveland? A. Immediately.

Q. And what information did he give you? A. I have the note if you wish it.

Q. Please.

The Witness—Mr. Shearman, both notes, the note that I wrote him and the one he replied; I brought them with me when I came on the stand before; they were not called for.

Mr. Fullerton—I understood they were not in existence at that time.

The Witness—I didn't say so, Sir.

Mr. Fullerton—No, no; I didn't say I understood so from you; I got the impression somewhere.

The Witness—Yes, Sir.

[Mr. Shearman produces the letters called for and they were examined by Mr. Fullerton.]

Mr. Fullerton—Now, after you received a reply from Mr. Cleveland, did you communicate with Mrs. Tilton? A. I did, immediately.

Q. Sent a letter to her? A. I did; yes, Sir.

Q. How did you send it? A. By the telegraphic messenger.

Q. And what time in the evening? A. I could not say exactly; I have the record, but directly that I received the reply from Mr. Cleveland.

Q. And it was the next morning that Mrs. Tilton came to your—— A. The following morning; yes, Sir.

Q. I did not understand what time you sent the letter to Mrs. Tilton that night. A. As soon as I received Mr. Cleveland's reply.

Q. About what time in the evening was it? A. I cannot say; I think about 9 o'clock; I should judge about that time.

Q. Do you recollect what time you sent a note to Mr. Cleveland? A. I do not exactly; I think it was between 8 and 9 o'clock, and the reply came immediately, and I then sent the answer to Mrs. Tilton. I don't think it was much after 9; it may have been half-past 9; it was between 8 and 10 o'clock, at any rate, that these notes were sent.

Mr. Fullerton—That is all.

Mr. Shearman—Will you hand me those notes, if you please?

Mr. Fullerton—Oh, have you seen that note that you sent to Mrs. Tilton, since that night? A. I have not; I regret to say that she destroyed it.

Q. Well, what request did you make of Mrs. Tilton? A. I informed her what I had written Mr. Cleveland.

Q. What request did you make, if anything? A. I will give it to you as well as I can remember the contents of the letter; I could not say exactly what was written, but I said that I had kept my promise to her to inform her, if I knew it, when her husband was before the Committee, that I had written Mr. Cleveland and received this note, and I think I worded it exactly as Mr. Cleveland had written me, telling her that I would be very glad to have her come with me that night if she wished to do so, and she wrote me a note in reply.

Q. Never mind that. A. I have the note here if you wish it.

Q. No. A. It may save my coming again; that is all.

Q. No, you won't have to come again.

REDIRECT EXAMINATION OF MRS. OVINGTON.

Mr. Shearman—Please look at that paper, and say if that is the note which you wrote to Mr. Cleveland? [Handing witness a paper.] A. I believe this to be the note, Sir.

Q. Look at this paper and say whether this is the answer which you received from Mr. Cleveland? [Handing witness a paper.] A. I believe that to be the answer.

Q. Look at this and see if this is the envelope in which it came? [Handing witness an envelope.] A. Yes, Sir; that is my penciling in the corner.

Q. Look at this paper and state whether that is the answer which you received from Mrs. Tilton that night? [Handing witness a paper.] A. That is correct.

Mr. Shearman—Now, if your Honor please, we offer this note to Mr. Cleveland in evidence. [Reading.]

FRIDAY, P. M., July 10, '74.

Mr. Cleveland.

DEAR SIR: Is Mr. Tilton with the Committee this p. m., or will he be informed of anything that may disturb him? Please send word by bearer, as I have promised in that case to telegraph Mrs. Tilton to come and remain with me to-night. I may have forgotten to mention this when speaking to you this p. m. Yours sincerely,

M. N. OVINGTON.

No. 148 Hicks-st.

[Marked "Exhibit D, 137."

Mr. Shearman—And the envelope from Mr. Cleveland addressed, "Mrs. Ovington." I offer that [marked, "Exhibit D, 138."]

Mr. Shearman—I now offer the letter from Mr. Cleveland in reply: [Reading.]

DEAR MADAM: Tilton is here, but I guess you need not send for Mrs. T. Yours always, C.

[Marked "Exhibit D, 139."]

Mr. Shearman—I now offer the reply of Mrs. Ovington, the contents of which have been given in evidence.

Mr. Fullerton—Let us see that; it may not be admissible. [Examining the letter.] No objection to it.

Mr. Shearman—This is the letter from Mrs. Tilton to Mrs. Ovington: [Reading.]

MY BELOVED: Do not fear for me. I will stay to-night and come to you in the morning. We will both trust and wait on the Lord.

Aff., Your own, sister, ELIZABETH.

[Marked "Exhibit D, 140."]

Mr. Fullerton—If I understand you correctly, Mrs. Ovington, you communicated——

Mr. Shearman—One moment, Mr. Fullerton. Let me ask one question. [To the witness.] Did you communicate or show this note of Mrs. Tilton's to your husband that evening? A. Immediately.

Mr. Fullerton—Well, I don't see the importance of it.

RECROSS-EXAMINATION OF MRS. OVINGTON.

Mr. Fullerton—I understood you to say that you communicated the contents of the note of Mr. Cleveland to Mrs. Tilton. A. I think, if I remember correctly, that I put the note before me and wrote from that, saying that was Mr. Cleveland's letter to me.

Q. Then you inserted a copy of it—a literal copy? A. I think so; I am not certain; I think I did.

Q. Did you communicate any other information to her, excepting that fact that you had addressed Mr. Cleveland and received that reply? A. Nothing else that I remember, except that Mr. Tilton was before the Committee, and invited her, if she wished to do so, to come to me that night.

Q. You did not communicate anything to her, then, to the effect that something would take place, or had taken place, before the Committee that would disturb Mr. Tilton? A. No, Sir; I knew nothing about it; I did not write anything of the kind.

Q. Did you expect her the following morning after receiving that note? A. I did not expect her. When she said she would come to me in the morning I thought it was merely as a call or conversation, but as I said to you on my other examination, it was a great surprise to me that she came to our house.

Q. Well, you did not expect her, then, at all? A. I thought she she might come as a call.

Q. Well, I am not referring to whether it was a call or whether it was a permanent stay that she contemplated; did you expect her the next morning? A. I did not expect her more than her note indicated, that she would call upon me in the morning.

Q. Well, did you think she would call, as the note indicated? A. I thought she might. She was in the habit of calling, Mr. Fullerton, and had been for years, upon me.

Mr. Fullerton—Well, that is all, unless Mr. Shearman wants you.

RE-DIRECT EXAMINATION OF MRS. OVINGTON.

Mr. Shearman—At what hour of the day did you expect Mrs. Tilton would call, if at all, the next day? A. I didn't know; she said in the morning. I merely thought she was coming to talk over her private matters with me, but I didn't know at what time. I know nothing more than the note indicated.

Q. At what time did she actually come? A. She came before breakfast.

Q. Had you any expectation that she would come at such an early time? A. None in the least.

Q. Had you any expectation that she would come for any other purpose than her usual ordinary call? A. I did not, unless it might be to talk over her matters.

Mr. Shearman—The contents of some letters were given in evidence, because the letters were not then to be found—on your examination. We have now found the letters, and we propose to put the whole letters in [handing the letters to Mr. Fullerton].

Mr. Morris—Can't we agree upon the time, so as to close this point—as to the time when Mrs. Ovington communicated with Mrs. Tilton? According to the telegraph message, it was five minutes past 10.

Mr. Shearman—Certainly; that is my recollection of it. [To the witness.] Mrs. Ovington, we understand that the time when you communicated with Mr. Cleveland——

Mr. Morris—With Mrs. Tilton—it was five minutes past 10.

Mr. Shearman—I wouldn't want to be so exact, but is that about the time?

The Witness—I can make it correct by showing the record, but I think you have that, Mr. Morris; I think you took it.

Mr. Morris—Yes, we examined it.

The Witness—I think you took the record, Mr. Morris, from the District Telegraph office. You have it, I think.

Mr. Morris—No, I have not the record.

The Witness—I understood you had.

Mr. Morris—Only the memorandum.

The Witness—Mr. Shearman, do you wish me to say why I wrote this note to Mr. Cleveland? I think, perhaps, it is but justice to myself to do so.

Mr. Shearman—Well, if it is in justice to yourself.

Mr. Fullerton—No.

The Witness—I think, if you will allow me, Mr. Fullerton, it will explain the matter a little more clearly.

Mr. Fullerton—I understood you wrote to him to know whether Mr. Tilton was going before the Committee.

The Witness—Yes, Sir.

Mr. Shearman—Well, I will ask that question in justice to yourself. State with what motive you wrote the letter to Mr. Cleveland?

Mr. Fullerton—That is unimportant.

Judge Neilson—I think we will take that.

Mr. Shearman—Go on. A. I had promised Mrs. Tilton that if I knew of Mr. Tilton's being before the Committee at any time I would immediately inform her of it.

Mr. Fullerton—That is already stated and on the record.

The Witness—And the reason that she wished me to inform her, she feared that Mr. Tilton——

Mr. Fullerton—One moment. That is not Mrs. Ovington's motive; that is another person's motive.

Judge Neilson—You are permitted to state your own views, Mrs. Ovington—your own motives.

Mr. Fullerton—She has stated.

The Witness—I knew that Mrs. Tilton feared Mr. Tilton——

Mr. Fullerton—One moment.

Mr. Shearman—State the reason in your own language.

Mr. Morris—She has stated it.

Mr. Shearman—If there was any further reason, you are at liberty to state it.

The Witness—It was merely according to my—

Mr. Fullerton—It has already been stated that she had promised to inform Mrs. Tilton, and that promise she fulfilled by the writing of this note. That is all very plain and all very proper.

The Witness—That is correct, Sir.

Mr. Fullerton—There is no reflection upon Mrs. Ovington at all in that respect.

Judge Neilson—Mrs. Ovington cannot state anything that is predicated upon the supposed condition of Mrs. Tilton's mind.

Mr. Evarts—No, we agree to that. She might state, I suppose, that her reason for doing this was that she was to communicate to her—that Mrs. Tilton had asked her——

Judge Neilson—I ruled that the lady could state her motives in writing.

Mr. Evarts—She had promised to write.

The Witness—Shall I tell you why I had promised? That is what I mean.

Mr. Fullerton—That is already stated. Why, Mrs. Ovington's promise was because Mrs. Tilton asked her to write and let her know.

The Witness—And Mrs. Tilton's reason for asking me——

Mr. Fullerton—Mrs. Tilton's reasons are not to be given.

Judge Neilson—That is a part we cannot take, Mrs. Ovington.

The Witness—Yes, Sir; I didn't understand that.

Judge Neilson—I think Mrs. Ovington is perfectly clear in this matter.

A FIGHT TO EXCLUDE MRS. TILTON'S NOTE TO MRS. OVINGTON.

Mr. Shearman—If your Honor please, we now offer the note in evidence, from Mrs. Tilton to Mrs. Ovington, the contents of which were stated by Mrs. Ovington on her previous cross-examination, as nearly as she could state them, and with very remarkable accuracy, certainly, being from memory, and we now offer the original note itself in order to make it complete. It was brought out by our learned friends on the other side. Mrs. Ovington did not then have any opportunity to go and find the paper.

Judge Neilson—It was brought out on a conversation with Mr. Tilton; therefore you may bring it in.

Mr. Fullerton—The note was not brought out in the conversation with him.

Judge Neilson—The contents.

Mr. Fullerton—Mrs. Ovington stated here in her evidence what she said to Mr. Tilton, which embraced that note as she then remembered it.

Judge Neilson—I think the question is whether that don't open the door for the note now.

Mr. Fullerton—That is *their* evidence. Certainly it would not open the door to admit the letter itself, because Mr. Tilton replied to Mrs. Ovington upon the strength of Mrs. Ovington's recollection of the note at the time.

Judge Neilson—Not if *they* opened it—if it was new matter by them.

Mr. Fullerton—It is matter by them, Sir, not by us.

Mr. Evarts—The point, I take it, is this, if your Honor please; if we had then had the note we should have offered it as being the note which Mrs. Ovington communicated to Mr. Tilton, but the paper not being at hand, or not being supposed to be in existence for the moment, she stated that she gave the contents of the letter. Her principal recollection was that she gave the contents of the letter, which she then had, and then the letter being missing, when the rules of proof would have required the paper to be produced as being the best evidence of its contents, she swearing that she communicated the contents, that was displaced and we had to take in lieu of it, as the best to be got, the secondary evidence of what the contents were. Now the proof puts us—the examination puts us in the same position, as we submit to your Honor, in regard to this paper, that we should have been in if the witness at the time had it in her hand and said. "I communicated the contents of this note," and then we should read it.

Judge Neilson—The contents were only before us, or proper to be brought before us, because this witness stated the contents in her conversation with Mr. Tilton; that is all.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—That I agree; but still the recollection is "I stated the contents," and now we are put, in the secondary form, to her remembrance of what the contents were.

Mr. Fullerton—She gave the contents.

Mr. Evarts—I know, but it was from her memory.

Judge Neilson—It is not material what the contents were, the question having been what she told Mr. Tilton the contents were, and about that there is no dispute.

Mr. Evarts—No, I think not; that is, that is my point, if your Honor please, and I will be very brief about it. I understand the state of the thing to be this: that the witness's recollection is that she stated to Mr. Tilton the contents of the note, whatever those contents were. If

the note had been here, then we should have had a right to read the note, because that speaks for its contents, and she has sworn she communicated the contents; but the note not being here, we then had to prove what she had communicated by her memory of the contents, instead of the written contents. That is my proposition.

Judge Neilson—Suppose, Mr. Evarts, you now have the letter before you, and you find in it some matter which Mrs. Ovington did not state to Mr. Tilton in the conversation with him; it clearly ought not to be admitted.

Mr. Fullerton—That is just the reason why they want to prove it, Sir.

Mr. Evarts—That will be brought out, if it be so, but that is not the state of the proofs upon which I am proposing the question of law to your Honor. The state of proofs upon which I propose the question of law is that this lady stated the contents of the note. That would have authorized us to read the note as being the evidence of its contents.

Judge Neilson—So far she had stated it.

Mr. Evarts—Well, she says she stated the contents.

Judge Neilson—Well, suppose a part of it she did not state.

Mr. Evarts—Well, the way the imperfection arises is that, not having the note, she is obliged to recur to memory for what the contents were.

Judge Neilson—The primary duty of the witness, then, was not so much to state the contents of the note as to state what she told Mr. Tilton That was the vital thing, embracing the contents of the note, so far as she remembered it.

Mr. Fullerton—Mr. Tilton's reply to that communication was predicated of what Mrs. Ovington stated to him in regard to the contents of the note.

Judge Neilson—Perhaps, if the note itself had been before him, his conversation might have been different.

Mr. Fullerton—Mrs. Ovington undoubtedly gave the contents of that note as she recollected it. Now, if she omitted to state anything, then Mr. Tilton is not to be concluded by what he stated to Mrs. Ovington.

Judge Neilson—In that case he had not the opportunity to reply.

The Witness—If your Honor please, I stated the note to Mr. Tilton at the time of receiving it. I recalled it here some months afterward.

Mr. Fullerton—Undoubtedly.

The Witness—Perhaps my memory was better then.

Judge Neilson [to the witness]—You were examined with reference to your conversation with Mr. Tilton, and you stated truly, according to your best recollection, all that you told Mr. Tilton?

The Witness—Yes, Sir.

Judge Neilson—That embraced the contents of the letter, which, according to your memory, you had communicated to him?

The Witness—Yes, Sir.

Judge Neilson [to the counsel]—Now suppose that Mrs. Ovington did not state the contents of the letter, as she then recollected.

Mr. Evarts—That we agree, but she did not recollect it in full.

Mr. Fullerton—That we don't know, but you certainly will not hold Mr. Tilton responsible for the contents of a letter which was not stated to him.

Mr. Evarts—Now, if your Honor please, let me call attention to a ruling in this case: [Reading.]

The plaintiff's witness having testified that he told Mr. Beecher the substance of the charges he intended to lay before the Committee: *Held*, that the plaintiff was entitled thereby to put in evidence the written——

Judge Neilson—"The written charges."

Mr. Evarts—"The written charges," wholly on the ground that the substance had been communicated.

THE NOTE EXCLUDED.

Judge Neilson—I should have admitted those charges, independent of any conversation with Mr. Beecher, just as I admitted the church record; they were a part of the record; they were entitled to come in any way, as a part of the proceedings of the church. I think that is all with this lady. There is no difference or difficulty about it.

Mr. Evarts—Well, if your Honor please, we think, with due submission, that if we are not entitled to read the letter, we are entitled to take the witness's memory now, upon being refreshed by seeing the letter, of what she told Mr. Tilton.

Mr. Fullerton—No, no.

Judge Neilson—She was examined fully on that subject.

Mr. Evarts—I know, but she had no opportunity to refresh herself.

Judge Neilson—The note itself would not refresh her.

Mr. Evarts—That depends upon whether her substantive evidence, so far as giving the contents of the note, was told him.

The Witness—I don't think, Mr. Evarts, I can give it any more correctly now from memory than I did when I was on the witness-stand before.

Mr. Fullerton—That is unfortunate for Mr. Evarts.

The Witness—You want me to tell the truth, don't you, Mr. Fullerton?

Mr. Fullerton—Certainly.

The Witness—And I would like to tell the whole truth.

Mr. Fullerton—I know your anxiety, but I couldn't yield to it, possibly.

The Witness—I suppose not.

Mr. Evarts—Your Honor will be so good as to note our exception to the ruling which excludes this letter.

GEN. TRACY'S TESTIMONY CONTINUED.

Benj. F. Tracy was then recalled, and his direct examination resumed.

Mr. Evarts—Before passing to other interviews, I will ask you one or two questions. During this interview, or after the same, was any suggestion made as to whether or not you should communicate any part of this to Mr. Beecher? A. Not during that interview. Some days—a day or to, or more, after that, I had a conversation with Mr. Moulton, in which it was agreed that I should see Mr. Beecher.

Q. In respect to your having had this interview? A. Yes, Sir.

Q. Well, Sir, did you see Mr. Beecher, and repeat to him any part of this interview? A. I saw Mr. Beecher and repeated to him some part of the interview.

Q. What did you say to him?

Mr. Beach—It is objected to.

Mr. Evarts—Did you mention the fact of the interview? A. I did mention the fact of the interview.

Q. Well, wait a moment. Well, that, I suppose, is not objected to. I will ask this question, which will raise the question: Did you state to him anything concerning the documents that had been shown you, or the charges that were made and that were disclaimed?

Mr. Beach—Objected to. I do not perceive, Sir, how any statement made by Mr. Tracy to Mr. Beecher, in the absence of Mr. Tilton, could be received as evidence.

Mr. Evarts—I understood it was at Mr. Moulton's request that he came there.

Mr. Beach—Mr. Moulton is not Mr. Tilton.

Mr. Evarts—Substantially.

Mr. Beach—Substantially?

Mr. Evarts—Yes, substantially.

Judge Neilson—I think we cannot take it.

Mr. Evarts—Your Honor, I think, has had occasion to rule that when a request is made by one party that a communication should be made to another, that that authorizes it.

Judge Neilson—Yes, request by the party.

Mr. Evarts—Yes, Sir, by the party.

Judge Neilson—By the party; this was a request by Mr. Moulton.

Mr. Evarts—Now, the sole ground upon which this interview was allowed to be given in evidence on the part of our learned friends was that Mr. Tracy stood there to represent Mr. Beecher, and so authorized to be given in evidence, as if in the presence of Mr. Beecher, what they gave in evidence.

Judge Neilson—Yes, Sir.

Mr. Evarts—Now, I have proved by this gentleman that he had no previous authority from Mr. Beecher, and had made no communication to him [Mr. Beecher] concerning any proposed interview. Now, after that, I propose to show by this witness, if I am allowed by the rules of evidence, so to disclose what he did say at the request of these parties—I say Mr. Moulton; I mean Mr. Moulton; it is from his mouth it came—to Mr. Beecher, concerning what had taken place at this interview.

Judge Neilson—It seems to be a subsequent and independent conversation.

Mr. Evarts—Your Honor will remember how much there was of subsequent conversation between Mr. Beecher, Mr. Moulton and Mr. Tilton, which was stated in the line of evidence, as presupposing that all that had passed between Mr. Tracy and these gentlemen was at Mr. Beecher's charge. There was no ground for bringing in anything that was testified to with regard to Mr. Tracy except that *pro tanto, pro hac vice*, he was Mr. Beecher; and now when I show exactly what the connection was—to wit, known before and afterward, by express request and by communication from them—the extent of that communication, I submit, is proper to be given.

Judge Neilson—If the communication to Mr. Beecher was by Mr. Tilton's request, he may give it.

Mr. Evarts—Not by Moulton's?

Judge Neilson—No.

Mr. Evarts—Have we not connected Mr. Moulton throughout all this prosecution with Mr. Tilton, and shall not this interview be permitted to be shown?

Judge Neilson—I think we will have to exclude this.

Mr. Evarts—Has not Mr. Moulton represented the views of Mr. Tilton over and over again? Does he not stand as Mr. Tilton, *pro tanto*, in all the interviews between him and Mr. Beecher?

Judge Neilson—I think I cannot receive it, Sir.

Mr. Evarts—Will your Honor be good enough to note our exception? I want to state the details of my offer. We offer to prove the facts communicated by Mr. Tracy to Mr. Beecher—such facts as were communicated by Mr. Tracy to Mr. Beecher arising at this interview.

Judge Neilson—Yes.

Q. Now, Mr. Tracy, up to the time of your first interview with Mr. Woodruff, which preceded any more definite interviews, had you known or heard anything concerning the Woodhull scandal, except what was published in the papers or in the street? A. I had not.

SOME CONTRADICTIONS OF MR. WOODRUFF.

Q. And from what individual had you heard anything about it prior to this interview on Sunday night—that is, professing any knowledge of it? A. No one except the brief conversation I had with Mr. Woodruff on the subject, and the brief conversation I had with him and Mr. Moulton in the office, on the morning.

Q. This conversation was the whole source? A. It was my only source of knowledge, except what was open to papers.

Q. Do you remember, concerning this narrative or paper read to you by Mr. Tilton, whether or not it contained the final letters, dated at the end of December, which form a part of the "True Story" as given in evi-

lence here? A. I do not—if you mean, by the final letters, Mrs. Tilton's letter and Mr. Beecher's letter of Dec. 29.

Q. I describe them as the final letters. They are these letters, at all events, dated Dec. 29? A. No, Sir, they were not present, nor referred.

Q. They were not referred to or read? A. No, Sir.

Q. Now, do you remember whether at this interview anything was said on the subject of lying, or as to what would be lying? A. During the discussion that ensued between myself and Mr. Tilton as to what answer he could make to this publication—I urging him to content himself with a simple denial of it, and he insisting that he could not—the question did arise, and was discussed as to whether a simple denial of the scandal would be a truthful statement—I arguing that it would under the circumstances, and giving him my reasons—he arguing that it would not; and then the question of what would be lying and what would not be lying was undoubtedly discussed.

Q. That is, whether the statement or denials in the form that you proposed would or would not be the entire truth? A. Yes.

Mr. Beach—One moment, Sir. I object to that question.

Mr. Evarts—Why?

Mr. Beach—Well, simply because the witness has given his statement, and you reform it by putting it in another shape.

Mr. Evarts—No.

Mr. Beach [hastily]—I think you do; I am entitled to my own opinion about that.

Mr. Evarts—Certainly; and am I not entitled to mine? The difference of opinion does not imply that I am right or that you are wrong, by any means.

Mr. Beach—It does not, nor the reverse.

Q. I want to call your attention to a point in Mr. Woodruff's testimony, Mr. Tracy, at page 345, near the top. He said that "Gen. Tracy spoke and said: 'Can't Moulton and Tilton go to Europe for one or two years?' and he replied, 'No, that could not be done; Mr. Robinson, the other partner, was in Europe, and it would be impossible.'" Now, Mr. Tracy, did you say anything in this interview about Mr. Moulton going to Europe? A. I did not.

Q. Was the subject of Mr. Moulton going to Europe spoken of in any way by you? A. Not that I remember; I am confident it was not.

Q. Was anything else said concerning Mr. Tilton's going to Europe than what you have stated? A. Nothing that I can recollect; I have stated the substance, I think, of what was said in regard to Mr. Tilton going to Europe.

Q. I ask your attention now to a point in the testimony of Mr. Moulton, page 116; he says, speaking of what he said to Mr. Beecher, "I said to Mr. Beecher——"

Mr. Beach—What page, please?

Mr. Evarts—Page 116. [Reading:] "I said to Mr. Beecher [Mr. Moulton says] I told Mr. Tracy the truth of the matter; I told him the fact of the case as it was—that you had been guilty of sexual intercourse with Mrs. Elizabeth Tilton; and he said, in the presence of my partner, if that was true, it must be concealed at all hazards." Was there any such conversation at this interview between Mr. Moulton and yourself? A. The interview on Sunday?

Q. Yes. A. No, Sir.

Q. And he adds, "And I said that Mr. Tracy said that, although he did not recommend lying, this was one of the cases in which lying was justifiable." Did that form a part of your conversation? A. No, Sir.

Q. In any way? A. No, Sir.

Q. Did anything of that kind occur between you and Mr. Moulton at any interview? A. About lying?

Q. About the sexual intercourses, or lying about it? A. Nothing of the kind.

Mr. Beach—Wait one moment. Mr. Moulton has sworn to nothing of that kind.

Mr. Evarts—He has not, except at that interview; that is understood, unless there is some question about the difference of day or date.

Mr. Beach—I understand this was the interview on Sunday, November 10.

Mr. Evarts—I understand so.

Mr. Shearman—I don't understand that it is fixed.

Mr. Beach—Mr. Tracy has just said it was on Sunday. He says it was an interview at which Mr. Woodruff was present; he identifies the interview.

Mr. Evarts—I think that is so; it does not appear in any other interview.

Q. I ask your attention now to a passage in Mr. Tilton's testimony, speaking of this interview—this Sunday night interview. Mr. Tilton says:

A. Mr. Tracy told me—— [That is at the bottom of page 423]——

Mr. Tracy told me that it was a case which ought to be very summarily treated. He said that he had told Mr. Woodruff, and had told Mr. Moulton, and he would tell me, that while in the ordinary affairs of life lying was not justifiable, but was reprehensible, yet this was a case in which the truth ought to be denied, and that lying was right.

Now, did you say anything of that kind? A. Nothing, except the phrase, "that this was a case that ought to be summarily treated;" the rest of that—what you have read—never occurred.

Q. Yes. Was there anything said concerning lying, except in the form that you have given it, as to the different statements that he could make? A. Nothing, except the form in which I have given it, and the discussion which grew out of that. There was a discussion, whether the form in which I asked them to put it, and said they could truthfully put it, would or would not be

lying; and in that discussion they took several phrases and various forms of expression; and I said that this story was essentially false, and I believed that they could truthfully deny it without being compelled to state the incidents connected with it which they admitted to be true; and that if they omitted these, and to specify those, would not be lying. It is barely possible that in that discussion, which at some times became warm, I said, in characterizing this publication, "If that was a lie, if the publication was concerning myself or my family, it was a lie that I would take the responsibility of telling;" I may have said that.

Q. That is, in that form of denial? A. In the form of denial.

Q. You proposed that you would take the responsibility? A. Yes; I should take the responsibility, if it was my case, of making that form of denial to such a publication; and I did not believe that a person could tell what was essentially false about another, and in order to compel him to deny it, at the same time compel him to state the incidents which might be dragged into that statement which were true.

Q. Now, did you in this interview say this to Mr. Tilton, or anything equivalent to it in substance or effect:

"I address that statement, Mr. Tilton, particularly to you, as I have done to them, for the reason that if the facts in this case are ever made public, if the story is ever confirmed, it will not only ruin Mr. Beecher and your wife"—of course, "not only ruin Mr. Beecher and your wife—of course it will ruin them—but it will also ruin you, because the world will never forgive you for having condoned your wife's crime."

Now, did you say, at this interview, anything of that kind? A. There are several things stated in that question; I undoubtedly did say that if this scandal was not extinguished, and if it was published in the form that he proposed to publish it in, it would ruin him and his wife and Mr. Beecher; I undoubtedly did say that; I remember saying to them, in one phase or another of that conversation, that this was a matter to be met and dealt with promptly, and not to be smothered; it had got to be killed, or it would kill them.

Q. Well, did you in that connection, or in any part of this interview, say to him that the world would never forgive Mr. Tilton for having condoned his wife's crime? A. No, Sir; no such thing was said in that interview—the subject of condoning his wife's crime was a matter of conversation——

Mr. Beach—You are not asked that, Sir.

The Witness—The subject of condoning was not——

Mr. Beach—You are not asked, Sir.

Q. Well? A. [Continuing:] In that interview on the subject of condoning his wife.

Q. Or his having condoned his wife? A. Or his having condoned his wife.

Mr. Evarts—It stands, then, no part of his answer, I suppose, except that there was nothing said at this interview; other interviews I shall take by themselves.

Mr. Beach—How is that?

Mr. Evarts—Strike out "the subject of condoning his wife's crime was a matter of conversation——"

Judge Neilson—Strike out the last part.

Mr. Beach—We will let it stand on the motion to strike out, and appear as it ordinarily does, Sir.

Judge Neilson—Yes.

Mr. Beach—I mean it won't be erased from the minutes.

Judge Neilson—No, not erased; they will add the motion.

Mr. Evarts—It will appear that you stopped him from going on.

Mr. Beach—Well, I want it to appear that he tried to go on.

Mr. Evarts—Now, Mr. Tracy, did you have an interview with Mr. Moulton on or about the 24th of June, 1874? A. I did.

Q. In regard to this matter, or application to you in connection with it? A. I did.

Q. Well, Sir, what was that?

MR. MOULTON AND MR. TILTON DECLARED TO BE ONE.

Mr. Beach—In regard to what?

Mr. Evarts—In regard to this matter, and any application in respect of it.

Mr. Beach—Have we given any evidence of that interview?

Mr. Evarts—I don't know that you have.

Mr. Beach—Well, we object to it, then.

Mr. Evarts—You have given evidence in regard to subsequent interviews, and this——

Mr. Beach—Do you suppose that makes this admissible?

Mr. Evarts—Yes; and this is an introduction of Mr. Moulton's application to him to come back to the matter. He had nothing to do with the matter from '72 until 1874.

Judge Neilson—With whom is the conversation you are suggesting?

Mr. Evarts—The conversation is with Mr. Moulton—the same as the other conversation was; it introduced Mr. Tracy into this business; and this is an introduction of him into the business on the same footing and in the same way.

Judge Neilson—On a later day?

Mr. Evarts—On a later day.

Judge Neilson—Conversation they have inquired into?

Mr. Evarts—They have inquired into. They have given evidence concerning interviews subsequent to this time.

Mr. Beach—We have not inquired into this interview at all, and the counsel does not pretend it.

Mr. Evarts—Well, they have inquired, if you please,

into the interview of drawing Mr. Tracy into this other. Now, is it to be proposed here as a rule for the remnant of this trial that Mr. Moulton has no connection with Mr. Tilton? It has not been the rule up to this time; but from the last week in December, 1870, this matter has been intrusted by Mr. Tilton to Mr. Moulton as his ally and representative and agent; and the trial has gone through upon that proposition.

Mr. Fullerton—It is not through yet.

Mr. Evarts—So far—is the remnant of this trial to be conducted on the principle that Mr. Moulton did not speak for that side of this business?

ARGUMENT OF MR. BEACH.

Mr. Beach—This is but a repetition, Sir, of the argument and the effort which the gentleman made but a little while ago, and in which he was overruled by your Honor. After the interview of Sunday, Nov. 10, was given by Mr. Tracy, the counsel undertook to prove, by the same witness, a subsequent interview between him and Mr. Moulton, and the same questions, in the same emphatic language and manner as now addressed to your Honor, as to whether Mr. Moulton is to be regarded as a separate existence from Mr. Tilton or not in this trial, was put, and your Honor seemed to think that there was, in regard to the conduct of this trial, a slight distinction between these persons. Mr. Tilton, as I apprehend, has not conferred upon Mr. Moulton, during any of the progress of these transactions, any authority to represent him in any conversation or in any dealing with Mr. Tracy. The first connection between Mr. Tracy and Mr. Moulton was with reference to Mr. Moulton's individual and personal interests in this matter, under the stringent advice and control of his partner, Mr. Woodruff. Mr. Tracy became connected with these interviews, and with Mr. Tracy, through the communication to Mr. Beecher by Mr. Moulton of what transpired at those interviews, and through a subsequent agency which was conferred upon Mr. Tracy by Mr. Beecher to represent him, about which more will be said as we get along. Now, upon what principle is it, Sir, that the counsel is to assume that Mr. Tilton is to be concluded by the declarations of Mr. Moulton upon this subject, or by the declarations of the counsel and the present attorney of this defendant made to Mr. Moulton? There is no identity of legal right; there is no identity of interest; there has been no connection nor association between the two parties which makes Mr. Tilton responsible for the acts and the declarations of Mr. Moulton in his absence; and I submit, your Honor, that there is no principle, nothing in the evidence upon which an argument can be founded to justify the reception of the declarations of Mr. Moulton, or of conversations which may have occurred between him and any other party. It is enough for Mr. Tilton, Sir, to answer for himself, for his own declarations, and that he will do. And it is quite enough for this witness to reveal the communications which have passed between him and his quondam client, Mr. Tilton, without traveling into conversations at which Mr. Tilton was not present, and where he could not speak and answer for himself, had between this witness and Mr. Moulton. It is quite well suggested, Sir, that Mr. Moulton no more (and I think scarcely so much—certainly not so much), so far as interest was concerned, and as devotion and zeal on the part of the agent was concerned in these transactions, did not represent Mr. Tilton so much, by far, as he did Mr. Beecher. He has been called, Sir, somewhat sneeringly, but it is not an epithet which he need disclaim, "The Mutual Friend" of these parties. He was undoubtedly the mutual friend, but not authorized by either to hear declarations or to make declarations which should bind either, except where the direct authority has been traced from the one or the other to him.

Mr. Evarts—I will read one part of my learned friend's observations which relate to the question of evidence.

Mr. Beach—They all relate to it.

Mr. Evarts—That is, in your opinion.

Mr. Beach—Well, in the opinion of ordinarily intelligent men.

Mr. Evarts—No doubt, but I am speaking for myself.

Mr. Beach—But you are so far above us that we cannot altogether understand.

Mr. Evarts—Or below, if you please.

Mr. Beach—Oh, no!

Mr. Fullerton—Well, get on the right plane, and go on and have it out.

Mr. Evarts [to Mr. Fullerton]—You ought to turn around when you address me.

Mr. Fullerton—I am addressing the Court, Sir.

ARGUMENT OF MR. EVARTS.

Mr. Evarts—Now, if your Honor please, the subject matter of this interview, as I propose to give it, is connected with interviews which follow, and which have been, in the main, subjects of evidence. The stage of the transaction which had been reached at the date, concerning which I am now pressing inquiry, was the stage after the publication of the Bacon letter, and when there was a series of conferences and consultations, which have been gone into by the plaintiff's counsel in their evidence between Mr. Moulton, and Mr. Tilton, and Mr. Beecher, or between Mr. Moulton, as representing Mr. Tilton, and Mr. Beecher, as to what was to be said or could be said or done in regard to the healing of the difficulty of what is known as the Bacon letter; and Mr. Moulton gives evidence of this kind.

Mr. Beach—Where?

Mr. Evarts—On page 114. The witness says:

I had a subsequent conversation with Mr. Beecher about it—about a subject which is not important except as showing the date—probably subsequent to the 5th of

July Subsequent we will say to the 5th of July he had an interview with Mr. Beecher—and I told him that I had seen Gen. Tracy concerning a reply to the Bacon letter, and that I had asked Gen. Tracy if he had submitted the paper to him, and I said to Mr. Beecher that Mr. Tracy's reply was that he had seen a paper in which he thought he detected my handiwork, and that Gen. Tracy had said to me that the words, "I have committed no crime," really said nothing, etc.

Your Honor may remember there was considerable testimony on that subject. Now, this interview that I propose to show between Mr. Moulton and Mr. Tracy as occurring in the end of June—after the 24th of June—after the situation was produced, was a part of the consideration concerning how the Bacon letter was to be dealt with, out of which a few days later there came a proposed card called the Carpenter card, because it is in Mr. Frank Carpenter's handwriting, a few days after this, which formed the subject of this conversation to which Mr. Moulton referred in his conversation with Mr. Beecher. Well, now, of course it is not to be denied that we have a right to go into the alleged conversation between Mr. Tracy and Mr. Moulton, which formed the subject of communication through Mr. Beecher. But this interview that I now speak of is the precedent and preliminary introduction by Mr. Moulton to Mr. Tracy's attention of this Bacon letter, and of the subject of answering it, or dealing with it, closing with the deferring of the matter to a further interview until more reflection had been given to the subject. And then these further interviews that are thus prepared for, and preceded by, the interview that I seek now to introduce in evidence, have been made the subject of evidence. Now, I submit to your Honor that Mr. Moulton does stand in the position confessedly upon the evidence of representing Mr. Tilton in the conduct or consideration of this matter, and that the whole series of his interviews with Mr. Tracy, or any other person that finally come to an interview as the result of the preceding conferences and the then present conference, which are in evidence, and in regard to which Mr. Beecher is to be affected by communications made to him, that Mr. Tracy is permitted to present his view of the facts as occurring at those interviews; that you cannot dislocate and cut in two the tenor of postponed conferences which all, really, are one conference, and the result of which forms the subject of the testimony which has brought Mr. Beecher, and so the statements of Moulton concerning Tracy's action into the case. It is one conferenee, so to speak, beginning, if you please, on the 25th July, repeated on the 25th of June, repeated and ending on the 6th or 7th of July, and then produced in the shape of Carpenter's card, and conferences which have been introduced, as pertinent and substantial affairs in the case. Now, this is the interview that I propose to show between Mr. Moulton and Mr. Tracy, sought by Moulton, which brings Mr. Tracy back into this case in 1874, for this interview concerning which we have Mr. Tracy's evidence, was in the very end of 1872, and there was no connection at any time intervening, no conferences between Mr. Tracy and any of these people. Now, Mr. Moulton brings him in action, and he has been used — Mr. Tracy's presence has been used as a means of stating conferences that were to affect Mr. Beecher without any evidence that I know of in the matter, except that two years before something had been said about it which was charged to Mr. Beecher's account, and for which Mr. Beecher has been made responsible—it has been applied in that way. Now, that is my proposition that in the end of June, Mr. Moulton resorts to Mr. Tracy for judicious counsel in the interests of the parties for the dealing with the then new stage of matters—to wit: the publication of the Bacon letter; and the sequel is certain results arrived at which have been given in evidence by the plaintiffs, and which we shall of course be at liberty to follow with evidence on those points as well as on this.

ANSWERING ARGUMENT OF MR. BEACH.

Mr. Beach—The counsel is driven, and necessarily driven, Sir, by his own reflections upon the question in debate, to assume false premises and mistaken facts, to enable him to reason at all upon the question. He assumes that this interview in June, which he now proposes to prove, was but the antecedent, the preliminary part of a continued and lengthened discussion upon the same subject between Mr. Moulton and the witness. Now, Sir, upon what authority does he do that? The interview which we proved was subsequent to July 5, 1874, as appears from the book and the page referred to by the counsel.

Judge Neilson—That is the interview with Mr. Beecher?

Mr. Beach—Yes, Sir, the interview with Mr. Beecher, of July 5, in which Mr. Moulton communicated to Mr. Beecher a conversation he had had with Gen. Tracy. There was nothing in the position which Gen. Tracy occupied at that time in connection with this interview which charged Mr. Beecher with any responsibility for his declarations, and it was only through the circumstance that what occurred between Mr. Tracy and Mr. Moulton was subsequently communicated to Mr. Beecher and approved by him, recognized by him, that it became at all material, or evidence at all in the case. Now, in that relation, Sir, of that interview there is nothing which justifies the counsel in saying that it was a continuation of a previous conversation between Mr. Tracy and Mr. Moulton; there is nothing which authorizes him to say that the rejection of this prior interview is a dislocation of the intercourse between these two parties upon a given subject. They were separate and independent interviews, but whether or not they relate to the same transaction, discussed the same question, viewed the same policy suggested by

either party as proper to be adopted with reference to the Bacon letter, we don't know. Counsel only says it was the preliminary introduction to that discussion, that it was the recall of Mr. Tracy to his allegiance to this transaction. There is nothing, Sir, to justify that. The simple proposition before your Honor is whether, having proven a conversation occurring between Mr. Tracy and Mr. Moulton upon the strength of its communication subsequently to Mr. Beecher, and ratification by him, or some action on his part in regard to it, the counsel is entitled to prove another conversation between Mr. Moulton and Mr. Tracy as against Mr. Tilton, who so far as it appears, never heard it, to whom it was never communicated, who never authorized it. But it is surprising, your Honor, that such a proposition should be made. Suppose it were upon the same subject, suppose Mr. Tracy was the authorized representative of Mr. Beecher, where is the authority from Mr. Tilton conferred upon Mr. Tracy or upon Mr. Moulton to consult upon the subject of an answer to the Bacon letter or upon any other subject or topic connected with the Bacon letter? And by what right do these two gentlemen, disconnected with Mr. Tilton in interests, attempt by their consultations or suggestions or declarations to conclude the legal rights of a party to this action. But, furthermore, Sir, my friend still insists that Mr. Moulton was the representative of Mr. Tilton. Indeed, Sir! In regard to the answer to this Bacon letter, the representative of Mr. Tilton authorized to negotiate and speak for Mr. Tilton, guiding the policy of Mr. Tilton in regard to the proper answer honor and duty called for to that letter! Why, he was the special emissary and agent of Mr. Beecher, working in the interests of Mr. Beecher, in my judgment faithless to the true interests of his more ancient friend. He was endeavoring to suppress the answer to the calumnies and reproaches, under the leading of Dr. Bacon, produced as against Mrs. Tilton; and he it was who says that he would rather pay the $5,000—I think the evidence justifies me in saying that he offered to Theodore Tilton $5,000 if he would not publish the contemplated answer to the letter. Sir, these two gentlemen, upon that question and in regard to the policy to be adopted in relation to the charges made by Dr. Bacon, humiliating and disgraceful and destructive to my client as they were, these gentlemen stood in direct and personal opposition, Mr. Moulton representing Mr. Beecher and laboring in the interests of Mr. Beecher, and Mr. Tilton representing his own manhood and speaking for his own justification. And yet the counsel has the effrontery in an argument to your Honor to maintain that Mr. Moulton is the representative of Mr. Tilton, and that the interests of Mr. Tilton before this Court and jury shall be concluded by what he may have been indiscreet or wise enough to say, I care not which. I insist to your Honor that there is no principle of right, there is nothing in this evidence showing any such association with or authority upon the part of Mr. Moulton which justifies the reception of these declarations.

THE CONVERSATION RULED OUT.

Mr. Evarts—The authority, Sir, to which I refer is *Nesbitt vs. Stringer*, 2 Duer, 26. [Reading.]

Where defendant's liability is sought to be proved by inference from circumstances, or from his verbal declarations or admissions, he is entitled to demand that all the circumstances and particulars of conversations relating to the subject-matter shall be taken into consideration, even though some of the conversations took place upon different days.

My learned friend also was wrong in his estimate of the actual situation. It was *after* the publication of the Bacon letter that this interview to which I call attention occurred in reference to what Mr. Tilton should do in answer to Dr. Bacon's contumelious observations, if they were such, what was to be done to prevent the injury to Mr. Tilton's family which would grow out of a meeting of the Bacon letter, in its imputations against Mr. Beecher, by Mr. Beecher, by a public investigation. That is the situation.

Judge Neilson—The conversation with the witness that you propose to give was after the publication of Mr. Tilton's Bacon letter.

Mr. Evarts—Yes, Sir.

Judge Neilson—So I understood. I think that strengthens the objection to it.

Mr. Beach—What possible analogy any legal mind, not to say any human mind, can see between this authority and this question——

Judge Neilson—That is a good authority, properly applied, Sir. That is all the trouble. I think we will not receive this, Mr. Evarts.

Mr. Evarts—Well, Sir, it was applied to the proposition that in the course of a relation from which a conclusion is drawn, you cannot limit a party to the right to give the conversation where the conclusion is drawn, but he may prove preceding ones, though on different days.

Judge Neilson—Certainly.

Mr. Evarts—That is my proposition—all these conversations as they occurred between the parties——

Mr. Beach—That is another matter.

Mr. Evarts—It is not. Do you say——

Mr. Beach—I beg your pardon.

Judge Neilson—Regarding this as an independent conversation, not opened by the plaintiff, I think we cannot receive this evidence.

Mr. Evarts—Very well, Sir, I will lay a foundation for the proof and your Honor will dispose of it.

Q. Did you have an interview with Mr. Moulton on or after the 24th of June of last year? A. On the evening of the 24th of June, if that is the date on which the "Bacon letter" was published in *The Golden Age*, I had an interview with Mr. Moulton.

Q. Where was that? A. At his house.

Q. How did that interview come about? A. He sent for me to come to his house.

Q. Did you go by Mr. Beecher's procurement in any way? A. No, Sir.

Q. Had you any authority from him, or had he any knowledge of your going? A. No, Sir.

Q. Now, Sir, what matter was brought to your attention by Mr. Moulton at that interview? A. Mr. Tilton's letter to Dr. Leonard Bacon.

Q. Had you seen it before? A. No, Sir.

Q. Did you know of its existence or publication? A. I did not.

Q. Did Mr. Moulton state to you what the objects of this—what his object in having this interview with you was?

Mr. Beach—I object to it.

Judge Neilson—We cannot take that.

Mr. Evarts—Now, I propose to show, if your Honor please (and I will make my offer brief), that Mr. Moulton desired the attention of Mr. Tracy, and his suggestions as to the proper treatment of this publication in reference to preventing any investigation or further publicity as proceeding from Mr. Beecher.

Mr. Beach—I object to it, of course, Sir.

Mr. Evarts—Yes, I understand. Your Honor excludes that evidence?

Judge Neilson—Yes.

Mr. Evarts—And we except.

Judge Neilson—On the former occasion, when the conversation with Mr. Tracy at Mr. Moulton's house was admitted, the occasion when Mr. Woodruff was there, it was received, rightfully or wrongfully, in view of the evidence then before us, showing that the interview was in pursuance of some arrangement with Mr. Beecher; and *there* is a question of fact to be passed upon finally by the jury. This occurs long afterward, and is utterly disconnected; it is even after the publication of Mr. Tilton's letter to Dr. Bacon. I think it is an independent conversation and cannot be received. It stands precisely as if Mr. Moulton had conversed with any other person on the subject.

Mr. Evarts—As if there were two strangers talking together.

Judge Neilson—Yes, Sir.

Mr. Evarts—There is a view, perhaps, however, that your Honor should take into your survey, and that is, that evidence has been given of subsequent, following interviews, in which it has been claimed on the other side that Mr. Tracy was there as the representative of Mr. Beecher.

Mr. Beach—Those were given on our part as charging Mr. Beecher.

Mr. Evarts—Yes; as charging Mr. Beecher.

Mr. Beach—Quite a different attitude, and different——

Mr. Evarts—But on the ground that Mr. Tracy was in, by Mr. Beecher's procurement; and it has been shown that this interview that I have brought to your Honor's attention was not by Mr. Beecher's procurement, nor upon any authority from him. I must leave it, of course, to your Honor's ruling and my exception.

"SCARCELY A WORD OF TRUTH" IN GEN. TRACY'S OPENING.

Q. Now, Mr. Tracy, after this interview, did you see the "Bacon letter?" A. After that evening?

Q. Yes. A. I did.

Q. Did you see it that evening at this interview? A. Well, I saw it, and heard it read; I did not read it.

Q. You knew of it, then, at that time? A. Yes, Sir.

Q. Now, the next morning you read it yourself in the papers, I suppose? A. I did.

Q. Was there a publication that appeared in any of the papers of this city as of an interview between yourself and a journalist, relating to that "Bacon letter?" A. There was.

Q. After that was published, did you have an interview with Mr. Tilton? A. I did.

Q. How soon after? A. Next day.

Q. That would be 26th? A. The 27th the interview was.

Q. The interview was on the 27th. What passed between you and Mr. Tilton at that interview? Did you call upon him, or he upon you? A. He called upon me at my office.

Q. What was said at that interview? A. He came in and——

Mr. Beach—Is that any interview we have given in evidence?

Judge Neilson—It is an interview with the plaintiff.

Mr. Beach—Sir?

Judge Neilson—It is an interview with the plaintiff.

Mr. Beach—Yes, Sir; but I wanted to know whether this gentleman goes on to it without any evidence before in regard to it.

Judge Neilson—It is referred to on the cross-examination, I think.

Mr. Beach—I had forgotten.

The Witness—I do not think it is, your Honor.

Judge Neilson—They ask Mr. Tilton if he did not go to Mr. Tracy's office.

The Witness—I don't think it is referred to in the cross-examination.

Judge Neilson—I may be mistaken.

Mr. Beach—Do you still think it was, Sir?

Judge Neilson—I am not certain, Sir, but I am inclined to think it was.

Mr. Beach—It would make it still worse for the purpose of contradiction.

Judge Neilson—I may, perhaps, have been confounding it with the reference made in the opening.

The Witness—Possibly.

Judge Neilson—It has been referred to somewhere.

Mr. Evarts—Yes, Sir; I think it is in our minds as part of the record heretofore.

Judge Neilson—Yes.

Mr. Beach—It does not affect the question of the admissibility of the evidence. My only point was to know whether it had been referred to in prior evidence, so as properly to call for an answer from anybody, or whether this is volunteered testimony.

Judge Neilson—Yes, Sir. I think it is a new occasion and a new interview.

Mr. Beach—Well, all right.

Judge Neilson—Referred to in the opening, I think.

Mr. Evarts—That is, the opening on our part.

Judge Neilson—Yes.

Mr. Beach—Well, fortunately that opening is not evidence.

Mr. Evarts—Why not?

Mr. Beach—Why not! Because there is scarcely a word of truth in it, from beginning to end.

Judge Neilson—That is the reason they are going to examine the witness in regard to it, I suppose.

Mr. Evarts—That does not exclude evidence, that it is not true.

Mr. Beach—Yes, Sir, it does, unless it is sworn to and verified by some other mode than Mr. Tracy's simple utterance as counsel.

Mr. Evarts—Well, I will not press this at present, Mr. Tracy; I will take up a matter that I can dispose of within a few minutes, and about which there is no doubt.

MORE BICKERING OVER THE TESTIMONY.

Q. Do you remember in August, 1874, an interview between yourself and Mr. Moulton, which has been made the subject of evidence, in regard to obtaining the documents from him for Mr. Beecher? A. That was in July, Mr. Evarts.

Q. July, yes; the interview was in July, but the answers did not come, I think, until early in August. A. No, Sir.

Q. Will you please state how that arose?

Mr. Beach—Can you refer to where that is mentioned?

Mr. Evarts [to the witness]—What occurred between you and Mr. Moulton?

The Witness—Mr. Beach is looking for the evidence.

Mr. Beach—Wait a moment, Sir.

Judge Neilson—If it was an application for the papers on behalf of Mr. Beecher, of course you can show it.

Mr. Evarts—Yes; Mr. Moulton gives the interview between Mr. Tracy and himself, and I will examine Mr. Tracy as to that.

Q. Now, how did that arise, and what occurred? A. I took a letter from Mr. Beecher to Mr. Moulton.

Q. That is the letter of July 24, is it? A. Yes, Sir.

Q. Which is in evidence? A. Which is in evidence. I am not certain that the interview occurred on the day of the date of that letter; it either occurred on that day or a day or two afterward; I could tell, probably, if I knew the day of the week that the 24th was. But I took a letter——

Mr. Beach [still searching the record]—Wait a moment.

Mr. Evarts—Do you find it?

Mr. Beach—Yes, Sir; I find it, but it is upon cross-examination.

Mr. Evarts—Well?

Mr. Beach—Well?

Judge Neilson—Necessarily it was on the cross-examination. It was in reference to Mr. Beecher's seeking to get the papers.

Mr. Beach—Certainly, Sir.

Judge Neilson—Now, it is perfectly competent to show that Mr. Tracy, on behalf of Mr. Beecher, went with one of those letters and sought to get the papers.

Mr. Beach—That is in proof.

Mr. Evarts—But Mr. Moulton's statement of any conversation or transaction, that we drew out on cross-examination, does not preclude us from giving what occured by another witness. It is not collateral.

Mr. Beach—My friend will modify that statement, for it certainly does, in regard to some matters. The question is whether this is collateral, or material to the issue.

Mr. Evarts—Well, I assume that it is not collateral.

Mr. Beach—I don't know why you should assume that.

Mr. Evarts—How is it collateral?

Mr. Beach—How is it material, as between Mr. Tilton and Mr. Beecher, that Mr. Beecher applied to Mr. Moulton for copies of letters, and that he declined to give them, or that he did give them?

Mr. Evarts—It certainly is not collateral in the sense of being extraneous to the subject or the issue. It is not in the nature of a collateral impeachment. It may be subordinate; it certainly is not collateral.

Mr. Beach—Well, the counsel makes a distinction, very refined and mystical, as between collateral and subordinate. This is collateral, Sir, in legal phraseology, because it does not bear directly upon the merits of the issue, and whatever does not is collateral in the sense of the law.

Mr. Evarts—Well, the only question is this, whether, in the line of this controversy, their giving evidence as to Mr. Beecher's course of conduct in regard to suppressing or shaping, or directing investigations, representations, explanations, is or is not collateral. It is not collateral. It is bearing upon the direct issue of the adultery, by showing, in the nature of confession or conduct, that which implies guilt. Otherwise we have no space in our record for all this evidence that has been given, running through the West charges and a variety of other matter. That is what I mean by saying that it is not collateral, although it may be subordinate, and may be unimportant, or important, as the examination may show. Now, this was one of the things done. On cross-examina-

tion I drew from Mr. Moulton, or there was drawn from Mr. Moulton, a certain view—correct in part, or in whole, if you please—concerning that interview and his dealing with this matter. Now, there is nothing in the fact that I took on cross-examination his testimony that prevents me from proving by another witness who knows what really occurred, what did occur, and qualifying or flatly contradicting his view of the matter. It is not as if I had asked him a question derogatory to his character on extraneous matters. There I take the answer of course. That is what I understand to be the legal sense of "collateral." If my friend insists that he is more correct in regard to the phrase than I am, we won't dispute about it. But this belongs to the issue, and is one of the elements and chains of evidence; and I propose to show now——

[Mr. Abbott here made a suggestion to Mr. Evarts.]

Mr. Evarts—If it came in any shape as outside of the issue, why, it would be a question of bias, and the conduct of a witness in respect to bias is not collateral in the sense that you cannot contradict him. Bias, then, becomes a matter to be proved—to wit: it belongs to this issue; it belongs to this issue as bearing upon the question of whether or no he has espoused one side or the other, and has acted with hostility and injustice toward the other party; so that if, in that sense, it is collateral, why, bias can always be shown, and we are not concluded by the witness's statement concerning his bias.

Mr. Beach—Upon the question of bias your Honor has ruled, and the law undoubtedly is, that in an attempt to show hostility or unfriendliness of feeling on the part of a witness, you can merely ask in general terms with regard to its existence; you cannot go into the details of any difficulty or transaction between the witness and the party against whom he appears, for the purpose of drawing an inference, or establishing a conclusion of enmity—so that it is not necessary in that view to consider the question presented to your Honor, because this was an application for letters, or copies of letters, to which it is supposed Mr. Beecher was entitled from Moulton as the trustee and depository in whose hands they had been placed. It is out that Mr. Moulton refused it. It is proven by him, it is proven by the correspondence between the parties it is proven by them orally and in writing, and therefore, so far as that fact indicates any unfriendliness or enmity, it is proven, and proven so far as it can be properly proven under the rule. Now, how does the conversation between Mr. Moulton and Mr. Tracy, which they drew out on the cross-examination, how does that become material, in any sense, to this issue? Mr. Tracy, representing Mr. Beecher, applies to Mr. Moulton for copies of these documents. Mr. Moulton makes certain declarations in regard to the propriety of delivering them, and his views of the honorary obligation which rests upon him. Mr. Tracy, representing Mr. Beecher, combats these views, and perhaps makes some very forcible and striking suggestions to Mr. Moulton in regard to his duties—undoubtedly forcible and striking, as that gentleman, Mr. Tracy, never speaks except in that character and to that effect. But what has Mr. Tilton to do with all this, Sir? By what right does Mr. Tracy, representing Mr. Beecher, by explicit authority, seek an interview with Mr. Moulton, and make declarations and make arguments to be testified to by him upon the stand, as against Mr. Tilton? And by what process does the gentleman make these interviews and these declarations by legal strangers to us evidence as against us? Why, Sir, there is a continual strife before your Honor to make the declarations of Mr. Moulton testimony against Mr. Tilton. Not only that, but, by putting forward Mr. Moulton as the representative of Mr. Tilton, to make whatever Mr. Tracy chooses to say, as the counsel of Mr. Beecher, to Mr. Moulton evidence as against Mr. Tilton; and to get, through Tracy counsel and Tracy witness, an argument upon this witness-stand, under the solemnity of an oath, from this counsel and witness. Now, I would like to know, Sir, how that is to be accomplished, and how my client, entirely innocent of all these transactions, not present at the interviews, or knowing anything about them, or giving any man a credential to represent him at them, is to be injured by this mode of getting up arguments, to be sworn to upon the stand by a counsel in the case. It may seem to your Honor consistent with those rules of justice and of evidence which guide a court of justice; but it seems to me that it is an evasion of every principle of equity and right, and is an effort which should be discountenanced by the indignant intelligence of the Court.

Judge Neilson—The suggestion sought to be made, perhaps, at the expense of Mr. Beecher, that during a course of time and for whatever reason as assigned by each party, he discouraged investigation or sought to put it by, flows on down to the time when the Tilton-Bacon letter was published. Then a committee was appointed, and the relations of the parties changed; and then Mr. Beecher sought to reclaim from Mr. Moulton the papers or copies of them for use before the Committee. Most of these papers were papers which Mr. Beecher himself had given to Mr. Moulton, and he writes a letter, which is, perhaps, in evidence, or is one of those excluded——

Mr. Evarts—Yes, Sir, it is in evidence.

Mr. Beach—It is in evidence.

Judge Neilson—Mr. Tracy, representing Mr. Beecher, very properly takes the letter to Mr. Moulton, and I think he is quite at liberty to say that, at the request of Mr. Beecher, he took that letter to Mr. Moulton——

Mr. Beach—Undoubtedly.

Judge Neilson [continuing]—In order to get the papers, and that he got them, or did not get them—if there was a refusal to state the fact, but not to give the conversation or arguments that occurred between them.

Mr. Beach—That is all I object to.

Judge Neilson—He has a right to prove the fact of the delivery of the letter, and the success or failure of his mission.

COUNSEL HAVE A LAUGH AT THE JURY'S EXPENSE.

Mr. Evarts—It is time to adjourn.

Judge Neilson—No, let us have this answer; let us get through with this branch.

Mr. Evarts—Well, Sir.

Judge Neilson—I will interrogate him, if you are fatigued.

Mr. Evarts—I am not fatigued in the least, but my learned friend—— [alluding to Mr. Beach.]

Mr. Beach—Oh, I am willing to stay here all night waiting for my friend.

Mr. Evarts—The jury are not fascinated with either of us, and they don't wish to have any more of us.

Mr. Beach—They are sick enough of us, no doubt. [Laughter.]

Mr. Evarts—Now, Mr. Tracy, you may remember that at this interview something was said of a letter which you then presently wrote. Have you that letter? A. I have, but I desire to say, Mr. Evarts, if you will excuse me, that if it be true that this conversation was gone into on our cross-examination and not on the direct examination, I hope that that question will not be put to me, because I purpose to confine my evidence entirely to conversations which the plaintiff has himself introduced, and where he has introduced my name.

Judge Neilson—Then you agree with the ruling which I have just made—to wit, that the conversations are not to be given.

Mr. Evarts [to the witness]—That I understand, and have always understood. But this is simply supplying the definiteness of proof which, in the absence of that letter, was not existing.

The Witness—I have that letter.

Mr. Evarts—Well, we will leave that.

Judge Neilson [to the witness]—You delivered that to Mr. Moulton?

The Witness—I offered to——

Mr. Evarts—No, Mr. Tracy wrote a letter, seeing that Mr. Beecher's letter required originals. Your Honor will remember that Mr. Moulton testified that seeing that Mr. Beecher's letter required originals, and Mr. Tracy recognizing the point that perhaps Mr. Moulton might not wish to part with the originals——

Judge Neilson—But would give copies.

Mr. Evarts [continuing]——then undertook to write a request or intimation to Mr. Moulton that copies would be equally satisfactory.

Judge Neilson—I will take the fact that that was his request, and that it was declined, if that was the fact.

Mr. Beach—Oh, copies were declined, Sir, as well as originals; there is no doubt about that.

The Witness—Yes, Sir; he declined to receive my letter, and asked me to take back Mr. Beecher's.

Judge Neilson—You didn't get the copies?

The Witness—I didn't get the copies.

Mr. Beach [to the stenographer]—Please strike that out.

The Witness—Strike it out.

Judge Neilson [to the jury]—Gentlemen, get ready to retire.

The Court then adjourned until 11 a. m. on Thursday.

SEVENTY-FIFTH DAY'S PROCEEDINGS.

MR. TRACY CROSS-EXAMINED.

CLOSE OF THE DIRECT EXAMINATION OF MR. TRACY—STATEMENTS OF MR. TILTON AND MR. MOULTON CONTRADICTED—HOSTILITIES OPENED BY MR. BEACH—AN AGGRESSIVE CROSS-EXAMINATION.

THURSDAY, April 29, 1875.

The direct examination of Mr. Tracy was concluded to-day, and the cross-examination by Mr. Beach was begun.

Very few exceptions have recently been taken by the counsel on either side to Judge Neilson's rulings, but to-day Mr. Evarts felt constrained to depart from this custom. He had offered to introduce new evidence in the shape of an interview with Mr. Tracy in relation to the scandal published in *The Brooklyn Daily Union* of June 26, 1874. He maintained that it was competent evidence, having been the public expression of Mr. Tracy's views at that time. It was, however, ruled out by Judge Neilson, and Mr. Evarts excepted to the ruling. The direct examination of Mr. Tracy terminated earlier than was anticipated. The main object was to elicit from Mr. Tracy contradictions of some of the plaintiff's witnesses. Mr. Evarts held in his hands a copy of theprinted report of the plaintiff's case, and picked out passages from the testimony of Mr. Tilton and Mr. Moulton which he read to the witness, asking him whether they were true. The passages related principally to what Mr. Tracy was alleged to have told Mr. Tilton about the Investigating Committee. Mr. Tracy said they were not true, denying absolutely with respect to some, and qualifiedly with respect to others. In his testimony Mr. Tilton said that Mr. Tracy told him, before Mrs. Tilton had gone before the Investigating Committee, he had instructed her what to say, and how to say it—put the questions to her, that she might make no blunders in answering them. This Mr

Tracy declared he had never said. He likewise denied that he had told Mr. Tilton that the Committee would not inquire closely enough to get at the truth. He called in question other statements that had been made by Mr. Tilton and Mr. Moulton. He also swore positively that Mr. Woodruff did not tell him that Mr. Tilton's charge against Mr. Beecher was adultery with his wife.

Mr. Beach began his cross-examination of Mr. Tracy in his usual vigorous manner, startling everybody by his first question, which was in substance this: Whether the witness had suggested questions to Mr. Porter when the latter was cross-examining Mr. Moulton. Mr. Tracy did not remember doing so.

"When cross-examining Mr. Moulton in regard to a litigation of Woodruff & Robinson, did you stand up behind Mr. Porter and make suggestions?" asked Mr. Beach.

"I did not!" replied the witness, with great emphasis, half rising from his chair.

Mr. Tracy had acted as counsel for the firm of Woodruff & Robinson, and the insinuations, which the question might have been thought to convey, that he had made improper use of professional secrets, probably lent piquancy to his reply.

The cross-examination, after opening in this aggressive manner, assumed the nature of a legal duel between the examiner and examined, and its progress was watched with great amusement by the spectators. Several times Mr. Tracy, who took the severe questioning of Mr. Beach in great good nature, laughed heartily at the manner in which he was brought to task by Mr. Beach for insisting on answering in his own way.

Considerable surprise was manifested by the auditors when the witness was asked whether he was the author of the opening speech which he had made for the defense. His face flushed as he replied that to a large extent he was. Mr. Beach insisted on having a more explicit answer. Objection was made by the counsel for the defense to these questions, but Mr. Beach said he wished to show in what character that opening speech, "overcharged with malignity, and," as he thought, "with untruth," had been made. Judge Neilson permitted the question to be asked again by Mr. Beach, and Mr. Tracy finally replied that he had composed most, but not all of it.

Gen. Butler's relations to the case were the principal subject of inquiry by Mr. Beach. The particulars of the consultation between Mr. Tracy and Gen. Butler at the Fifth Avenue Hotel in August, 1874, were all gone over. Mr. Beach wished to ascertain in what manner Mr. Tracy had gone into that consultation. This led to another duel of words. Mr. Tracy finally stated that he had gone intending to do a friendly act, to prevent the publication of a scandal the effect of which would be to breed demoralization. He denied that he told Gen. Butler that he appeared as the representative of Mr. Beecher. Questions about Mr. Tracy's visit to Boston to Gen. Butler last Summer led to an amusing scene. Mr. Beach was endeavoring to find out whether he had gone with or without Mr. Beecher's consent. The witness insisted that he could not answer without entering into an explanation.

"It's a mere speculation, Sir," he said. "Ah! speculation, Sir!" exclaimed Mr. Beach in an indescribable manner that set the audience into a muffled roar of laughter; "isn't it a conclusion in your mind?" Mr. Tracy at last said that he never supposed he went against Mr. Beecher's wishes. This Mr. Beach declared was the answer which he had been for a long time trying to get. The witness insisted that this was the first time the form of the question had admitted of that answer. Mr. Beach then called for the reading of the preceding questions and answers. THE TRIBUNE stenographer accordingly read them, beginning well back, and an amused expression on the faces of both Mr. Beach and Gen. Tracy gradually deepened into a smile, as they listened appreciatively to their words, which had been very earnest when struck off at a heat, but which sounded very funny when read by a third person.

Once Mr. Tracy had answered, "I don't remember definitely."

"Definitely," exclaimed Mr. Beach; "what are you covering up under the word definitely?"

"Nothing," replied Mr. Tracy, with a laugh. The interview between Mr. Tracy and Gen. Butler, at the former's room, immediately after the Fifth Avenue Hotel consultation, was one of the principal topics. Mr. Beach wished to know whether either Mr. Tracy or Gen. Butler was preparing a statement for Mr. Beecher on that occasion. The witness wanted to answer in his own way, and Mr. Beach insisted on having shorter and more direct replies.

"Can't you answer?" asked Mr. Beach.

"No, but I'll tell you what occurred," replied Mr. Tracy.

"No, you won't—I beg your pardon," said Mr. Beach.

Mr. Shearman came in for his share of the "scuffling," as Mr. Evarts once called it. Mr. Beach had said that an answer given was not honest. Afterward he said he did not apply the remark to the witness.

"We understand Mr. Beach's remark was purely Pickwickian," said Mr. Shearman.

"Well, Sir," returned Mr. Beach in a severe tone, "there is no one more competent or apt to deal in Pickwickian sense than that gentleman," indicating Mr. Shearman.

Mr. Tracy said that at his room Gen. Butler had begun to dictate a statement which he thought Mr. Beecher might make, but he did not finish it. After returning to Boston he sent Mr. Tracy a paper, which the latter had returned within two months, without paying any attention to it.

THE PROCEEDINGS—VERBATIM.

GEN. TRACY NEVER MR. TILTON'S COUNSEL.

The Court met at 11 a. m., pursuant to adjournment.

Benjamin F. Tracy was recalled and his direct examination resumed.

Mr. Evarts—Mr. Tracy, have you ever been in any matter or in any form an attorney or counsel or legal adviser of Mr. Tilton? A. Never.

Q. What employment or relation of advice or assistance had you in respect of the Church Committee or its investigations? A. I was requested by the Church Committee to attend their meetings and aid them in the examination of witnesses that might appear before them.

Q. Was it employment for compensation? A. No, Sir, a mere friendly act.

HOW GEN. TRACY BECAME COUNSEL FOR MR. BEECHER.

Q. Now, when did you become counsel of Mr. Beecher in this matter at all, and how? A. I was asked to become counsel to Mr. Beecher soon after the commencement of the action—I don't know how soon—by Mr. Shearman. I did not determine whether I would accept the retainer of Mr. Beecher until some time in September, not at least until after yourself and Judge Porter had been employed, and the other counsel had been determined on.

Q. And then the question of your acceptance was determined by you? A. It was.

Q. And in favor of acting for Mr. Beecher, with your associate counsel? A. Yes, Sir.

Q. When did you first anticipate being a witness in this cause? A. Not until after the plaintiff had given evidence of interviews between myself and Mr. Moulton and Mr. Tilton, in which it was alleged that I represented Mr. Beecher in those interviews. After that evidence had been given I considered the question whether it was my duty or not to be a witness.

Mr. Beach—Well, we don't want that statement, Sir.

Mr. Evarts—Well, after that was done, was the question of whether you should be a witness submitted to any consideration or opinion?

Mr. Beach—That is objected to, Sir.

Mr. Evarts—Why is that, Sir?

Judge Neilson—I think he may take the naked fact that the question was considered by him and his associates—the simple naked fact.

Mr. Evarts—That it was submitted to the judgment of others is the main point. How is that, Mr. Tracy? A. It was submitted to my associates, and I followed their judgment.

Mr. Beach—Well, Sir, I move to strike out the latter portion of that.

Judge Neilson—Yes; "It was submitted to my associates." The act of his being here shows that he followed their judgment.

Mr. Evarts—Presumptively.

The Witness [*Sotto voce*]—Not necessarily.

THE "UNION" INTERVIEW WITH GEN. TRACY RULED OUT.

Mr. Evarts—Though an obstinate man might have gone against it. [To the witness.] Mr. Tracy, please look at this paper; come down from the stand a moment.

[The witness examined a bound volume of *The Brooklyn Union* and then resumed his seat.]

Q. Please look at *The Brooklyn Daily Union* of the issue of Friday, June 26, 1874, and say if this is the publication of an interview with you to which you have referred in your testimony? A. It is.

Mr. Evarts—I offer, if your Honor please, to put that interview in evidence, not of course as evidence that any statements are representations of facts, or proof of facts, but as evidence, and of some importance, I think, in some subsequent connections, that this was a public declaration of Mr. Tracy's views of certain facts in this case, growing out of interviews between himself and Mr. Moulton and Mr. Tilton, which were well known to them as his public declarations, and the subsequent relations preserved between the parties after that publication.

Mr. Beach—We object to it, Sir, as incompetent and immaterial.

Judge Neilson—I think the mere fact that the publication was made can be taken, but that is as far as you can go.

Mr. Evarts—That is in evidence, but unless the nature of the publication—your Honor perceives, as my learned friends do, that a state of public declaration on the part

of Mr. Tracy, known to these gentlemen as a public declaration, and presumptively his views and his opinions, and then a continuance of relations with him in regard to matters that may be brought in evidence in reference to interviews concerning which they have given evidence, may be an important element. Their conduct towards him after that publication goes to sustain, if you please, the view that we take as to their subsequent relations. Here certainly was a public declaration, I say, in general.

Judge Neilson—I don't think we can receive it, Mr. Evarts.

Mr. Evarts—Your Honor will allow us to have it marked for identification?

Judge Neilson—Yes.

Mr. Evarts—And permit us to except to its exclusion. I dare say it is sufficiently described to be identified. It is a subdivision of a general subject headed "The Scandal," and the subdivision is headed, "The Nature of the Scandal Expained."

Judge Neilson—What paper is it, Sir?

Mr. Evarts—It is *The Brooklyn Union* of Friday, June 26, 1874.

Mr. Shearman—The stenographer had better mark it, hadn't he?

GEN. TRACY'S INTERVIEWS WITH MRS. TILTON.

Mr. Evarts—No; the particular copy of the paper is of no importance. [To the witness.] Gen. Tracy, it has been a subject of evidence as to your interviews or conversations with Mrs. Tilton preceding her examination before the Committee; I will ask your attention now to that point of time, and ask you to state when and how you first came into any conversation or meeting with Mrs. Tilton, and what passed between you and her prior to her delivering her statement to the Committee, on the night, I think, of the 6th of July?

Mr. Beach—So far as that question calls for what passed between Mrs. Tilton and Mr. Tracy we object to it, as immaterial and incompetent.

Judge Neilson—It will answer your purpose to describe whether he met her, and how long they conversed, and who was present.

Mr. Evarts—Well, I dare say we can get along without running against any legal prejudices of my learned friends.

Mr. Beach—Prejudices!

Mr. Evarts—Well, Mr. Tracy——

The Witness—Shall I begin at the time I first met Mrs. Tilton?

Q. Yes. Just give the facts concerning your meeting with her; and then I, perhaps, will ask some questions that will not be objected to. A. In the afternoon of July 6—late in the afternoon—I was at Mr. Beecher's, and I there learned that Mrs. Ovington had been to Mr. Beecher's with a message which she desired to communicate to him; I learned also that Mr. Beecher preferred not to have a communication from Mrs. Ovington, or not to see her, and requested me to go around and see if she would deliver whatever communication she had for him to me.

Mr. Beach—This is trespassing, Sir, upon the rule, I think.

The Witness—Then I will begin where I met Mrs. Tilton, if you prefer it.

Mr. Evarts—I think this is substantially in evidence before, if your Honor please.

Judge Neilson [to the witness]—Then you went to Mrs. Ovington's and met her; is that it? A. No, I went to Mr. Ovington's and introduced myself to Mrs. Ovington, and told her my object in coming there.

Mr. Evarts—Had you any acquaintance with her before? A. I never had seen Mrs. Ovington before that, and she said——

Judge Neilson—No, you learned that Mrs. Tilton was there.

The Witness—I learned that Mrs. Tilton was not there.

Judge Neilson—But would be?

The Witness—No, I did not learn that at that time.

Mr. Evarts—We cannot anticipate, if your Honor please, exactly how it came about.

Judge Neilson—That is true.

Mr. Evarts—Mr. Tracy, understand not to give any conversation, except how it came about that you saw Mrs. Tilton.

Mr. Beach—We don't want the substance of the conversation in the shape of a narrative.

The Witness—I will avoid any objection, I think, Mr. Beach. As the result of my interview with Mrs. Ovington, she went to Mr. Beecher's; and as the result of what passed there, she stating that Mrs. Tilton would be at her house, she thought; on her return, I went to see if Mrs. Tilton desired to go before the Committee.

Q. Went to Mrs. Ovington's? A. Went to Mrs. Ovington's, and, on reaching there, I found that Mrs. Tilton had been there and had gone away, but would return with her stepfather, Judge Morse, later in the evening; I think I then went to dine, and, after dinner, returned to Mrs. Ovington's, and either Judge Morse and Mrs. Tilton were in the house when I went, or followed me in very soon after, and I was there introduced to Mrs. Tilton by her stepfather, Judge Morse.

Q. Was Judge Morse a previous acquaintance of yours? A. He was; I had known Judge Morse slightly for several years.

Q. And Mrs. Tilton—had you any personal acquaintance with her? A. None whatever.

Q. Did you know her by sight? A. Well, I think I should have recognized Mrs. Tilton by sight; I remember having seen her in Plymouth Church once or twice, but I never had spoken with her, and had no acquaintance with her

Q. Now, before she left Mrs. Ovington's to go before the Committee, did you have any conversation with her, and if so where and of what length? A. She did not leave Mrs. Ovington's to go before the Committee, Mr. Evarts; the Committee came to her.

Q. Yes, that is so. A. On being introduced to Mrs. Tilton, the object of her visit was stated generally in the presence of Mr. and Mrs. Ovington, Judge Morse and myself. She was considering whether she would or would not——

Mr. Beach—Wait a moment, Sir.

Mr. Evarts—Well, that we have had.

The Witness—There was a general talk on the subject. She went apart and had a private consultation with her stepfather, Judge Morse, and returned to the room and said——

Mr. Beach—It is hardly worth while to go into those details. You ain't very good at avoidance.

Mr. Evarts—Well, I don't know; I think so. [To the witness.] She gave you an answer as to going before the Committee? A. She did, and Judge Morse left the house. I left immediately after to go to Mr. Storrs's and notify the Committee. I did so, and they came around to Mr. Ovington's house, where Mrs. Tilton was.

Q. Now, what further interview, if any, did you have with Mrs. Tilton before she commenced her statement before the Committee? A. When we reached Mr. Ovington's, I was told that Mrs. Tilton and Mrs. Ovington were in the dining-room below, and I went down there. Mrs. Tilton was just finishing her tea. I notified her that the Committee were present, and she immediately—we passed up to the parlor floor, she and Mrs. Ovington proceeding up stairs.

Q. To the story above? A. To the story above.

Q. Above the parlors? A. And returned in a few moments, and she was introduced to the Committee—the different members of the Committee—and proceeded at once with the statement.

Q. Now, at this interview between yourself and her in the tea-room was anything else said excepting that the Committee were ready to to hear her statement and that she was ready to give it? A. There was a single word said—a single sentence.

Mr. Evarts—Well, shall I have that, Mr. Beach?

Mr. Beach—I think not, Sir.

Mr. Evarts—Did it relate to the appointment of going before the Committee? A. It did.

Q. Now, were you present during the examination of Mrs. Tilton? A. I was.

Q. And did you attend to and hear all the questions and all the answers? A. I did.

GEN. TRACY AND MR. TILTON TALK ABOUT MRS. TILTON'S TESTIMONY.

Q. Now, Sir, evidence has been given by Mr. Tilton concerning an interview with you on the day after, I think, this examination of his wife. Did you have such an interview? A. I did.

Q. How did that come about? A. By an appointment made by Mr. Moulton, for me to meet Mr. Tilton at his house that next evening.

Q. And you did so? A. I did so.

Q. Now, Sir, what passed at that interview between you and Mr. Tilton? A. Well, it was a long interview; a good deal was said. The main subject of conversation was the appearance of his wife before the Committee—the different members of the Committee, what impression she made before the Committee, the details of which conversation I cannot repeat in the language in which it occurred that evening, but the substance of which and the drift of which I know.

Q. Well, Sir, what was that? A. Well, Mr. Tilton asked me about his wife's being before the Committee—asked me how she came to go before the Committee, and I told him the facts so far as I knew them; told him how I first met his wife, how she determined to go before the Committee; that I went for the Committee and they came around to Mr. Storrs's house—or Mr. Ovington's house, and she made her statement before the Committee; I told him that I was present at that statement, that I heard all the questions that were put to her, and all the answers that she made; I stated generally the drift of what she said, to him, and her bearing before the Committee and the impression that she made upon the Committee, so far as I observed it; he inquired particularly about that, and what feeling her statement seemed to produce on the minds of the Committee toward himself, and I told him that, as far as I had observed it.

Q. Well, what did you tell him in that regard? A. I told him that Mrs. Tilton's statement was very kind to ward him; while she had denied positively the statement of the Woodhull scandal and of improper relations with Mr. Beecher, and had also denied positively that Mr. Beecher had ever made an improper proposal to her, yet she had not accused Mr. Tilton, or spoken harshly of him at all; on the contrary, she had spoken in the kindest manner of him, and I think that I told him that she expressed in some manner her—in some words, I have forgotten what—her affection for him, and that she explained her motive in coming before the Committee, that after the publication—she said after the publication of the "Bacon letter" she felt it to be her duty to seek out some of her brethren in the church and to make a communication to them of the facts in this case, and I repeated to him what she said about her duty to deny it, to herself—for her own sake and for the sake of her children. Then he asked me who the

members of the Committee were, and I told him, naming them over, and we discussed the various characteristics of each member of the Committee and how they felt toward him and toward Mr. Beecher, he giving me what information—or his views of each member of the Committee, and I giving him my impressions; and he spoke there of whether that Committee could ever be induced to believe or say they believed that Mr. Beecher had been guilty of wronging him or committing an offense against him. He said very strongly that he did not believe they would; that they were determined to acquit Mr. Beecher of all wrong, and they never would say that Mr. Beecher had committed a wrong against him; and I combated that view, because I told him that I was satisfied from what I knew of the Committee, and what I had seen of them, that the Committee would make a report that the facts presented before them justified; if those facts condemned Mr. Beecher, they would condemn; if they acquitted him, they would acquit him, and they would condemn or acquit just to the degree that the facts would warrant; and that discussion went on a long time, until late in the night; that was the general nature and drift of the talk.

Q. When you were speaking to Mr. Tilton concerning his wife's attitude and statements as toward himself, did you say anything to him on the subject of her continued purpose or wish to remain with him? A. I did.

Q. What did you say to him in that regard? A. I said to him that his wife expressed a desire and a determination to preserve her family, and to continue to live with her husband and to struggle on and live down this story.

Mr. Beach—When was that? On the 7th of July? A. This was on the 7th of July.

CONTRADICTIONS OF MR. TILTON.

Mr. Evarts—I call your attention, Mr. Tracy, to this statement of Mr. Tilton's—[Reading]:

Gen. Tracy told me that I need have no anxiety concerning the formation of a committee; that Mrs. Tilton had gone down to the Committee at Mr. Ovington's house; that previous to the assembling of it, he, Gen. Tracy, had instructed her what to say and how to say it—put the questions to her, that she might make no blunders in answering them; that when she came before the Committee, she astonished and surprised all of them with her eloquent allusions to her pastor and to her husband.

In this interview was anything said by you to this effect, in whole or in part, that you had instructed her what to say and how to say it—put questions to her that she might make no blunders in answering them? A. Not a word.

Q. In your intercourse, at any time, with Mrs. Tilton, before her examination was completed, had you in any way, or in any part, prepared her for the questions or the answers in that examination? A. No, Sir; not unless the remark I made to her first should be deemed a preparation; I will state the remark that I did make to her if it is permissible.

Q. Well, what was that?

Mr. Beach—That is objected to.

Mr. Evarts—I think we have a right to give that, Sir?

Mr. Beach—I don't know why they have a right, Sir.

Mr. Evarts—I have a right to give the negation by showing what was said.

Judge Neilson—That you have given.

Mr. Evarts—Now, the witness says not unless this single remark which he has already referred to, and which he was not allowed to give, was a negation.

Judge Neilson—Well, that rule would admit any conversation that might be suggested in the absence of the party in interest.

Mr. Evarts—Not necessarily, I should think, if your Honor please; it would admit any qualifying statement in the denial which the witness makes; that, I suppose, a witness is always entitled to.

Judge Neilson—Yes; and I think you could ask him now whether in that single observation any direction was given in respect to her answers.

Mr. Evarts—Well, I will ask him that. [To the witness.] In that single observation to which you refer, was there any direction given in respect to her answers? A. No, Sir.

Judge Neilson—It seems to me, Sir, that covers the ground.

Mr. Evarts—Well, Sir, that is sufficient. I believe it is already in evidence by Mrs. Ovington.

Mr. Beach—No; you are mistaken.

Mr. Evarts—Now, Mr. Tracy, Mr. Tilton says this also, in respect to this same interview; he says that you said to him:

Now, if you take right advantage of Mrs. Tilton's appearance before that Committee, and of the tender hearts of those gentlemen toward all the parties in the case, particularly toward you, now is an opportunity to suppress the scandal forever.

Then he proceeds:

It is a woman's right (he says) to deny it; let her deny it; let her stand on the denial. Now, cooperate with that denial, and it can be made a success.

Did you say anything of that kind to Mr. Tilton? A. No, Sir, except that I said that she had denied it, and that she said that it was her right and her duty to deny that statement.

Q. Mr. Tracy, a certain passage between Mr. Tilton and yourself before the Committee in regard to your acting as counsel notwithstanding what you had said to him, has been given in evidence, and in that statement as the statement that you had previously notified him; do you remember the occurrence before the Committee in which—— A. I do.

Q. Yes; well that is—that I believe is sufficiently in evidence—now, Mr. Tracy, before that time had you given notice to Mr. Tilton, and when and how? A. I had given him notice.

Q. When was that? A. Well, it was between the 10th

and the 13th of July; I cannot state definitely, as I was seeing Mr. Tilton almost daily from the 27th of June until about the 13th of July; sometimes oftener than once a day.

Mr. Beach—What year?

The Witness—'74; and it is impossible for me to state, therefore, with definiteness the time; but I am sure it was after I had heard of his conversation at Ovington's on the 9th of July; and I am inclined to think it was after I had heard his wife had left him, but of that I am not certain.

Mr. Evarts—Where did it occur, the interview or the conversation? A. I think it occurred at the club.

Q. The Brooklyn Club? A. The Brooklyn Club—it may have been at my office; Mr. Tilton was in the habit of dropping in at my office frequently; and he was also in the habit of dropping in at the club when I was taking lunch or at dinner; and I met him in the street often. We had casual conversations; at times we had set conversations; and it was one of the casual conversations either in my office or at the club when I told him——

Q. Well, what passed between you—how was the matter introduced? A. Referring to the conversation in 1872, I said to him: "Mr. Tilton, as long as you adhere to the case that you then stated to me, I shall adhere to the promise I made you; but I desire to say to you that when you change your case against Mr. Beecher, if you ever do, and state a different case from what you stated to me, I shall not regard my promise then made to you as binding upon me."

Q. What did he say to that? A. He said that he could not see whether—how that would release me from my promise; that I had made my promise not to be counsel for Mr. Beecher in case he and Mr. Beecher came into collision; and whether he stated the same case now against Mr. Beecher that he stated then or not, he did not see that that would release me. I told him I thought I did; that that was a matter of judgment, whether it did or not; it was my judgment that it did, and that I should act upon it in that contingency.

Q. Did he say anything in regard to it? A. I think he did not; that was the substance of the interview.

Q. Now, you have said that you frequently had meetings, casual or otherwise, with Mr. Tilton during this period. What were your relations, friendly or—— A. Friendly.

Q. Were these interviews, any of them, sought or invited by you? A. None that I remember, not a single one; every interview I ever had with Mr. Tilton, so far as I now remember, was either sought by himself, or was the result of an appointment made by Mr. Moulton.

Q. In his behalf? A. In his behalf, or in behalf of——

Q. But not through you? A. Not through me, nor at my solicitation.

Mr. Beach—He does not include in that the casual interviews of which he has spoken of at the club or otherwise.

Mr. Evarts—Well, interviews that were entirely casual.

The Witness—Oh, accidental meetings in the street could be said to be sought by no one, but when Mr. Tilton sought me at the club, when I was lunching, and sat down at the table and had a conversation with me, I treat that as an interview sought by him.

Q. You didn't seek an interview; you didn't commence or seek the conversation at the club with him, finding him there? A. No, Sir; and the club is not the place where Mr. Tilton is in the habit of resorting except to see some one; that is, I never saw him there—I think I never saw Mr. Tilton at the club except when he had come to have some interview with me; I don't remember that I ever did.

Q. I recur now to the interview, Mr. Tracy, that you, I supposed, completed—the interview of the 7th. Now, Mr. Tilton says this, as coming from you:

He said, (speaking of you Mr. Tilton says), He said something like this: "There are a number of gentlemen, and they can summon whom they choose. They can summon Mr. Beecher, and he can say what he chooses, little or much; they can summon Mrs. Tilton, and she can say what she chooses, little or much; they can summon you, and you can say what you choose, little or much; and the Committee will be bound to make their report, and on the basis of the truth, for they won't inquire enough to get the truth; they will be bound to make their report on the basis of what those people choose to put down before them, and what you will choose to put down before them; only," he said, "a proper, gentlemanly, and respectful report would be to the advantage of all parties."

Now, Sir, did you have any conversation of that substance, or—— A. No, Sir; not in the sense that it is there stated; the question of the mode in which the Committee would get witnesses before them was probably discussed, and it was quite likely stated that they had no compulsory——

Mr. Beach—Well, I had a little rather that this gentleman would not reason on the subject; if he will, give us the benefit of his recollection.

Mr. Evarts—No matter; just give us what you remember—what is your recollection upon the subject. A. Well, I recollect that the Committee and its mode of proceeding was discussed between Mr. Tilton and myself, and I recollect the question of the power of the Committee was discussed; I do not remember positively whether it was—whether I stated there that they had not the power to compel the attendance of witnesses or not; if that question was asked—I don't know whether it was or not positively.

Q. You don't recollect about that? A. I know I never stated what he says there about the Committee's not inquiring after the truth, or not wanting the truth; I don't recall precisely the words you have read; that I know I never stated.

Q. "They won't inquire enough to get the truth." A. I never said that.

Q. Or of that effect? A. I never said that; I said that the Committee's report would undoubtedly proceed upon the evidence before them and would be in concurrence with that evidence whatever it might be; that I said.

Q. And otherwise than that you didn't make the statements? A. I did not.

Q. Or to the effect here given—now Mr. Tilton further says this:

Gen. Tracy then asked me what sort of a report would satisfy me—what kind of a report I would stand by. I told him I would stand by any report which did me no injustice, and which reinstated Elizabeth. "Well," said he, "all I want you to bear in mind is this: you may make any kind of report you choose which don't charge Mr. Beecher with adultery, or with any such crime as that he cannot maintain his pulpit. Make the offense anything you choose, and I will procure the passage of the report, only," said he, "of course the committee could not bring in a report that he was guilty of adultery, or of anything that compromised his character and standing as a clergyman. Make a report of that kind and you can make it ad libitum, according to your own wish and will."

A. There was nothing said at that interview on that night on the subject of my getting the Committee to make a report, or what kind of a report the Committee would make; whatever there is of that conversation did not occur on that night.

Q. At this interview, then, nothing of this kind occurred? A. No, Sir.

MR. TILTON'S PROPOSED STATEMENT FOR THE COMMITTEE.

Q. Now, subsequently, an interview has been drawn into evidence at which something was said about a report and a report or draft of a report was present; do you remember such an occasion? A. I do.

Q. Yes, when was that? A. The report was presented by Mr. Tilton on the morning of the 9th of July; I had seen him on the morning of the 8th, after the interview in the evening, I think, but I certainly saw him on the morning of the 9th, when he had what is known on this trial as the "Long Report," presented.

Mr. Evarts—What is the number of that exhibit, Mr. Shearman?

Mr. Shearman—"D, 45."

Mr. Evarts [handing paper to witness]—Just look at this "Exhibit D, 45"—look at that paper, Mr. Tracy, sufficiently to ascertain if that is the paper that was made the subject of conversation on that night. A. I did not have this paper in my hands on that morning; I heard Mr. Tilton read it, and have heard it read on the trial, and have read some part of it myself. He read a paper that morning in my presence which was to the tenor and effect of this paper, but I cannot identify the manuscript, nor can I say that—affirm of my own knowledge—that this is in all respects the paper that he read there; I have no reason to doubt that it is.

Q. Well, he did read through a paper? A. He did read through a paper, of about this tenor and effect.

Q. And it was considered and talked about between you? A. Yes, Sir.

Q. And, so far as you now recall that paper and examine this, you suppose that this is the paper? A. I suppose that this is the paper.

Q. Was Mr. Moulton present at this conversation? A. Mr. Moulton? he was there.

Q. You three were together? A. We were.

Q. Now, will you state that conversation and how this report figured in it? A. If I saw Mr. Tilton on the 8th of July, then I learned the fact of his having gone home on the night of the 7th from him, and seeing his wife; if I did not see him on the 8th, then the following conversation occurred on the 9th; I am not absolutely positive of having seen him on the 8th of July, but I think I did on that morning; I think I saw him two mornings in succession, but of that I would not be positive, but at one or both of these conversations he said that he had gone home after the interview of July the 7th, had seen his wife, had called her up, had kissed her, and said to her that he had seen Gen. Tracy and had learned from him the details of her statement before the Committee; that he had expressed himself reconciled to that statement, and that the next morning they arose and talked over the matter and consulted in regard to a report which should be made by the Committee which should settle this matter and end this scandal; he said his wife was very happy over the result; he said that he and his wife had sat down and prepared this document, as one with which she would be satisfied and he would be satisfied; he read it over to me—he read the report to me, and after listening to it, I said to him, "Why Mr. Tilton there are many things stated in that report that of course the Committee could not, under any circumstances, say." He said he was aware of that; that he had only prepared it as a suggestion of what could be done. He did not expect the Committee to adopt this report as he had drawn it literally; he had brought it down for suggestion and to see what was thought of it. I said to him that it was a step in the right direction; that I discovered by it that he and Mr. Beecher had substantially agreed on the offense that was alluded to, and covered by the "Apology," and *that* I considered the pivot on which the whole case turned; that if they agreed on that, there was no difficulty, as it seemed to me, in their making a statement which would authorize the Committee, and justify the Committee, in stating this case substantially as he covered this point of it in the report; and he asked me if the Committee would make that report; I said, "Of course they won't make it, unless there is evidence given before them that requires them to make it; the Committee are not going to adopt this report at your suggestion, Mr. Tilton, without any evidence; but the parties have got to come before the Committee and state facts, and if, in the

statement of facts, that statement warrants a report of this description, I have no doubt that they will make it."

Q. Was anything said by Mr. Tilton as to whether he was ready or willing to give the facts, according to that report? A. I certainly so understood Mr. Tilton, that that was the agreement between himself and his wife, which they had arrived at.

Q. Well, was that all that was said about this report? A. That was substantially all that was said about this report.

Q. Was the report taken away by him—that is, did you take it away? A. Well, I didn't take it; it was either kept by him or by Mr. Moulton.

Q. I believe you have said it was never in your hands? A. It was never in my hands before.

Mr. Shearman [suiting the action to the word]—I will take it out of your hands now.

Q. Mr. Moulton has stated in regard to this interview this. Mr. Fullerton says: [Reading.]

I am now trying to prove what Mr. Tilton said at the time of the actual handing of that paper to Mr. Moulton.

We made objection that Mr. Beecher was not present. Then the witness says: [Reading.]

Mr. Tracy was a party to it [that is, to the interview], and he said he represented Mr. Beecher.

Did anything of that kind occur on your part at that interview? A. I never said I represented Mr. Beecher, on any occasion, at any time, in the sense of being a substitute for him. I never said that, or claimed to represent Mr. Beecher in any sense, except as a friend whose judgment he would be likely to rely to a greater or a less extent. That was understood by Mr. Moulton always, and by Mr. Tilton. I never said anything else.

Mr. Beach—Wait one moment. I move to strike that out, Sir, that that was understood by Mr. Moulton and by Mr. Tilton.

Judge Neilson—Yes.

Mr. Evarts—Well, they had a great many understandings. At this interview did you say that you represented Mr. Beecher, in any way? A. I don't remember that any such thing was said or talked of at that interview.

Q. This interview had been sought by them, as you say? A. Yes, Sir; I was requested to come around that morning.

Mr. Evarts—Your Honor has made this ruling, which seems to be pretty near, if not entirely, equivalent to this proposition. [Reading from a memorandum.]

Mr. Tilton having said, in answer to a general question on direct examination, that defendent never denied the criminal intercourse, added: "Whenever he spoke of it he always said the criminality attached to him alone." *Held*, that the motion to strike out as not responsive, as stating general result of conversations, instead of stating what was said, and when, should be denied.

Judge Neilson—The witness did say what was said in that case.

Mr. Evarts—No; he stated that whenever he spoke of it, he always said so and so; that is, giving the result, but not the words of special occurrence. Now, the understanding, whatever it was, was produced, I suppose, necessarily by the conversations on the subject.

Judge Neilson—Yes.

Mr. Evarts—And I will ask Gen. Tracy this question, then. [To the witness.] Mr. Tracy, in reference to this subject of representing Mr. Beecher, during any of these interviews that you have spoken of, or any interviews with either of these gentlemen, did you say to them that you represented Mr. Beecher in the interview? A. No, Sir.

Q. Was there ever made to you any claim or suggestion on the part of Mr. Moulton or Mr. Tilton that you did represent Mr. Beecher? A. Never.

Q. Now, I ask you whether at this interview when the paper was before you, this report, this was said by Mr. Tilton, according to your recollection of anything that occurred?

"Well," said he [meaning yourself], "all I want you to bear in mind is this: you may make any kind of report you choose which don't charge Mr. Beecher with adultery, or with any such crime as that he cannot maintain his pulpit. Make the offense anything you choose, and I will procure the passage of the report. Only, of course, the Committee could not bring in a report that he was guilty of adultery, or of anything that compromised his character and standing as a clergyman. Make a report of that kind, and you can make it *ad libitum*, according to your own wish and will."

A. No, Sir; there was something said in that conversation that the statement in that report, the statement of what the apology referred to, was in substantial accordance with what Mr. Beecher said it referred to, and it referred to a matter that did not compromise his moral character; and I did say in that conversation that I should not, so far as I was concerned—I should not stand at all on a phraseology of statement or report that did not compromise the moral character of Mr. Beecher.

Q. I call your attention now to a point in Mr. Moulton's testimony applicable to this same interview. He gives, as a part of a conversation which he had with Mr. Beecher at some part of this interview, this, as coming from you, or occurring on your part at that interview:

That he (Mr. Tilton) had prepared such a report for the Committee to make, and had shown it to Gen. Tracy, and Gen. Tracy had said to him, on the night of the conversation to which I refer, that the Committee seemed now to be of opinion that there was an offense, and that he thought it would not be hard to get from that Committee a report, unfavorable, it is true, to Mr. Beecher, on the ground of the offense, but which would really settle the whole business and save all the parties concerned from dishonor in consequence of crime.

Now, did you say anything to the effect of this last clause? A. I did not. There was a conversation which embraced more or less of the first clause.

Q. Is it the conversation which you have given? A. It is.

Q. Did anything occur at that interview that is covered by this recital, other than as you have stated it in your testimony? A. Not as I understand that recital.

MR. BEECHER'S PAYMENTS OF MONEY DAMAGING TO MR. MOULTON.

Q. Now, Mr. Tracy, an interview has been introduced in evidence in which something was said between you [it is said by the witnesses or the witness] and Mr. Moulton on the subject of money having appeared in the course of this transaction; do you remember such an interview? A. I do.

Q. When was that? A. I cannot state definitely, but it was some of the interviews that occurred between Mr. Moulton and myself between, I think, the 13th and the 20th of July.

Q. Where did that occur? A. I should say that it occurred at Mr. Moulton's house.

Q. And who were present? A. Mr. Moulton and myself.

Q. How did that interview come about? A. We were speaking, as I recollect it, of Mr. Tilton's contemplated statement which he had promised to make before the Committee on the 20th of July, I think—given notice that he should make a statement, and in the course of conversation I said to Mr. Moulton, "I don't see, if Mr. Tilton has any regard for your interests, how he can press this matter to such an extent that the full history of this transaction will have to be stated, for if it is, I don't see how you can keep from coming out the fact that money has been paid by Mr. Beecher in this matter." That is not the form of the conversation; excuse me. I said, "I don't see how this can go on so that a full history of the case has to be stated, without resulting in serious injury to you." He said, "How? What do you mean?" I said, "I mean the fact, Mr. Moulton, that money has been paid by Mr. Beecher in this matter." Said he, "Mr. Beecher had no business to tell you about that money; that was a matter of confidence between Mr. Beecher and myself. Mr. Tilton knows nothing of that money, and it is a very mean thing in Mr. Beecher to have told you of it;" and he became somewhat excited in his remarks, and I felt constrained to say to him that I did not get my information from Mr. Beecher in regard to that money. He said, "If you didn't get it from him, whom did you get it from?" I hesitated to answer. He pressed me very strongly to tell him, and I finally said, "I got it from your partner, Mr. Moulton, Mr. Woodruff."

Q. Mr. Franklin Woodruff? A. Mr. Franklin Woodruff. He was the first man who informed me of the fact that money had been paid for Mr. Tilton. He then made some severe remarks about Mr. Woodruff for having told me, and said again that that was a matter of strict confidence between himself and Mr. Beecher, and that he had denied the payment of that money, and that Mr. Beecher must. I said to him, "It will be very easy for Mr. Beecher not to state the payment of that money, Mr. Moulton, provided he is not required to give a history of this case; but if Mr. Beecher is compelled to make before the public a full statement of this case, I don't see how he can conceal the fact that money has been paid, and if that fact transpires, I think it will do you great injury." That is the substance of that interview.

A Juror [to Mr. Evarts]—What was the date of that interview.

Mr. Evarts—It was somewhere between the 20th and the 30th of July, of last year.

The Witness—I think it was. It was after Mr. Tilton has given notice through *The Argus* that he should make a statement before the Committee, and the time for that statement, I think, had been appointed for the 20th of June, and I think it was intermediate those two days

Mr. Beach—The 20th of July, you mean.

The Witness—July; yes, Sir.

Mr. Evarts—I said July. [To the witness.] When Mr. Moulton, in this conversation, said to you that Mr. Tilton didn't know anything about the payment of money, did you make any observation to Mr. Moulton? A. I said to Mr. Moulton that I thought that was a matter that he and I had not better discuss.

Q. Well, was it any further discussed? A. I don't think it was.

Q. Mr. Moulton has given a statement of this kind, as a part of a conversation between himself and Mr. Beecher:

I told Mr. Beecher that Mr. Tracy wanted me to communicate the fact that I had received $5,000 from Mr. Beecher, to Mr. Tilton, in order to stop him from the publication of his statement.

Did anything of that kind occur? A. I did not say to Mr. Moulton that I desired him to communicate that to Mr. Tilton. He may have inferred it from what I did say.

Q. Well, what you did say you have stated? A. I have stated.

Q. You did not say anything otherwise on that point? A. No, Sir.

Q. Mr. Moulton says [reading]:

I said, when Mr. Tracy wanted me to tell Mr. Tilton, that that would be a serious embarrassment to me personally, in consequence of my having received that money, and I said to Mr. Beecher that I told Mr. Tracy that I was perfectly willing to be guided by him with sound advice, with any moral, good reason—with any good reason, and I would coöperate with him to induce Theodore Tilton not to publish his statement; but I would not, on any such ground as that, undertake to stop its publication. Mr. Tracy told me that would cause me trouble if it was published, and I told him if it caused me trouble it must cause me trouble, that I had done no wrong, and I didn't fear any trouble that would come from that.

Did that occur between you and Mr. Moulton? A. Not except as I have stated. I don't think it occurred as he has stated.

Q. Did he make any statement to you that if the com-

munication caused him trouble it must cause him trouble? A. I don't think he did, though he may have said that. I told him that it would cause him trouble; that it would be a serious injury to him to have that fact published; and he may have said if it does transpire and injures me, I can stand it, or something of that kind. I don't remember that; but he said that Mr. Beecher must deny it—that *he* should deny it, and Mr. Beecher must. I told him that I didn't think Mr. Beecher would deny it if forced to make a statement, or if he——

Mr. Beach—That was not called for, Sir.

Mr. Evarts—He has already stated it.

Mr. Beach—I know he has already said it, and therefore there is no necessity for repeating it without its being called for.

Mr. Evarts—It is a qualified statement.

Mr. Beach—It is part of the argument.

Mr. Evarts—Was anything else said at this interview between you and Mr. Moulton in regard to Mr. Tilton's being informed or knowing anything of this matter of the money, other than what you have stated? A. I think not. I think he simply made the remark that Mr. Tilton knew nothing of where that money came from. That was his phrase.

Q. Well, when you disposed of that branch of the matter by saying you thought you and he had better not discuss that matter of Mr. Tilton's knowledge, in what form, so far as you remember, did that pass between you? A. I think I said in reply to that: "Mr. Moulton, whether Mr. Tilton knew where this money came from or not, is a matter that you and I probably had better not discuss!" and I don't think he made any reply to that.

MR. TILTON APOLOGIZES TO GEN. TRACY.

Q. Do you remember, Mr. Tracy, after the passage between you and Mr. Tilton before the Committee (on the 22d of July, I think, it is said to have been, or about that time), as to your having given a pledge—do you remember seeing Mr. Tilton again that day? A. I do.

Q. How, and under what circumstances? I saw him at Dieter's saloon that day, when I was dining.

Q. There with your family? A. There with my daughters.

Q. Well, did he then have anything to say on the subject of that occurrence? A. He did. He came into the room——

Mr. Beach—Is that a conversation which has been given in evidence?

Mr. Evarts—It is not a conversation that has been given in evidence, but it relates to this conversation; it is a sequel to this conversation that has been given in evidence, that occurred before the Committee.

The Witness—It was perhaps——

Mr. Beach—No, it is not the sequel of it.

Mr. Evarts—You will see that it is, if you listen to it.

The Witness—It was, perhaps, an hour after the scene before the Committee, or possibly more. I was dining in Dieter's with my daughters, and he came in and passed by me to the back part of the saloon; (I was in the front part), and as he passed me he threw his arm around my neck and put his head down to mine and said, "Mr. Tracy, if I said anything this afternoon that hurt your feelings, you must forgive me."

Mr. Beach—It is a wonder there was not a kiss on that occasion. [Laughter.]

THE INTERVIEW AT THE FIFTH AVENUE HOTEL.

Mr. Evarts—Well, you can cross-examine on that. [To the witness.] Mr. Tracy, there was an interview between yourself and Mr. Moulton that occurred at the Fifth Avenue Hotel, which has been introduced into the evidence. Now, did you have an interview with Mr. Moulton there, and, if so, when was it? A. I went with Mr. Moulton to the Fifth Avenue Hotel on Sunday evening—I think Aug. 9—where I had an interview with Gen. Butler.

Q. Well? A. And a very small portion of which Mr. Moulton was present at. He was not present at the interview.

Q. At the principal interview? A. At the principal interview between myself and Gen. Butler he was not present.

Q. Well, it is not the interview with Gen. Butler that I have to do with now; that has not been made a subject of evidence.

Mr. Beach—I think it has.

Mr. Evarts—Except as to results.

Mr. Beach—Mr. Moulton was present at a very considerable part of the interview, and he has stated a portion of it.

Mr. Evarts—Very well; the matter that I am now dealing with is this. In regard to anything between yourself and Mr. Moulton, Mr. Tracy—in respect of any advice asked by him or given by you in respect to his dealing with the scandal, or the situation as it then stood, do you remember any conversation with him in regard to the papers, or what should be done with them? A. Yes, Sir; we had conversation that day; I had been at Mr. Moulton's a good deal that day—had gone to the Fifth Avenue Hotel with him; and his relation to the scandal——

Mr Beach—Well, what is it? Do you direct attention to the conversation at the Fifth Avenue Hotel?

Mr. Evarts—I was not going to get the conversation. It is the fact that there had been a conversation between them. [To the witness.] Now, Mr. Tracy, was there a conversation between yourself and Mr. Moulton in regard to what disposition or use should be made by him in respect of any of these papers which were there at the time?

Mr. Beach—Do you refer to a conversation at the Fifth Avenue Hotel?

Mr. Evarts—At the Fifth Avenue Hotel.

The Witness—I cannot say, Mr. Evarts, whether Mr. Moulton was present and participated in any conversation at the Fifth Avenue Hotel, when the subject of his position and what he ought to do—or what he should do was talked about.

Mr. Evarts—Very well.

The Witness—He may or may not have been present at some part of such an interview.

Q. That is the conversation between you and Gen. Butler? A. Gen. Butler.

Q. That I do not go into. Then I understand your last answer to be, in substance, that you don't remember any conversation between yourself and Mr. Moulton on the subject of what you advised him to do, or what his duty to do about the papers was, as forming a part of that interview at the hotel?

Mr. Beach—I do not understand him to say so, Mr. Evarts.

Mr. Evarts—Then we will have the answer read.

Mr. Beach—He says he is uncertain whether Mr. Moulton was present when the subject was discussed between him and Gen. Butler.

Mr. Evarts—Well, the stenographer will read the answer—I think the answer to the last question.

[The Tribune stenographer here read the answer.]

Mr. Beach—Mr. Moulton's testimony shows that he was present at that conversation, and he has given a part of it.

Mr. Evarts—There was a conversation, no doubt, about that—the question is——

The Witness—I can state this, that Mr. Moulton went with me to the Fifth Avenue Hotel, went into Gen. Butler's room; the subject of our visit was introduced, when I remember that Gen. Butler requested Mr. Moulton to retire from the room. Gen. Butler and I had an interview; I understood——

Mr. Beach—Never mind.

Mr. Evarts—Gen. Butler and you remained? A. Yes; and Mr. Moulton came back after the interview was over, and Gen. Butler announced to him the result. Now, I cannot say definitely, precisely what was talked about while Mr. Moulton was present and what was talked about when he was absent; I cannot draw the line there with accuracy.

Q. You did have a conversation on your way up? A. We did.

Mr. Evarts—And of that no evidence has been given, that I can see, on the other side.

Q. Now, Gen. Tracy, you have been counsel for the firm of Woodruff & Robinson? A. I have.

Q. During the last how many years? A. Well, I am not their regular counsel; I have been employed for them on two occasions, I think; the last occasion was in the Winter—the Fall of 1873 and the Winter of 1874.

Q. Professionally—as a lawyer? A. Yes, Sir.

Mr. Evarts—That is all.

CROSS-EXAMINATION OF GEN. TRACY.

Mr. Beach—During the time Mr. Porter was cross-examining Mr. Moulton, did you make suggestions to him as to what questions to put? A. I cannot say, Sir; I don't remember whether I did or not; I presume—possibly I did.

Q. Don't you recollect of standing up behind Mr. Porter and making suggestions to him of questions? A. I do not remember.

Q. Sir? A. I do not remember whether I did or did not.

Q. When Mr. Porter was cross-examining Mr. Moulton in regard to the litigation had with the Government, don't you remember of standing up behind Mr. Porter and making suggestions to him? A. No, Sir.

Q. Eh? A. No, Sir.

Q. You don't remember that? A. No; I do not.

Q. Do you know you did not? A. I never made any suggestions to him——

Mr. Beach—Wait a moment! wait a moment! Well, can you now remember the fact whether you did or not, while Mr. Porter was conducting the cross-examination, make suggestions to him of questions to be put? A. I cannot; I do not know whether I did or not.

Q. When did you first become acquainted with this case on trial? A. You mean this action?

Q. This case on trial? A. I cannot state definitely, Sir; but——

Q. You understand my question? A. I do.

Mr. Evarts—He was proceeding to answer.

The Witness—I am proceeding to answer your question.

Mr. Beach—I don't think you were.

Mr. Evarts—Yes, he was proceeding to answer the question.

Mr. Beach—I know he was proceeding to answer something.

The Witness—It was after the retainer of Judge Porter and Mr. Evarts.

Q. That does not help me as to the time? A. I cannot tell you the date, Sir.

Q. Then can you not say so? A. I can say so.

Q. You cannot tell the date? A. Not the precise date; not the day of the month.

Mr. Evarts—I submit, if your Honor please, the witness has a right to answer as to the date. He has been asked the date, and he has a right to give it as near as he can.

Mr. Beach—There is no objection to that.

Mr. Evarts—Then let him give it.

The Witness—I cannot give the day of the month; I remember the occasion; but the day of the month I cannot give you; I remember it was after ——

Q. I don't ask you that. A. Oh, I understood you to.

Q. Then you cannot give the date? A. I cannot give you the day of the month.

Q. Can you give me the month? A. Yes, Sir.

Q. What month was it? A. September.

Q. September of what year? A. Of 1874.

Q. When was the suit commenced? A. I cannot tell you that.

Q. Can you tell me the month? A. I think it was in August.

Q. You think it was in August? Were you retained before the answer was put in? A. No, Sir.

Q. Do you remember the date of the answer? A. I do not.

Q. Do you remember what month that was in? A. I do not now.

Q. Who first applied to you to become connected with this action? A. Mr. Shearman, I think.

Q. When was that application made? A. Very soon after the suit was commenced.

Q. How soon should you think? A. I cannot tell you definitely, but perhaps a week, perhaps a week after the action was commenced.

Q. Did he show you the complaint? A. No, Sir.

Q. When did you first see the complaint? A. Well, I cannot say as a matter of fact that I have ever seen it in the world; I perhaps have, but I do not now recall any instance where I ever read the complaint.

Q. Were you consulted as to the answer? A. I think not.

Q. Will you swear that you were not? A. I think I will.

Q. Will you? A. I do.

Q. By anybody? A. Ah! I did not say that no one talked with me about the answer, or what answer would be put in; parties—outsiders and newspaper men—may have spoken to me about it; when you asked me if I was consulted about the answer, I supposed you meant consulted as counsel.

Q. You know what consultation means. Do you say that you were not consulted by any one as to the form of the answer? A. I do not think I was.

Q. Will you swear you were not? A. I swear, according to my best recollection, that I was not; I will not swear that there was not some casual conversation.

Q. I talk about consultation, not about casual conversations; and I understand you to swear that you were not consulted in regard to the character or form of the answer that Mr. Beecher should interpose in this case? A. I undertook to see Mr. Beecher——

Q. [Interrupting.] Do you swear that, Sir? A. I swear that I was never present at any consultation when the subject of the answer that should be interposed to this action was talked of.

Q. That is not a direct answer to my question, and I want one. Will you swear that you never were consulted in regard to the character or the form of the answer that Mr. Beecher should interpose in this case? A. I cannot give you any different answer on that, except to say that I might have been spoken to in the street, or casually meeting Mr. Shearman when the subject of the answer might have been alluded to, and if I had it would have passed my recollection and I not recollect it; I remember no such occurrence.

Q. That is all you can say on that subject? A. Yes, Sir.

MR. TRACY'S FIRST CONSULTATION WITH MR. BEECHER.

Q. And do I understand you to say that you never saw the complaint in this action? A. I say I don't recollect ever having seen it; I may have seen it.

Q. Did you ever have a consultation with Mr. Beecher in relation to this action? A. Yes, with reference to the trial—yes, several of them.

Q. Yes; well, I will ask you when the first was? A. Well, not until the case was at issue, and I think not until it was expected to be tried in the coming term of the court.

Q. Then you say that there was no conversation between you and Mr. Beecher in regard to the subject of this action until after the case was proposed to be moved for trial, do you? A. If you mean by the subject of this action that Mr. Beecher and I never talked of the scandal, then I say we did; but if you mean that I never had a consultation with Mr. Beecher in reference to this action—the trial of this action—then I say I never did until after the cause was at issue, and I think not until it had been noticed for trial.

Q. I don't limit my inquiry, Sir, to the technical definition of a consultation; I asked you if you talked with Mr. Beecher about this action before the time you mention when the case was expected to be moved for trial? A. I don't recollect that I ever did.

Q. Well, do you recollect that you did not? A. My general recollection is that I did not.

Q. Is your recollection so precise and definite upon that subject that you will swear you did not? A. Well, if you will fix the date when the cause was noticed for trial I can tell you better.

Q. I am adopting a reference which you yourself made. You can fix the date for yourself. A. I shall have to ask Mr. Shearman to fix it for me.

Q. I don't care who you ask. A. If I knew when the cause was first noticed I could tell better.

Mr. Shearman—May I give the date?

Mr. Beach—I have no objection.

Mr. Shearman [examining papers]—It was the 7th of September.

The Witness—Then I am certain that I never had a conversation with Mr. Beecher until the cause was noticed for trial.

Mr. Morris—I don't think that date is correct; the answer had not been served at that time.

Mr. Shearman—Yes, it was the 7th of September; I guess I am right; the answer was served on the 7th of September, and a notice was served with it.

Mr. Beach—You are aware that at that date Mr. Beecher was out of town? A. Yes, I knew generally the fact that he was out of town.

Q. Before the time given as the 7th of September, had you talked with Mr. Shearman or Mr. Sterling, his partner, in regard to the action? A. Oh, I probably had. The—7th—of—September? [Pausing.] I think I remember calling at Mr. Shearman's office one day to see him before the answer was served and not seeing him, and talked with Mr. Sterling; but I think I learned from him that the answer had not been served; that is the only interview that I remember ever to have had with either Mr. Shearman or Mr. Sterling previous to the serving of the answer.

Q. About how long was that before the answer was served? A. I cannot tell you.

Q. As near as you can. A. Oh, it may have been ten days; I cannot tell you more definitely; my impression is that it was after an answer had been sent down from Mr. Beecher and had been returned for another verification; I think I learned that fact from Mr. Sterling, that an answer had been received from Mr. Beecher and had been returned to him, as the verification was informal, or something of that kind.

Q. Did you communicate with Mr. Beecher during his absence? A. No, Sir.

Q. When, Mr. Tracy, did you first have a conversation with Mr. Beecher upon the subject of this scandal? A. I should say it was within a week after the Sunday interview at Mr. Moulton's house.

Q. That Sunday interview, do you understand it to be as the others do, on the 10th of some month. What month was it, Mr. Morris?

Mr. Morris—November.

Q. The 10th of November, 1872? A. I have heard no one state the date of the interview before.

Q. I have heard it stated? A. I don't think it was stated in evidence.

Q. Well, was that the date of it? A. I cannot fix the date of that interview, my recollection would be that it was later than the 10th of November, and earlier than the 8th of December, but I am unable from my recollection to fix the Sunday on which the interview occured.

Q. I am certain Mr. Woodruff spoke of it as having occured in the Autumn of 1872? A. That is possible.

Q. Cannot you fix any nearer date than those you have mentioned? A. No, Sir; I think it occurred—my best recollection is that it occurred either on the 17th or the 24th of November, or the 1st of December.

GEN. TRACY'S PLEDGE TO MR. TILTON.

Q. The 17th or 24th of November, or the 1st of December; and that interview at Moulton's study which you have related was preceded by two interviews, I understand you, with Mr. Woodruff? A. Yes, Sir.

Q. The first interview with Mr. Woodruff was at your office? A. No, Sir, the first—if you mean by that the first talk?

Q. I mean the first of these three interviews of which you have spoken? A. Well, strictly speaking, Mr. Beach, I saw Mr. Woodruff three times before the interview at Moulton's house, where the subject of the scandal was talked about—where the scandal was talked about between myself and Mr. Woodruff.

Q. Well, where did they happen? A. One happened in the street, and the others——

Q. Which was that? A. The first; the other two I think happened at my office; one was the interview with him and Mr. Moulton when Moulton was introduced to me.

Q. In this interview at Moulton's study I understood you to say that Mr. Tilton addressed you in this form:

"Mr. Tracy, I will ask"—or he said: "I am about to (I am not sure which)—to make a statement to you about my case against Mr. Beecher; I don't know what the etiquette of your profession allows. If I make a statement of my case against Mr. Beecher to you, and Mr. Beecher and myself should afterward come into collision, would the etiquette of your profession permit you to be counsel for for Mr. Beecher?" I replied, "Mr. Tilton. without discussing what the etiquette of my profession would or would not allow, I say to you that if a person having a controversy with another, comes to me and makes a statement of his side of the controversy, and the parties should afterward come into collision on that case, I should not feel at liberty to become counsel for the other party."

By the term, "if the parties should afterward come into collision," did you understand Mr. Tilton to refer, and did you yourself refer, to an ordinary litigation of an action in court, or a collision in other forms? A. I don't remember that that word suggested any definite shape in my mind at that time.

Q. Will you answer me, Sir, whether you understood that pledge which you then made to refer to an ordinary litigation in court, or to a collision occurring in any other form? A. Well, I can only judge how I used it from the language then used, now; as a matter of memory I don't recollect,

Q. You do not know? A. I did not say I do not know.

Q. Well, I understood you to say so. If you know you will tell us, won't you? A. I say I don't recollect.

Q. Well, then you don't know. A. That is a matter of reasoning.

Mr. Evarts—It is not necessary to reason.

Mr. Beach—Yes, it is necessary to reason. [To the witness.] Do you recollect what the statement of Mr. Woodruff was in regard to what your pledge upon that occasion amounted to? A. I have a general recollection of what Mr. Woodruff said about it, but I cannot repeat it.

Q. Well, to refresh your recollection, I will direct your attention to it if I can put my eye on it. [Turning to

Mr. Morris.] Will you turn my attention to it, Mr. Morris?

[Mr. Morris looks for the place, assisted by Mr. Moulton.]

Q. This is the conversation which Mr. Woodruff gives—speaking of Mr. Tilton, he says that he said to you:

If Mr. Beecher and I should ever get into law, or into court in regard to the matter, could you, or would you ever be counsel on his side? And Gen. Tracy said no, that he could not and should not, and he need not have any fears on that score.

That was the reason of my asking the question, Mr. Tracy—to know whether you understood the pledge which you then gave to Mr. Tilton to be limited in its application to a litigation in a court of justice, or whether it applied to any collision which might afterward occur between Mr. Beecher and Mr. Tilton in any form in relation to the subject matter of this scandal? A. Well, now, what question do you ask?

Q. I ask you now how you understood the extent of that pledge? A. I say, as a matter of recollection, I don't know that I stopped to consider the question, or to understand to what extent Mr. Tilton meant to have my pledge given at that time.

Q. Did you mean your pledge to apply to all collisions, both legal, social and otherwise? A. I should say I did not from the form of the language which Mr. Tilton used; he used the word "collision;" now I should understand that to be a collision in a court.

Q. As you now suppose, you then understood it to apply to a litigation in court? A. I did; I now suppose I then understood it so.

Q. I understand, Mr. Tracy, that you informed Mr. Moulton at a later period that you should consider yourself absolved from the obligation of that promise, if he changed the nature of his accusation against Mr. Beecher? A. I did.

Q. When do you say that notice was first given? A. It was somewhere from the 10th to the 13th of July, I think.

Q. 1874? A. Yes, Sir; 1874.

Q. And when did you first suppose that Mr. Tilton had changed the character of his charge? A. I cannot say then that I supposed he had changed it.

Q. And what was the charge, as you understood it to be made, at the time you gave this pledge to Mr. Tilton? A. That Mr. Beecher had made improper solicitations to Mrs. Tilton.

Q. Well——

The Witness—Ah, I cannot say that. Mr. Beach, excuse me. Repeat your question again.

Q. I want to know what was the nature of the charge you understood Mr. Tilton to make against Mr. Beecher at the time you gave him this pledge? A. Mr. Tilton had not, at that time, made his statement against Mr. Beecher, and, therefore, I did not understand from him what the nature of the charge was to be; my only understanding of it was what I had gathered from the papers that I had seen.

Q. When did you first gather from Mr. Tilton the nature of that charge? A. That day, immediately following the promise.

Q. Well, what did you then understand it to be? A. An improper solicitation on the part of Mr. Beecher to Mrs. Tilton.

Q. And it was because, as you supposed, that charge was changed into a specific accusation of adultery, that you considered yourself at liberty to act for Mr. Beecher? A. I did.

Q. Did you understand, Mr. Tracy, as a lawyer, that any litigation between Mr. Beecher and Mr. Tilton could grow out of a charge of improper solicitation made by Mr. Beecher to Mrs. Tilton? A. I did not; after I had heard his statement the idea of a litigation growing out of it never occurred to me as possible.

Q. At the time you gave this pledge, you had heard from these parties, I suppose—Mr. Moulton and Mr. Woodruff—what the charge was? A. No, Sir; not definitely—no, Sir.

Q. And when was it that you say you made up your mind that no litigation could grow out of it? A. On hearing Mr. Tilton's statement that day.

Q. On hearing Mr. Tilton's statement that day. Then you gave your pledge generally, without understanding what the nature of the accusation was? A. I gave my pledge just as I have stated it to you.

Q. Did you give your pledge without understanding the nature of the charge which was made against Mr. Beecher at the time the pledge was given? A. I gave my pledge without knowing from Mr. Tilton definitely what his charge against Mr. Beecher was to be.

Q. Mr. Tracy, my question must be answered in its full scope. Did you give your pledge which you have stated, to Mr. Tilton, without knowing or understanding what the nature of the accusation was he made against Mr. Beecher? A. I knew nothing more of it than what I have stated to you.

Q. What did you know in regard to the nature of the accusation at the time you gave your pledge? A. I knew that the Woodhull publication had been made, which charged adultery; I knew——

Q. And you knew it was denied, did you not? A. I knew——

Q. You knew it was denied, did you not? A. Yes, in one sense.

Q. Then that passes out. Give us something else. A. I am telling you I knew that the Woodhull publication had been made, which charged adultery; I knew that I had seen the "Apology" of Mr. Beecher; I knew that I had seen the retraction of Mrs. Tilton, and I knew from that what it referred to, as far as that discloses; I had seen the explanation; I had asked Mr. Moulton if Mr. Tilton

charged Mr. Beecher with adultery, and he said he did not. Beyond that I did not know what the nature of Mr. Tilton's charge against Mr. Beecher was to be, at the time that I gave the promise.

Q. From the facts which were before your mind at the time the pledge was given, what did you understand to be the nature of the accusation made against Mr. Beecher? A. I can't say that I had any definite understanding of what the accusation was, or was to be.

Q. Well, you understand that it was not adultery? A. I did; that is, I understood from Moulton that Tilton did not charge Mr. Beecher with adultery.

Q. That was your understanding? A. Yes.

Q. That acceptation of the language you had then of the charge? A. Yes, Sir.

Q. You understand it was a charge to the extent of improper solicitations? A. No, I can't say I did definitely understand that.

Q. Why, did you not understand that there was, in these papers which were read to you, a statement of Mrs. Tilton to that effect? A. I understood from the papers that the form of implication was that Mr. Beecher had in some way attempted the virtue of Mrs. Tilton.

Q. And it had been repulsed, I understood you to say? A. Well, I inferred that from the statement.

Q. You stated so in your direct examination.

Mr. Evarts—You are now bringing in a conversation that occurred after the pledge.

Mr. Beach—No, I beg pardon; it was at the same interview of the pledge; whether it immediately preceded or immediately followed it, is of little consequence.

Judge Neilson—Is it not now the time of taking a recess?

Mr. Beach—Just as your Honor pleases.

The court then took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Benjamin F. Tracy was recalled.

GEN. TRACY'S IDEA OF THE ORIGINAL CHARGE.

Mr. Beach—Mr. Tracy, at this interview which you have related at Mr. Moulton's study, at which Mr. Moulton, Tilton, Woodruff, and yourself were present, at the close of it what did you understand to be the charge made by Mr. Tilton against Mr. Beecher? A. I understood the charge to be that Mr. Beecher had made improper solicitations to Mrs. Tilton.

Q. Which had been refused or repulsed by her? A. Yes, Sir.

Q. And you distinctly understood, you say, up to that period, that the accusation was not that of adultery? A. I understood so.

Q. And you say that up to that period you had not received any intimation that the charge on the part of Mr. Tilton was adultery, from any source? A. No, Sir, I don't say that.

Q. You don't say that? A. No, Sir.

Q. Well, then, you left that interview with the understanding that the charge was improper solicitations, and nothing more; and, understanding that, you had given a pledge that you would not appear as the counsel for Mr. Beecher in any litigation which might occur between him and Mr. Tilton growing out of the charge? A. I cannot say, Mr. Beach, that the idea of litigation occurred to me after Mr. Tilton's statement; I cannot say, therefore, that I left the interview——

Q. Well, we have got that settled; you told all about that; I don't want to unsettle what we have got established. You told me that you understood at the time, as you suppose, as you understood now, that your pledge referred to the ordinary litigation in court? A. That is, when I made it.

Q. Well, it was made at that interview; did you change your mind in regard to the extent and character of the pledge during the interview? A. No, but I changed my mind as to the result that might flow from it.

Q. Well, that we will see about. Then, we start with these premises that you understood your pledge to be that in case of any litigation between Mr. Beecher and Mr. Tilton, growing out of the subject of that conversation, that you could not appear as the counsel of Mr. Beecher? A. I so—I assume now that I so understood it at the time when I gave it.

Q. And you understood at the close of that conversation that the only charge preferred by Mr. Tilton against Mr. Beecher was improper solicitations to his wife? A. Yes, Sir.

Q. Now, as a lawyer, will you tell me how you understood that any litigation could grow out of improper solicitations from a third party to a woman? A. I did not; when Mr. Tilton stated his case against Mr. Beecher, I dispensed at once with the idea that litigation would grow out of that direct charge, as possible; I, of course, did not know but that it might grow out of it incidentally, but when I had heard that statement I had no idea that any—that the subject of that charge could ever be a matter of litigation in court.

MORE ABOUT GEN. TRACY'S PLEDGE.

Q. Did you make any suggestions of that kind at the interview? A. I think not, Sir.

Q. Then you allowed your pledge to stand, confined to a question of litigation, when you knew as a lawyer that no litigation could grow out of the charge as then made? A. I did not refer to my pledge after I gave it.

Q. Well, you allowed it to stand? A. I allowed it to stand. My pledge, as you will see, Mr. Beach, is a statement of the general rule, not applicable to Mr. Tilton's case, specially, but applicable to all cases. I stated a

general rule in answer to the question, and I did not refer to it after I stated it.

Q. What, you merely stated that as a general rule? A. Certainly.

Q. Did not state it as applicable to that particular case, then? A. Not as particularly applicable to that case, but as a general rule that included his case.

Q. As in fact applicable to that case, didn't you state it? A. Applicable to it in the sense I now give, as included in the general rule, and of course applicable to the case.

Q. You stated this general rule as applicable to the particular question which Mr. Tilton addressed to you? A. Yes, Sir; as including it and covering it.

Q. You understood it to apply to that? A. Yes, Sir.

Q. Then it is true, Mr. Tracy, that you gave that pledge and allowed it to stand, knowing as a lawyer that it was not possible for any litigation in court to grow out of the charge as then made by Mr. Tilton, didn't you? A. In the sense that that general rule is a pledge I stated, and I did not——

Q. I did not ask you anything about a pledge. A. [Continuing] Refer to it afterward.

Q. Now, Sir, that is not the question I put to you at all. Did you not leave that interview with the promise which you gave to Mr. Tilton standing, knowing that no litigation in court could grow out of the charge as it was then made against Mr. Beecher? A. I did, knowing that no litigation could grow out of the direct charge as then made.

Q. Then you knew that the pledge or promise which you gave was entirely inapplicable to the matter, did you not? A. Well, I knew that the rule that I stated would never be called upon—I never would be called upon to pass upon it in any litigation growing out of that charge.

Q. Well, then, didn't you know, Mr. Tracy, that that promise or pledge, whatever you call it, was utterly inefficient in reference to the charge that was then made? A. I supposed it to be.

Q. And then you went on and received the communication in that conversation? A. I heard what Mr. Tilton had to say.

Q. Received all the communication which the parties chose to make to you? A. Not the parties—Mr. Tilton.

Q. Well, Mr. Tilton. A. He was the only man that the conversation was with; yes, Sir.

Q. No, no—not the only man that the conversation was with? A. The only man that this particular part of the conversation referred to.

Q. Oh! yes—that the promise referred to? A. Yes, Sir.

Q. Did you suppose that Mr. Tilton seriously requested or required from you a promise? A. Well, I never stopped to consider whether he did it seriously or not.

Q. Well, do you suppose now? A. What?

Q. Do you think now that he did? A. I have no well-defined opinion on that subject.

Q. That is, that when he came in and required you to give him a promise that in case of any collision upon the subjects about which you were to talk, that you did not understand that he was serious? A. Oh! I don't say that I did not understand that he was serious.

Q. Well, I asked you if you did? A. I did not stop to consider it, whether he was or not. He made the proposition, and instantly I stated the rule that would govern me in such cases, without any reflection or supposition as to whether he was serious or not serious. I do not think I stopped to consider it at all. I assumed that he was serious, in the ordinary sense of the word.

Q. Very well; if you had made that answer in the first place, it would have saved some time. You supposed that Mr. Tilton relied upon that assurance, didn't you? A. I assumed that he did.

Q. Then you came from that interview supposing Mr. Tilton serious in requiring the pledge, and supposing that he relied upon it in the course of the interview, when you knew that that pledge was entirely inoperative to the subject matter? A. Yes, when I knew that there never any allegation could grow out of the charge as he then put it.

Q. And you never until in July, 1874, disabused his mind upon that subject, did you? A. No, Sir, I never spoke with him on the subject until July, 1874, after that.

Q. And you believing, supposing that Mr. Tilton was all this time resting upon the promise or pledge which you had given, didn't you? A. I had forgotten the fact of the promise, Mr. Beach.

Q. Oh! you had forgotten it? A. It had passed out of my mind entirely.

Q. Very well. A. I had been out of this case from——

Q. Oh, please don't! A. Ah! Until it was called to my mind on the 7th of July, I think it was, by Mr. Moulton; Mr. Moulton on the 7th day of July referred to it.

WHY GEN. TRACY BECAME A WITNESS.

Q. Oh, please! please, Sir! You say that you made up your mind to become a witness in this case when Woodruff and Moulton and Tilton were examined in regard to conversations with you? A. No, that is not strictly correct, Mr. Beach. I did not say that.

Q. Well, make it correct then? A. I say the subject of my becoming a witness was first considered by me after this evidence had been given in the case, and that matter was referred to my associates.

Q. Well, I didn't ask about that. Well, when you did determine to become a witness, you determined to become so for the purpose of contradicting those three parties, did you not? A. I determined to become a witness——

Q. Just answer me that question now, Sir? A. Yes, so far as a true statement contradicts their statements.

Q. Yes, so far as your testimony would contradict theirs? A. Yes, Sir.

Q. And understanding that? A. Yes, Sir.

Q. And you understand that in your testimony you have under oath put yourself in contradiction to them? A. To a large extent I do, Sir.

Q. To a large extent; yes, Sir. Have you ever dissolved your connection with this case as counsel? A. No, Sir.

Q. Still counsel in the case? A. I have not formally dissolved my connection.

Q. You are still counsel in the case, ain't you? A. I suppose so; yes, Sir.

Q. How recently have you been in consultation with your associates upon the subject of the trial? A. Well, in some degree all along, and yesterday, say.

Q. Later than yesterday? A. Well, I dined with them, took lunch with them this noon; I don't think we had any formal consultation about it, but we were in consultation yesterday afternoon.

Q. How came you to mention dining—do you consider that as coming within the range of professional consultation? A. That depends upon what goes on at the time of lunching.

Q. Well, I suppose something must have gone on, then, at the time of lunching, or you would not have mentioned it? A. Well, I suppose the fact of the trial's going on was talked of more or less, or alluded to, in the lunch to-day, but there was no consultation, that I am aware of.

Q. Any allusion made to your testimony? A. If there was, it was of the most incidental character, which I do not recall; I don't recall any allusion to it.

Q. Well, do you mean to say that there was, or not, anything like the ordinary intercourse of counsel with reference to the subject matter of the suit, at the dinner to-day? A. I think not.

Q. Very well; then we will pass that. A. I think that most of the time was taken in other matters to-day.

Q. Do you contemplate withdrawing from this case? A. No, Sir.

GEN. TRACY'S OPENING FOR THE DEFENSE.

Q. You was the counsel who opened the defense to the jury in this case, were you? A. Yes, Sir.

Q. Was you the author of that opening? A. Well, I think so, to a very large extent, Sir.

Q. Was you the author of it?

Mr. Evarts—I submit to your Honor there is no license of examination——

Judge Neilson—I think the answer might well be accepted.

Mr. Beach—I think not, your Honor. When an opening like that delivered in this case, overcharged with malignity—and I say, with untruth is delivered by one who afterward places himself as a witness on the stand, I have a right to know whether he is the author of the calumnies.

Judge Neilson—Well, he says he is the author.

Mr. Beach—No, Sir; he does not.

Judge Neilson—Substantially the author.

Mr. Beach—No, no; that is just what I am going to get out, if I am permitted.

The Witness—If you want to know whether I accept the responsibility of everything that is in the opening——

Mr. Beach—No, Sir; I don't want that. I will hold you to the responsibility—— [Sensation.]

Judge Neilson—Mr. Rogers!

Mr. Beach [continuing]——as indorser. Was you the author of that opening? A. I think I may be said to be, Sir, of the opening as an opening.

Q. Mr. Tracy, you know what my question is, and what it means. I asked you if you was the author of that opening. A. No. I cannot say that I do know what your question means, in that sense.

Q. Did you compose that opening? A. I did the most of it, Sir.

Q. Did you all of it? A. No, Sir; not all of it.

Judge Neilson—But he delivered it all, and therefore made it his own.

Mr. Beach—Well, possibly.

Judge Neilson—Emerson says, you know, that the use of borrowed thoughts is approval, when they become our own. It became his by the act of delivery.

Mr. Beach—Well, Sir, if it is Emerson, I will give up.

Mr. Fullerton—He didn't refer to a witness on the stand.

ADULTERY NOT MENTIONED AS THE CHARGE BY MR. WOODRUFF.

Mr. Beach—Well, Mr. Tracy, passing that, did you, in the conversation which you had with Mr. Woodruff preceding the one at Mr. Moulton's study, of which you have spoken—did you discuss with him any of the incidents of this scandal, as it is called? A. Which interview do you refer to, Mr. Beach?

Q. Either of them. A. Yes, Sir.

Q. Which one was it—the one immediately preceding, or second removed? A. The first interview certainly, and I think it was some matters incidentally referred to in the second interview,

Q. In those interviews—preceding interviews—of which I speak, did Mr. Woodruff relate to you the circumstances of the confession or statement of Mrs. Tilton, and her retraction and reassertion—those preliminaries? A. No, Sir; not in detail.

Q. Well, did he allude to them—state them? A. I have the impression that at the second interview with Mr. Woodruff he stated to me that Mr. Moulton had——

Q. Oh, I don't want to go into that. A. Ah!

Q. I only want to know, Sir, if those things were stated by him, in general terms? A. I have an impression that he referred to the papers which Mr. Moulton had in his possession, and which I would want to see.

Q. Now, Sir, in those interviews did Mr. Woodruff, in substance, tell you that Mr. Tilton charged Beecher with adultery with his (Tilton's) wife? No, Sir; he did not, in those words.

Q. I said in substance, Sir. A. I cannot say that he did in substance.

Q. Will you swear that he did not, in substance, tell you that? A. I think I will.

Q. Well, make up your mind and let us know whether you will? A. Well, I will state how I can state it, and the only way I can state it; he did not say that in substance, in my judgment, according to my recollection; but Mr. Woodruff, by his gestures, and what he omitted to say in answering some of my questions, and his insinuations left an impression upon my mind that he believed Mr. Beecher had been guilty of something that was very wrong in Mr. Tilton's family; what it was he did not state, and he did not leave me to infer.

Q. Well, this is all impertinent to my inquiry. Still, let it stand. Will you swear positively that in the interviews of which we are now speaking, or one of them, Mr. Woodruff did not in terms tell you that Mr. Tilton's charge against Mr. Beecher was adultery with his (Tilton's) wife? A. I will.

Q. Positively? A. Yes, Sir.

Q. That he did not use the term "adultery?" A. I will.

Q. And that he did not in any more direct form than you have stated convey an implication of that charge? A. Yes; I have intended to state, and think I have stated.

Q. No, not intended; I don't know anything about your intentions. A. Well, I think I have stated.

Q. Very well; now, in those preceding interviews was anything said upon the subject of Mr. Beecher having paid money? A. No, Sir.

Q. Sure of that? A. I am very sure of it.

Q. Swear positively? A. Positively.

Q. That is, in any interview with Mr. Woodruff preceding the one of which you have spoken at Moulton's study, no communication was made to you in regard to Beecher's having paid or advanced money? A. I know there was not.

Q. That we will see about by and by. A. Well, Sir.

Q. Now, didn't he tell you that Beecher had given to Moulton, for the support, or the benefit, of Mrs. Tilton and Tilton's family $500? A. No, Sir.

Q. Do you swear positively to that? A. I do most emphatically.

Q. Did you and Woodruff leave, at the time of this conversation at Moulton's study, the house together? A. Mr. Woodruff says we did, and I am unable to say we did not. I have an impression that we did, but it is not a rec llection.

Q. After you left the house did you and Mr. Woodruff have any conversation about Beecher's having given or advanced money? A. No, Sir. After we left the house that day?

Q. Yes, that night. A. Not on that night; no, Sir.

Q. Did he not, on that night, refer again to the communication which he had made to you in a preceding conversation, and did you not say in words or substance that that was the most damaging fact as against Mr. Beecher? A. No, Sir.

Q. When Mr. Woodruff first communicated to you, in one of these preceding conversations, the fact that Mr. Beecher had given, as I have stated, $500 to Mr. Moulton, didn't Mr. Woodruff tell you that he thought he had been indiscreet in making that communication to you, that it was conveyed to him confidentially by Mr. Moulton, and pledged you not to say anything about it? A. Your question assumes that he made a communication to me on that subject in one of those preceding conversations.

Q. Yes. A. He never made any such communication to me in any of those preceding conversations.

Q. That you have answered—now answer the other part of it. A. When he told me about the money, he made no promise or asked no promise of confidence, and did not convey any injunction of secresy about it, Sir; I remember very well the interview when he told me that.

Q. Well, we will find somebody else that remembers it, too. When Mr. Woodruff first spoke to you about consulting you upon this subject, did he not ask, and did you not give him, a pledge that whatever was communicated to you should be held secret as between counsel and client? A. He did, Sir, in substance that—I have stated it.

Q. No; you haven't stated that. A. Yes; I stated it in my direct examination; his language was, Mr. Beach, that "Whatever is communicated to you I want you to regard as having been communicated professionally"—in substance that was his remark.

THE "TRUE STORY" AS SHOWN TO GEN. TRACY.

Q. Well, I understand you, Mr. Tracy, that at this conversation the "True Story," so far as you know it, as given in evidence in whole or in part—it is your understanding that that "True Story" was read to you by Mr. Tilton? A. Not as it appears and is introduced in evidence, Mr. Beach; there are some things in this "True Story," as published, that I never remember to have heard that night; and on reading this "True Story," as published here, I think it a more elaborate and complete document than the statement or writing which Mr. Tilton made to me on that occasion; but the general drift of the "True Story" is the same as the drift of the statement which he made.

Q. Now, specify, Sir, what matters in the "Story," as it appears in evidence, you think were omitted in the statement made to you by Mr. Tilton on that occasion? A. I cannot recall at this instant but a single one that I can say positively I think I did not hear, and that is a statement in which he says Mr. Moulton returned and reported to him the conversation with Mr. Beecher, and he took it down in notes; I never heard of that, I am sure, until I read it in the "True Story."

Q. Well, with that variation, I understand your impression to be that this "True Story" was the paper which Mr. Tilton unfolded to you upon this occasion? A. No, I don't say that is the paper.

Q. Well, what else, Sir? what else is there? A. I cannot say, Mr. Beach, that there is any subject treated of in the "True Story" that was not alluded to in that conversation that evening; but I say that my impression is that the "True Story," as now produced, is a more elaborate and perfect document than was read to me that night.

Q. Why? You mean that its phraseology is changed? A. Somewhat; yes, Sir.

Q. Somewhat; but the subjects upon which it treated were the same? A. The same, as I remember.

Q. Now, you mentioned in your testimony, in answer to Mr. Evarts, that you know that that paper—that is, the paper that Mr. Tilton read—contained a statement of a writing from Mrs. Tilton, informing her husband that her friend, Henry Ward Beecher, had solicited her to be a wife to him, with all that that implied. [Reading.] "I recollect the statement, as given that day, to be substantially the statement here——" Was that the Storrs letter that you referred to? A. I don't think it was the Storrs letter, Sir; but I think that——

Q. Well, what was it? A. I don't know, Sir, what it was.

Q. Have you seen anything from Mrs. Tilton in this case informing her husband that Mr. Beecher had solicited her to be a wife to him, with all that that implied—except the Storrs statement? A. That is the only paper I have seen.

Q. Well, but this—you say: "I know that the paper contained a statement of a writing from Mrs. Tilton." A. I know it said it did.

Q. Well, what did it say about a writing? A. It said, "I quote"—in substance, it says, "I quote from Mrs. Tilton's handwriting a statement 'that my friend, Henry Ward Beecher, solicited me to be a wife to him, with all that that implies'"—that is the substance of what he purported to quote from his wife that day.

Q. Well, Sir, as that was, substantially you say, in conformity to the one produced, perhaps you can give me more accurately the statement by referring to this, if you can get your eye upon it? A. I doubt whether I can; but still I will see.

Q. Well, we will find out what this states, at any rate? [Paper shown to witness.] A. I have my eye on it, Mr. Beach.

Mr. Beach [looking at the paper at a place indicated by the witness]—Well, it don't help it. You don't think it was the Storrs paper? A. No, Sir; I don't think it was the Storrs paper; my impression is this interview occurred before the Storrs paper was written.

Q. Yes, I was aware of that. Do you recollect the testimony of Mr. Moulton and Mr. Tilton with regard to the time when the "True Statement" was prepared? A. Generally I do.

Q. That it was after Christmas—the last part of December? A. That it was completed then.

Q. Not prepared then? A. No; I don't recollect that testimony, Mr. Beach.

Q. You don't? I omitted to ask you, Mr. Tracy, whether in this interview with Mr. Woodruff—either of the two I have asked your attention to other than the one after Mr. Moulton's study—whether you said, in language or substance, to Mr. Woodruff, that if the thing (referring to this matter) was to be covered up, that no more money must pass? A. No, Sir.

Q. Either that or anything in substance? A. No, Sir.

GEN. TRACY SEEKS TO SUPPRESS THE SCANDAL.

Q. You have spoken, Mr. Tracy, of an interview at the Fifth Avenue Hotel; at that interview, was the question considered as to the propriety of Mr. Moulton's producing the papers in his possession before the Committee? A. Between myself and Gen. Butler, do you mean?

Q. At the interview at the Fifth Avenue Hotel; you and Mr. Moulton differ as to whether he was present, and therefore I did not want to incumber it. A. Yes, Sir; I think it was—I think it was.

Q. Well, that was in relation to the papers which had been referred to by Mr. Tilton, wasn't it? A. It was in relation to this and to others; the conversation took two forms, Mr. Beach, as I remember.

Q. Well, do you mean to say that? A. Yes, Sir; I mean to say that.

Q. As a matter of positive testimony? A. Yes, Sir; that two different ways were discussed, two different modes of proceeding were discussed that night, or suggested for discussion and discussed more or less, and I am inclined to think that more than two were.

Q. Well, was the subject considered in the two aspects—first, whether all—I do not mean to give the order of the discussion, but merely to separate the branches—first, that whether all the papers in his possession should be produced; and second, whether those referred to by Mr. Tilton should be produced? A. Yes, Sir; the discussion went on in those two aspects, I am sure.

Q. You recollect that the call of the Committee upon Mr. Moulton was for the documents referred to by Mr

Tilton, do you not? A. I think there was a call—one of the calls by the Committee, that that construction was placed on its language; I am not certain whether there was any broader call than that or not.

Q. Well—[Reading.]

We earnestly request that you bring all letters or documents in your possession which are referred to by Theodore Tilton in his statement before the Committee.

A. Yes, Sir, I think that was one form; I have an impression that was written, but used slightly different language, but I am not certain.

Q. No, Sir, you can testify about it as a matter of recollection; don't give us the impression. A. I won't.

Q. Just make yourself certain upon that point; well, Sir, at that interview did you advise, or request, that the papers should be produced? A. You may say that I advised or requested it; I can tell what I said——

Q. Well, I am endeavoring to avoid a long cross-examination, if I can, Sir, and to get at some leading, prominent facts; I have no objection to your relieving yourself. A. I don't think the word "advised" would be strictly applicable, because I don't think Mr. Moulton was present; at a different stage of that interview the word "advised" might be appropriate.

Q. Very well; we are not standing upon phrases, Sir. A. Well, I suggested two ways that I thought Mr. Moulton could honorably pursue under the circumstances.

Q. Well, I don't care to go into that. A. And in no other sense did I advise or request, I think.

Q. Well, I want to know whether you advised or requested Mr. Moulton not to present the papers before the Committee? A. I do not think that I put my suggestions either in the form of advice or request. I think my suggestions were in the form of a statement of what in my judgment Mr. Moulton ought to do under the circumstances.

Q. Well, in your statement of what Mr. Moulton ought to do under the circumstances, did you state that it was not best for him to present the papers? A. I don't recollect that I did.

Q. Well, do you say you did not? A. Oh! I won't swear that, Sir; all my remarks might not have taken that form—I can't say; I remember the general fact.

Q. Yes, yes; you have answered my question.

The Witness [continuing]—That was stated there, and I don't recollect any other.

Q. Well, you went over to this interview, you say, at the request of Mr. Moulton? A. I did.

Q. For what purpose did you go? A. To see Gen. Butler as counsel.

Q. Well, to see him upon what subject? A. Upon the subject of Mr. Moulton's action in relation to this scandal.

Q. That is, what he should do with reference to the Examining Committee? A. Yes, Sir, what course he should pursue.

Q. Did you go as counsel for Mr. Moulton? A. No, Sir.

Q. Did you consider yourself in that interview as representing Mr. Moulton, or as consulting on his behalf with his counsel? A. No, Sir.

Q. Well, pray, in what capacity did you go? A. I went, Sir, as one who had been invited to coöperate with Mr. Moulton in this matter, by Mr. Moulton himself, as a friend of Mr. Beecher—one whom he said Mr. Beecher, he thought, would accept, whose advice he thought Mr. Beecher would accept, if it was in concurrence with his own, as one who was a member of the society of Plymouth Church, and was taking part in the effort to prevent an open scandal by the publication of these charges.

Q. Went as a general philanthropist? A. No, Sir.

Q. Well, you went out of universal benevolence? A. No, Sir; I went as a citizen, as a member of Plymouth Church, as a friend of Mr. Beecher, and as one who had an interest in preventing the publication of a scandal that I felt would breed more demoralization than any event of the last century.

Q. Well, when was it? A. When was this interview?

Q. Yes. A. August 9.

Q. What year? A. 1874.

Q. Had you talked with Mr. Beecher about this scandal before that? A. I had, Sir.

Q. When first? A. In November or December, 1872.

Q. November or December, 1872—how often between that and Aug. 9? A. I talked with Mr. Beecher once, I remember, in November or December, 1872; I talked with him again about five minutes on the 7th of January, 1873, at the renting of the pews at Plymouth Church; after that I remember no conversation with Mr. Beecher on the subject of this scandal until after the publication of the "Bacon letter."

Q. How soon after that? A. On Friday night, after the publication of the Bacon letter, which was published, I think, Wednesday.

Mr. Shearman—Friday was June 26, 1874.

The Witness—June 26.

Mr. Beach—Well, from June 26 to July 9, how frequent were your interviews with Mr. Beecher—August 9, I mean? A. August 9. Well, they were frequent; I can't say how frequent; sometimes every day; sometimes twice a week; sometimes he went to Peekskill, and was gone; but when he was in the city, I should say as often as two or three times a week.

Q. Did you consult and advise with him upon the subject at these interviews? A. I consulted with him.

Q. Didn't you advise him? A. Yes; to a greater or less extent, I did.

Q. Well, you considered yourself as his adviser, didn't you? A. No, Sir.

Q. What? A. Not in the strict sense of adviser.

Q. Oh! I am not talking about "strict sense" now, Sir. A. Well, I considered myself as an adviser, as a friend would advise another in difficulty.

Q. Yes; you did not know that Mr. Beecher considered you as a prominent and reliable attorney and counsel—did not suppose that, did you? A. No, Sir; not in that connection.

Q. Not in what connection? A. In the connection of my relations with him.

Q. And you did not suppose that Mr. Beecher sought or was grateful for your advice because of your profession? A. I cannot say how grateful he was, or how grateful I thought him to be; I cannot say, either, that he sought my relation because of my professional position.

Q. Did you suppose, Sir, that he was consulting with you and valued your advice on account of your professional position? A. If I thought anything on the subject, I perhaps assumed that that entered into his calculation or his motive more or less.

Q. Well, Sir, with that presumption, and having had these interviews with Mr. Beecher, and having given him advice, you went to this interview at the Fifth Avenue Hotel? A. Yes, Sir.

Q. Did you there state to Mr. Benjamin F. Butler—is that his name?

Mr. Morris—Yes. [Laughter.]

Mr. Beach [continuing]—Mr. Benjamin F. Butler—that you represented Mr. Beecher? A. Not in that language, Sir.

Q. What? A. Not in those words.

Q. Well, in substance that? A. No, Sir; I undoubtedly, quite likely, did——

Q. Never mind what you undoubtedly did; we don't want any further reasoning. Now, did you not upon that occasion represent to Mr. Butler that you appeared as the representative and counsel of Mr. Beecher? A. No, Sir.

Q. You did not do so in the presence of Mr. Moulton? A. No, Sir.

Q. Well, after that interview did you see Mr. Beecher? A. Undoubtedly I did, after that interview.

Q. I don't want any "undoubtedly;" I want your recollection, if there is any. A. Oh, I did; yes, Sir; yes, I saw him after that, of course.

Q. How soon after that did you see him? A. That was the 9th.

Q. Yes? A. I can't say.

Q. Well, give me the best of your recollection? A. I undoubtedly saw him within a week after that, probably within three days; it would depend upon whether he was in town or not; I don't remember.

Q. Well, was the subject of your interview at the Fifth Avenue Hotel a matter of conversation between you and Mr. Beecher? A. I don't recollect positively whether it was or not.

Q. Well, isn't it possible for you to refresh your recollection upon that subject? A. No, Sir; I remember no conversation between myself and Mr. Beecher.

Q. Well, you have answered my question. A. Oh, excuse me, Sir.

Q. I don't want anything further. Is that the only conference you had with Mr. Butler in regard to this scandal? A. No, Sir.

GEN. TRACY GOES TO BOSTON TO SEE GEN. BUTLER.

Q. Where else have you conferred with him except at the Fifth Avenue Hotel, in New-York? A. Once in Boston.

Q. In Boston? A. Yes, Sir.

Q. When was that? A. About the first of July.

Q. 1874? A. Yes, Sir.

Q. Was it on the 29th of June? A. I cannot say the date definitely; it is about the first of July, I know.

Q. Did you go to Boston for the purpose of consulting with him? A. I went to Boston for the purpose——

Q. Did you go there for that purpose, I asked you? A. I went to see him.

Q. What? A. I went to see him on this subject.

Q. Yes; you went to see him on this subject; how came you to go? A. If you apply any technical meaning to the word consult, I did not go to consult.

Q. Oh, no; to confer. A. To confer with him.

Q. How came you to go? A. Because of a message which I understood Mr. Benjamin F. Butler sent to Mr. Beecher on the subject of this scandal.

Q. Who did you understand it from? A. Mr. Beecher.

Q. Did Mr. Beecher request you to go? A. No, Sir.

Q. No suggestion from or with him in regard to your going? A. I can tell you what occurred, Mr. Beach.

Q. Well, you can answer my question? A. No, I cannot, without telling you what occurred.

Q. You cannot say whether there was any suggestion about your going to Boston between yourself and Mr. Beecher? A. There was a suggestion about my going; Yes, Sir.

Q. Who made the suggestion? A. I did.

Q. Did Mr. Beecher concur in it? A. He did not.

Q. Did he object to your going? A. He did.

Q. You went contrary to his wish? A. I cannot say that.

Q. Went contrary to his objection, didn't you? A. I cannot say that.

Q. Why, you went, didn't you? A. Yes, Sir.

Q. And he objected to your going? A. He did when the suggestion was made first.

Q. Oh—— A. Now, I will tell you—I will state the facts, if you want them.

Q. Oh, no; wait a minute. [Laughter.]

Mr. Shearman—Yes, ask him.

Q. And you did not go against Mr. Beecher's objection? A. Well, I can't say that, either.

Q. Can't you say whether you did or not? A. No, Sir.

Q. Well, did he withdraw the objection which he made? A. Well, I can't say that.

Q. Well, then, if he made an objection, and didn't withdraw it, you must have gone contrary to it. A. That don't follow, Sir.

Q. Doesn't it? A. No.

Q. Well, had you any knowledge of his wish upon this subject except what he said? A. Well, I had what I might have inferred was some knowledge of his wish.

Q. Now, Mr. Tracy, did you go to Boston to confer with Mr. Butler with or without the concurrence of Mr. Beecher? A. I cannot tell you, Sir.

Q. Can't tell me? A. I will tell you the facts, and all I know about it, and then you can judge as well as I.

Q. Well, you cannot judge, you say? A. No, Sir; I cannot accurately answer; I——

Q. Can't you form a conclusion upon that subject? A. No, Sir.

Q. What? A. No, Sir.

Q. You can't form a conclusion? A. I cannot form one that is definite, so as to enable me to say whether I did or did not go with Mr. Beecher's wish.

Q. Yes, Sir; you have no understanding upon that subject? A. No; I don't say that; I have an inference on the subject.

Q. What is it? A. Well, Sir, I have an inference that, after Mr. Beecher objected to my going at night, he had seen Mr. Shearman in the morning and withdrawn his objections, and Mr. Shearman came to me and advised me to go, and my determination to go was the result of the conversation between Mr. Shearman and myself, and from the fact of Mr. Shearman's coming to me and consenting after being present at Mr. Beecher's objections, I inferred, without asking any questions about it, that Mr. Beecher had withdrawn the objections that he made the night before, and I went to Boston.

Q. Well, when you went, you supposed you were going with the concurrence of Mr. Beecher, didn't you? A. I didn't suppose I was going——

Q. Now, did you suppose that or not? A. I supposed he had withdrawn his objection——

Q. Did you suppose you were going with the concurrence of Mr. Beecher? A. I did not know whether Mr. Beecher knew I was going.

Q. I ask you if you supposed you were going with the concurrence of Mr. Beecher? A. I did not suppose anything about it.

Q. You did not? A. No.

Q. You had no idea about it? A. Not definitely; no.

Q. Oh! not definitely. I asked you if you had any idea about it. [Laughter.]

Judge Neilson—Gentlemen, please be quiet.

A. I have stated to you all I know about it.

Q. Now, wait, Mr. Tracy; I am not asking you for a definite and unqualified fact; I am asking you, Sir, as a man of intelligence and sense, whether, when you went to Boston, you supposed you were going with the concurrence of Mr. Beecher? A. I supposed——

Q. Now, I want you to answer that question. A. Well, I can't answer it, if your Honor please.

Q. You can tell what you supposed. A. No, I can't say that I supposed that Mr. Beecher knew I was going when I started, and how I could know that I was going with his concurrence——

Q. You understood from Mr. Shearman that his objection to your going had been withdrawn, didn't you? A. I say I inferred it.

Q. Well, you understood it? A. Not from Mr. Shearman; no, Sir.

Q. Didn't you suppose it? A. I supposed it; yes, Sir.

Q. Then we will start there. You supposed his objection had been withdrawn? A. Yes, Sir.

Q. And yet you had no supposition when you went whether you were going with the concurrence of Mr. Beecher or not? A. Well, it is a mere speculation; Mr. Beecher——

Q. Ah, a speculation! Is it not a conclusion of your own mind? A. No, Sir; I have no conclusion upon the subject.

Q. I am asking what you supposed in your own mind, when Mr. Beecher's objection was withdrawn to your going—— A. I did not know that it was withdrawn.

Q. You said you supposed it had been withdrawn. A. I said I inferred, from the fact of Mr. Shearman's coming to me, that he would not have come without Mr. Beecher had withdrawn his objection.

Q. When you inferred that Mr. Beecher had withdrawn his objection, did you not suppose you were acting in accordance with his wish? A. I cannot say that I supposed one way or the other on the subject at that time.

Q. Yes—— A. I don't think that I speculated on the question.

Q. You went on to Boston? A. I acted on the——

Q. Wait a minute. You went on to Boston to confer with Mr. Butler upon that subject, in which you conceived Mr. Beecher to be deeply interested, without having any idea in your own mind as to whether you were acting in accordance with the wishes of Mr. Beecher or against his wishes. Do you mean to swear that? A. I mean to swear that I went to Boston on the responsibility of Mr. Shearman; and beyond that I did not inquire, and did not consider nor speculate, as to whether I was going with Mr. Beecher's knowledge or with Mr. Beecher's concurrence.

Q. Mr. Tracy, when Mr. Shearman came to you and consulted with you, and, under his advice, you went to Boston, did it not occur to you whether Mr. Beecher's objection had been withdrawn or not? A. I say if did, and

I inferred from the fact of his coming that it had been withdrawn.

Q. And when you made that inference that that objection had been withdrawn, you mean to say, do you, that the idea did not occur to you whether you were going to Boston in accordance with or against his wish? A. Ah, I don't say that, Mr. Beach.

Q. You don't, eh? A. I never supposed I was going there against the wish of Mr. Beecher.

Q. Well, I have been asking you that for some time? A. No, Sir, you have not. I beg pardon. That is exactly what you have not been asking.

Mr. Evarts—There is a distinction that he wanted to make.

Mr. Beach—No, Sir; no, Sir; it is not a distinction that he wanted to make, nor is it a distinction that my question admits.

The Witness—It is just the distinction that I wanted to make, and have been trying to make all the time.

Mr. Beach—What prevented you from making it?

The Witness—Simply because of the form of the question; this is the first time that you have asked the question in that form.

Mr. Beach [to the stenographer]—Please give me those questions, two or three of them, and let us see.

Mr. Shearman—How far back do you want him to go?

Mr. Beach—Just as far back as you want him to go.

[The Tribune stenographer read several of the preceding questions and answers.]

Mr. Beach—That will do; I guess my questions do not prevent him from answering.

The Witness—That is the first time that I understood your question—that I understood you to ask me if I went against——

Mr. Beach—Then you had better understand the questions as we go along.

The Witness—Well, I think that is the first question, Mr. Beach, where you asked me that. When I say that I wanted to make that, I say——

Mr. Beach—Wait, wait.

The Witness—Well, if you won't permit me to explain——

Mr. Beach—You saw Mr. Butler in Boston, did you? A. Yes, Sir.

Q. And that, you say, was about the 1st of July, 1874? A. I think it was, Sir.

Q. Had the Committee then been formed—called? A. Substantially.

Q. The Investigating Committee? A. Yes, Sir.

Q. The Investigating Committee had then been named, hadn't it? A. I am not certain but one name was added after I went to Boston.

Q. Whose name was that? A. I should say it was Mr. White's, but I am not certain of that.

Q. Did you tell Mr. Butler anything about the calling of that Investigating Committee? A. I did not.

THE INTERVIEW WITH GEN. BUTLER.

Q. What was the subject of your conversation with Mr. Butler? A. It was about the message he had sent to Mr. Beecher, and his knowledge of the scandal.

Q. Was it not upon the subject of the best policy to be pursued in suppressing the scandal? A. The latter part of the conversation may have taken some turn of that description; I don't remember about that.

Q. Did Mr. Butler tell you that he knew what the character of the accusation was against Mr. Beecher? A. I don't remember whether he did or not.

Q. You don't remember? A. I don't remember, Sir, whether Gen. Butler and I discussed his knowledge; I don't know that he professed to have any special knowledge about the case, aside from what was gathered in the prints. I went there on the supposition——

Q. Oh, I don't want your suppositions. A. Exactly.

Q. Did not Mr. Butler in that interview in words or in substance inform you that he understood the charge against Mr. Beecher to be improper connection with Mrs. Tilton? A. He may, or may not.

Q. You cannot tell me now whether he did or not? A. I don't remember what Gen. Butler said he understood the charge to be, and I don't remember that he made any statement of what he understood the charge to be.

Q. It is enough for you to say that you don't remember. You don't remember, you say? A. No, I don't say that I —I say that I don't remember definitely——

Q. Definitely! What are you covering up under the word definitely? A. Nothing.

ANOTHER CONSULTATION WITH GEN. BUTLER.

Q. Very well then leave it out—you don't remember. Well, did you have an interview with Mr Butler on the 20th of July? A. I did.

Q. Where was that? A. At Mr. Moulton's house.

Q. How came that interview about? A. I think Mr Moulton sent for me.

Q. How did you learn that Mr. Butler was in New-York or Brooklyn? A. I think Mr. Moulton told me.

Q. Was that the first you knew of his presence in New-York on that occasion? A. July 20—I think I knew that he was to come.

Q. For the purpose of that interview? A. What?

Q. For the purpose of an interview? A. For the purpose —on the subject of this scandal.

Q. Well, for an interview? A. For an interview.

Q. With you? A. No, not definitely with me.

Q. Not with you? A. Not with me, aside from Mr. Moulton and the——

Q. Not with you? A. I supposed that I was to be notified when he did come.

Q. And you supposad that you would have an interview with him? A. I supposed so.

Q. Didn't you telegraph for him to come on? A. I did on one occasion.

Q. Was not that the occasion? A. I think not.

Q. When was it? A. I think my telegram to Gen. Butler was at a later date.

Q. When do you think it was? A. I think it was later; I have got it here. [Referring to the telegram.] Yes Sir; I am correct.

Q. Did you not on this occasion, July 20, summon him to New-York? A. I think not; I don't remember that I did.

Q. Is that all you will say about it? A. That is all I will say about it; I say I have no recollection.

Q. What was the interview at Mr. Moulton's house about? A. It was about Mr. Tilton's proposed statement.

Q. Well, did you understand, then, that Mr. Moulton was endeavoring to suppress the statement, to prevent the statement being made? A. I did.

Q. You understood that Mr. Moulton was laboring for the purpose of avoiding any publication of this scandal at that time, didn't you? A. I did.

Q. At that interview of July 20th was it arranged in substance that the meeting of the Committee for that night should be postponed in some form, or put off? A. Not *arranged*, Mr. Beach—that does not express it.

Q. Well, was it suggested? A. Yes, Sir.

Q. That the meeting which was called for July 20th, of the Committee, should be put off, to give Mr. Moulton more time to control Mr. Tilton if possible? A. To give Mr. Moulton and Gen. Butler more time.

Q. Well, Mr. Moulton and Mr. Butler? A. Yes, Sir; that was suggested.

Q. Was not that understood to be the purpose of the three parties? A. The purpose of——

Q. At that meeting was not that understood to be a purpose to be accomplished? A. By the postponement of the meeting of the Committee?

Q. Yes—— A. Yes——

Q. Well, was not the suggestion made that you would not be present at the meeting of the Committee on that evening, and that if you were not present the meeting would not go on? Was such a suggestion made? A. Yes, Sir.

Q. Now, was not that the understanding—— A. Yes, Sir, I think that part of it was an understanding, that I should not be present——

Q. And that therefore the meeting would be postponed and Mr. Tilton and Mr. Butler were to—— A. Ah! that don't express it, Mr. Beach. I can tell you what occurred exactly. I think I can——

Q. No, I don't think you can? A. I think I can.

Q. Do you pretend to give exactly what occurred at these meetings? A. Not at all these meetings.

Q. Well, at any of them? A. I think I can tell you exactly what occurred on this occasion.

Q. Exactly? A. Well, if you put a very limited meaning on the word "exact," perhaps not; but I can give you substantially what occurred at this meeting, and really what occurred.

Q. That is another thing. Because I want to know—if you are undertaking to give the precise language used at these meetings, I want to understand it. Are you pretending to that? A. No, Sir; when I am repeating conversations I am not, as a rule, professing to give the precise words, but the substance.

Q. I supposed not. Was it not arranged and understood between Mr. Butler and Mr. Moulton and yourself, at this meeting on July 20, that you should not be present at the meeting of the Investigating Committee called for that evening, and was it not expected that in consequence of that absence of yourself that meeting would be postponed, and no proceedings taken on the evening of July 20? A. I cannot answer your question yes or no, Mr. Beach.

Q. Well. A. I will tell you what occurred.

Q. Well, I will get it by somebody else, if you cannot answer it. Was it expected that Mr. Tilton would make his statement to the Investigating Committee on the evening of July 20? A. That was expected; yes, Sir.

Q. Well, you did appear on that evening at the Committee? A. I did.

Q. And the meeting was held? A. Yes, Sir.

Q. And Mr. Tilton made his statement? A. Yes, Sir.

Q. That, I understand, was the first statement, where he refused to make a statement, and where he did not make a statement? A. Oh, no; that was his long statement; that was the sworn statement.

Q. July 20? A. Yes, Sir.

Q. Well, I was mistaken; I thought it was the former one. Now, you afterward saw Gen. Butler, you say? A. Yes, Sir.

A STATEMENT DICTATED BY GEN. BUTLER.

Q. Where was that? A. At the Fifth Avenue Hotel.

Q. When was it? A. Aug. 9, 1874.

Q. That is the interview spoken of? A. Yes, Sir.

Q. Did you see him upon any other occasion? A. Yes, Sir.

Q. Where was that? A. I saw him on the evening of Aug. 10, at Mr. Moulton's house, and I saw him next morning.

Q. Where was that, next morning? A. That was at my room.

Q. Your room—where? A. In Montague-st.

Q. At your house—where you lived? A. I was boarding at the time.

Q. In your room at your boarding place, then? A. Yes

Q. Who was present at that interview? A. His private secretary.

Q. Any one else? A. I think not, Sir.

Q. Are you quite certain about that? A. I am.

Q. Was Mr. Beecher in the house? A. No, Sir.

Q. Had he been that day? A. No, Sir; he never was in the house, to my knowledge.

Q. Were you and Mr. Butler then preparing a card to be issued or spoken by Mr. Beecher? A. No, Sir.

Q. Were you not preparing some paper for Mr. Beecher to use? A. No, Sir.

Q. What? A. No, Sir.

Q. No paper for Mr. Beecher to use? A. No, Sir.

Q. Were you preparing any paper? A. No, Sir. I will state what occurred, if you want it.

Q. Well, when I do, I will tell you. Were you preparing any statement? A. Well, I will say, Mr. Beach, that in that interview——

Q. Just answer my answer. A. I say that *we* were not; I can state to you what occurred, precisely.

Q. Wait a moment. You seem to be somewhat disposed to be critical, and I am inclined to indulge you. A. I see you are.

Q. You say *we* were not. Was either you or Mr. Butler preparing a statement? A. Mr. Butler—General Butler did——

Q. Can't you answer my question? A. No; I will answer it by stating what occurred.

Q. No, you won't. I beg your pardon. Was either you or Mr. Butler preparing a statement on that occasion? A. Mr. Butler dictated to his stenographer, or started to, and did to some extent, and quit on a conversation between himself and me; we had a conversation——

Q. Now, I am not asking for the details of that interview. I ask you simply the question whether either party dictated a statement, or prepared a statement—— A. You did not ask me whether he dictated.

Q. Well, prepared a statement, I said. You have forced upon me matter which occurred, which I did not call for. Now, will you answer my question whether or not either you or Mr. Butler upon that occasion prepared a statement? A. I say we did not.

Q. Did you prepare any part of a statement? A. Mr. Butler dictated——

Q. Did either of your prepare any part of a statement? A. Mr. Butler dictated to his stenographer, who took down in shorthand——

Q. Well, Sir, I don't want it to be supposed that I call out what transpired at that interview, so as to make it the subject of evidence, for I do not care to have it in.

Judge Neilson—In other words, you don't ask for the conversation.

Mr. Beach—No, Sir; but this gentleman insists upon stating it.

Mr. Evarts—He asks whether either of the parties prepared a statement, and the witness answers that Gen. Butler did dictate to a stenographer, who reported, or wrote in shorthand, something.

Judge Neilson—The answer may be well enough, if it is understood that it is not bringing in the conversation.

Mr. Evarts—Well, it is not. That is all. He is asked if he prepared a statement, and he says that Gen. Butler dictated to a stenographer, who wrote down——

Judge Neilson—A statement, in part.

Mr. Evarts—I suppose so. I don't know what it was, I am sure.

Mr. Beach—Was the statement completed? A. No Sir; you mean that day?

Judge Neilson—At that time?

Mr. Beach—I was going to add, then or afterward? A. Now, I can't tell you that. I can tell you what occurred.

Q. No you won't.

Judge Neilson [to witness]—You have answered the question.

Mr. Beach—Was that partial statement, partly prepared and left unfinished, a statement designed for the use of Mr. Beecher? A. No, Sir; it was designed for my use so far as it was designed at all.

Q. For your use on behalf of Mr. Beecher? A. In one sense. It was suggestions to me.

Q. Was it not suggestions in regard to a statement contemplated to be made or submitted to Mr. Beecher? A. It was a statement of what Gen. Butler thought Mr. Beecher's statement should be, made to me.

Q. Very well. A. That is what it was, or purported to be, and he started to make it and then stopped. It was giving me his ideas on the case.

Q. Did he take that off with him? A. He did.

Q. Did he afterward send you a full statement prepared? A. He sent me afterward a package which I never read——

Q. Now, Mr. Tracy will you answer my question? A. Well, I cannot tell you whether it was completed or not.

Mr. Shearman—How can the witness tell whether it was a statement when he does not know that it was?

Mr. Beach—Can't he say so, then?

Mr. Shearman—Well, this is the fair and honest way of answering it.

Mr. Beach—Well, I don't think it is either fair or honest.

Mr. Shearman—I do.

Mr. Beach—Very well. If you want to get into a controversy on that subject, let us have it out.

Mr. Shearman—Very well, let us have it out. The witness is asked——

Judge Neilson [rapping on his desk]—That will do, gentlemen. The witness says that Gen. Butler sent him some papers, which he did not read.

Mr. Shearman—And I submit to your Honor that that is a fair and honest answer, and the only one that could be fairly and honestly made to the question. That is my proposition.

Judge Neilson—I regard it as an answer. There is no occasion to say whether it is honest or not. The witness needs no compliments.

Mr. Shearman—Well, the counsel upon the other side was attacking the witness, when he said that it was neither fair nor honest.

Judge Neilson—That was improper.

Mr. Beach—It was not improper, Sir, in answer to the remark of the counsel upon the other side.

Judge Neilson—If it was not applied to the witness, very well.

Mr. Shearman—Then we are to understand that the gentleman's remarks are made entirely in a Pickwickian sense.

Judge Neilson—Very well.

Mr. Beach—Well, Sir, I know nobody more competent to deal in Pickwickian language than that gentleman. [Laughter.]

Q. Mr. Tracy, did you afterward receive from Gen. Butler a paper purporting to be a proposed statement for Mr. Beecher? A. I afterward received——

Q. Will you answer my question? A. I cannot tell you, Sir, for I never read it.

Q. Did you ever read the letter accompanying that paper? A. I am not sure that any letter did accompany it; if there was I have forgotten it.

Q. You have forgotten that Mr. Butler wrote you a letter accompanying a package of papers he sent to you?

Mr. Evarts—Does he say he has forgotten? When we "forget" a thing it implies we once knew it. He says he does not know if there was one.

Judge Neilson—There is something in that distinction.

Mr. Evarts—He says, "I don't know there was such a paper; if there was I have forgotten it."

Mr. Beach—What is my question?

Judge Neilson—Whether he read the letter.

Mr. Beach—I think not. Let the stenographer read the question.

[The Tribune stenographer read question and answer.]

Mr. Beach—You have forgotten whether or not he sent you a letter? A. I have no distinct recollection; since you speak of it, it seems to me I did see a letter accompanying the package, but I am not certain—or that came at the same time with the package.

Q. Did not that letter in words or substance state to you that the offense of Mr. Beecher was adultery, or intercourse with Mrs. Tilton, and that the paper sent was the best statement he could make under the circumstances? A. If Gen. Butler wrote me a letter I would assume that was what was in the letter, because I know that that was Gen. Butler's view of the case at the time, and he was trying to see what kind of a statement he could make, on the supposition that Mr. Beecher was guilty.

Q. Exactly! Exactly! That was the basis or the aspect of the case represented by Mr. Butler in your conferences with him? A. Not in all the conferences.

Q. In the conferences in Boston and the conferences here? A. About the conferences in Boston I don't remember what Gen. Butler's impression or supposition was; I don't know that he stated it; I know distinctly that in the interview at Moulton's house, on Aug. 10, Mr. Butler assumed Mr. Beecher's guilt.

Q. What did you do with the package of papers? A. I returned it to Gen. Butler, without even keeping a copy of it.

Q. When did you return it? A. Well, it is within, I think, two months; it was buried up in my papers; I got the boy overhauling my papers, this Winter, and had a general overhauling, and that paper turned up; I had not seen it before since the time I got it; I directed it to be sent back to Gen. Butler, and I suppose it was.

Q. When you and Gen. Butler parted, at the time of the interview at your room, did you not part with the understanding that he would prepare and forward to you a statement? A. Yes; he said it would continue——

Q. Wait; you have answered my question. I did not ask that. A. You say a statement. I don't know what you call a statement; it was not called a statement by Gen. Butler; that is not what he called it, nor what I called it.

Judge Neilson—You mean a written view about it.

Q. Well, if it was not a statement, what was it? A. Well, it was his views of Mr. Beecher's case, as he would present them.

Q. Well, was it not in a form to be presented by somebody else beside Mr. Butler? A. That I don't know, for I never read it.

Q. Did you not hear the dictation? A. I heard what proceeded in the dictation.

Q. Yes, Sir; was it not in the form of a statement? A. I think it began in the form of a statement—yes, Sir.

Q. Now, when he left, was it not the arrangement between him and you that he should continue, or finish what he had begun? A. I think it was.

Q. Did you not request him to do it? A. After he offered to.

Q. After he offered to! [Laughter.] You are sure that you did not do it until after he offered? A. I am sure.

Q. But you did request him? A. Yes, Sir, after he offered.

Q. After he offered to do it, you requested him; and yet when the paper came on here you did not deign to look at it? A. I did not, for it was too late.

Q. When did it come? A. My recollection is it did not arrive until after Mr. Beecher's statement was prepared and published; I am not, however, certain of that; some days elapsed, and I had given up hearing from Gen. Butler on the subject, and I think, if I remember correctly, that it was the very morning that Mr. Beecher's statement was published that I received this package from Gen. Butler, but of that I am not certain; I know I did not read it at the time; I know that.

Q. Now, was it not understood or arranged, or dis

cussed, between you and Mr. Butler, that this paper, which Butler was suggesting or preparing, should be presented and read by Mr. Beecher to his church, and that Mr. Beecher should make no statement before the Investigating Committee? A. Mr. Butler made a suggestion of how he would treat this case.

Q. Oh! Mr. Tracy, please answer my question? A. Repeat it, Mr. Beach.

Mr. Beach—The stenographer will please read it.

The Tribune stenographer read the question as follows:

"Q. Now, was it not understood or arranged or discussed between you and Mr. Butler, that this paper which Butler was suggesting or preparing should be presented and read by Mr. Beecher to his church, and that Mr. Beecher should make no statement before the Investigating Committee?" A. It was not arranged or understood, or anything of the kind; that was Mr. Butler's suggestion.

Q. I ask you if it was not discussed? A. It was mentioned by Gen. Butler—yes, Sir.

Q. Was it discussed? A. I think it was discussed, in the sense that he made the proposition.

Q. Yes. Well, was it not also, in connection with that suggestion, understood that Mr. Moulton should give up to Gen. Butler all the papers which he had, connected with the subject? A. It was not understood.

Q. Was it not arranged that he should do it? A. No, Sir; not that I remember.

Q. Will you swear it was not arranged that he should do it? A. In what contingency? Let me understand the question.

Q. In what contingency! In any contingency—that he should give up the papers that he held to Gen. Butler? A. Gen. Butler said in the conversation, some part of it——

Q. I don't want that. A. I cannot speak of any proposition Gen. Butler made to me, that was an arrangement or understanding or an agreement; I cannot say that.

AN OFFER TO SHOW THE WITNESS'S ANIMUS.

Q. When you left from that interview, did you not understand that Mr. Moulton was to give up all the papers he held to Mr. Butler? A. No, Sir; I can't say that I understood it.

Q. And you don't know that Mr. Moulton sent on all the papers to Mr. Butler, in compliance with the understanding formed at that interview? A. No, Sir.

Q. Do you swear to that? A. No, Sir; I understood Gen. Butler was to have Mr. Moulton deliver the papers if he could, or he made a suggestion that he should do it.

Q. I don't want to go into details on the subject so as to open it.

Mr. Evarts—I think it is opened.

Mr. Beach—I supposed not; I have tried to keep it shut.

Mr. Evarts—You have not succeeded.

Mr. Beach—I am sorry; but if you have any desire to explore it, you have my full consent.

Mr. Beach [to Mr. Morris]—What is this letter of Butler's? Is this of any importance? [Looking at letter.]

Mr. Beach—Did you ever see this letter, Mr. Tracy? [Showing letter to witness.]

[The witness looks at the letter, occupying a long time in reading it.]

Mr. Beach—You are a mighty bad reader.

The Witness—I am; I have just discovered when this was written, now; I can't say that I ever saw that letter, Mr. Beach; I see when it was written and the occasion when it was written.

Q. Was it not written in your presence? A. I don't recollect that it was.

Q. Will you swear it was not? A. No, I will not swear that it was not; I know that Gen. Butler——

Mr. Beach—Wait! wait! unless you want to go into an argument. [Turning to Mr. Morris.] I don't see the importance of this letter, or the pertinency of it yet. If anybody else does, and tells me what it is, I will follow it up and give it in evidence. [To the witness.] Do you recollect the conversation you had with Mrs. Moulton on the evening of Aug. 10, being Monday evening? A. Yes, Sir.

Q. That was the evening after Mr. Moulton had made what is called the short statement? A. Yes, Sir.

Q. In place of the long one? A. Yes, Sir.

Mr. Evarts—What is that, Mr. Beach?

Mr. Beach—The interview with Mrs. Moulton of August the 10th.

Mr. Evarts—We do not understand that an interview between Mr. Tracy and Mrs. Moulton is proper.

Judge Neilson—It has not been inquired into, has it.

Mr. Evarts—No, Sir.

Judge Neilson—Then the counsel will not go into it.

Mr. Beach—I think I will, Sir.

Mr. Fullerton—That does not follow, if your Honor please.

Judge Neilson—It would follow, unless you propose to show Mrs. Moulton gave the witness notice of something that he ought to know. As evidence of a conversation it would not be admissible.

Mr. Fullerton—Why, Sir, the dealing of this witness with any person connected with this case is a proper subject of inquiry.

Mr. Evarts—I don't understand how Mr. Tracy is so identified with Mr. Beecher that conversations with him can be given. We could not get Mr. Moulton into that position.

Mr. Fullerton—We do not propose to hold Mr. Beecher responsible for what Mr. Tracy did there. It is Mr. Tracy himself. We have a right to show the animus of the witness, connected with what he did and said.

Mr. Evarts—Oh, if it is a question of bias, very well.

Mr. Fullerton—Then you should not have objected until you knew what it was.

Mr. Evarts—Yes, we have a right to object until we unearth the object.

Mr. Fullerton—It lay on the top of the earth, to be seen with half an eye.

Judge Neilson—I confess I didn't see it until you suggested it.

Mr. Fullerton—Then I am glad that I made the suggesgestion, your Honor.

Judge Neilson—I believe it is time to adjourn.

Mr. Beach—If your Honor wishes, I am willing to go on.

The Court then adjourned until Friday at 11 o'clock.

SEVENTY-SIXTH DAY'S PROCEEDINGS.

THE DEFENSE RESTS, DECLINING TO CALL MRS. TILTON.

B. F. TRACY'S CONVERSATIONS WITH MRS. MOULTON INQUIRED INTO—ONE OF THEM DECLARED BY THE WITNESS TO BE CONFIDENTIAL—QUESTIONS AS TO THE SUPPOSED POSSIBILITY OF THE DESTRUCTION OF THE SCANDAL DOCUMENTS—MR. TRACY THE LAST WITNESS FOR THE DEFENSE—PLAINTIFF'S COUNSEL OFFER TO ALLOW MRS TILTON TO TESTIFY—MR. EVARTS DECLINES THE PROPOSITION—OPENING TESTIMONY FOR THE PLAINTIFF IN REBUTTAL—CHARLES C. STANLEY, GEO. W. MADDOX, AND JOHN SWINTON TESTIFY ABOUT MR. TILTON'S PLACE IN THE ROSSEL PROCESSION.

FRIDAY, April 30, 1875.

Mr. Beach resumed the cross-examination of Gen. Tracy. His first question was whether the witness had not been consulting with his fellow-counsel about his testimony just before taking the witness chair. This was the provocation of several sharp replies as it was followed up by similar questions.

One of the most important portions of the cross-examination to-day related to an interview between Gen. Tracy and Mrs. Moulton about the time when Mr. Moulton's short statement to the Committee was substituted for his long one. Mr. Beach asked if the witness at that interview had said to Mrs. Moulton, "Emma, you are a brave woman; you have saved the old man to-day," and if he had questioned her whether she wouldn't destroy the papers if Jeremiah P. Robinson advised it, and had said to her, "If Frank ever uses that statement and the letters, you will be ruined socially, financially, and in every way." Mr. Tracy replied that he had had a conversation with Mrs. Moulton on the subjects referred to in Mr. Beach's question, but that in substance it was not what the question embodied. Before replying in reference to this conversation Mr. Tracy objected to going into it, on the ground that it was a confidential conversation between Mrs. Moulton and himself. Again, on his redirect examination, Mr. Tracy said that he hoped he would not be questioned about the details of that conversation, but his objection was set aside. He testified that nothing at that time was said about the destruction of the papers, either then or at a future date. Mr. Tracy denied that he had made other statements of a similar character in a previous conversation with Mrs. Moulton in 1874. Mr. Beach said that he intended to recall Mrs. Moulton and question her in reference to these conversations.

Mr. Moulton's short statement was read by Mr. Beach, and the acts of the Investigating Committee were once more inquired into, and the circumstances of Mr. Richards's refusal to testify before the Committee were touched upon. Mr. Beach asked some very searching questions about the relations of the witness with newspapers, and endeavored to find out if he had sought to influence any leading newspapers in favor of Mr. Beecher after the publication of the Bacon letter. Mr. Tracy said he had not sought to influence the course of any paper, although he had talked with newspaper men about the scandal.

The re-direct examination of Mr. Tracy by Mr. Evarts was short. It drew out the fact that before Mr. Tilton's sworn statement was made public Mr. Tracy had consulted with others in reference to procuring an injunction to prevent the destruction of the papers. There was genuine surprise exhibited among the spectators, when, having asked a few more questions of the witness, Mr. Evarts turned to the Court and said in a low voice, "We rest." Few had expected that the defense would finish their case this week, as it was understood that there were a number of important witnesses yet to be called on that side.

THE DEFENSE DECLINE TO CALL MRS. TILTON.

Immediately after the closing of the case for the defense Mr. Beach arose, and after remarking that during the course of the trial many references had been made to the fact that there were legal obstacles in the way of Mrs. Tilton's becoming a witness against her husband, he announced that the prosecu-

tion would make no objection whatever, and would waive entirely any legal objection, which they might have the right to make, to Mrs. Tilton's being called as a witness by the defense. Mr. Evarts replied that the question whether Mrs. Tilton could be a witness in this case had never been an actual question. "The law," said he, "prohibits it; the policy of the law prohibits it; the general sense of the wisdom of that law prohibits it." The defense, he continued, had no opinion and no view that their case needed any more testimony than they had produced. All questions about their duty to introduce such evidence were hypothetical, and he should not have alluded to them in the least but for the proposition of the plaintiff's counsel.

Mr. Beach replied that he thought Mr. Evarts was mistaken in his view of the policy of the law, and the question whether a wife should be allowed to defend herself when placed in Mrs. Tilton's position. Mr. Evarts finally said that he did not regard consent or stipulation between the parties in opposition to a law which excluded a witness on the ground of public policy as making him or her competent. Judge Neilson remarked that the offer having been made, and the question presented, and the learned counsel for the defense thinking it their duty to decline to accept the suggestion, he felt gratified that the lady was not to be called. The vexed question of Mrs. Tilton's becoming a witness, which has led to so much rumor and conjecture, was thus finally settled.

MR. TILTON'S PLACE IN THE ROSSEL PROCESSION.

The plaintiff's counsel began their evidence in rebuttal by introducing witnesses to prove that Mr. Tilton did not ride with Mrs. Woodhull and Miss Claflin in the Rossel procession in December, 1871, and that Gen. Ryan had been mistaken for Mr. Tilton. The first witness was Charles C. Stanley, a journeyman carpenter of Brooklyn, who had seen the procession, and who testified that he had seen Mr. Tilton walking with a gentleman during a large part of the march of the procession. His evidence was followed up by that of George W. Maddox, a real estate broker of New-York, who had been in the procession. He testified that he had seen Mr. Tilton walking in the procession, and not in company with any lady. On his cross-examination by Mr. Evarts, this witness created much amusement by droll replies.

Mr. Evarts asked him if he had ever been connected with a newspaper as a reporter. "Not as a reporter," replied the witness; "I published a paper myself—got out three whole numbers." A roar of laughter succeeded this reply, while Judge Neilson rapped angrily with his gavel, and the officers looked around bewildered.

"Into whose hands did the paper pass?" asked Mr. Evarts.

"It passed into—defunct," was the dry reply. This produced another burst of merriment, and the witness covered his mouth with his hand and laughed slyly at his own joke. "Then," said Mr. Evarts, "it passed from the undertaker into the hands of the undertaker." The name of the short-lived paper was *The International*.

Mr. Evarts wanted to know at what points the witness had seen Mr. Tilton in the Rossel procession. "It would be quite impossible," replied the witness, "for me to designate any particular point where I saw him—that is," he added by a pause, "I think I can't tell; but peg away, perhaps I can."

Mr. John Swinton was the last witness called for the plaintiff. He testified that he had marched arm in arm with Mr. Tilton from near the point where the Rossel procession was formed to the place where it disbanded, and that Mr. Tilton had not walked with Mrs. Woodhull or Miss Claflin. Mr. Swinton proved to be an amusing witness when cross-examined. He had stated that he had allowed the procession to get out of sight and had attempted to head it off by cutting through side streets, and that he had finally reached it near the middle where he found Mr. Tilton; from that point he added that he could see neither end of it.

"Was it on a trot?" asked Mr. Evarts. "Well,' replied the witness, "I'm of an indolent habit, and perhaps as I went along I was musing on the infinite." "And you struck the infinite," quickly returned Mr. Evarts, "about the middle, so that you could see neither end of it."

The Court adjourned half an hour before the usual time, by request of the plaintiff's lawyers, whose witnesses were not all at hand. On Monday they will produce other testimony in regard to the Rossel procession, and will also introduce testimony concerning Mrs. Woodhull's relations to the case.

THE PROCEEDINGS—VERBATIM.

GEN. TRACY'S CROSS-EXAMINATION CONTINUED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—We will proceed, gentlemen.

Benjamin F. Tracy was recalled, and his cross-examination resumed.

Mr. Beach—Have you been consulting with Mr. Evarts this morning in regard to your testimony? A. Mr. Evarts——

Q. Have you been consulting with him in regard to your testimony? A. I cannot say that. He said to me that he should probably ask me a question, half a minute before I took my seat here.

Q. A half a minute? A. Yes; the last thing he did.

Q. How long were you in consultation with him? A. Long enough for him to say to me, "I shall probably ask you"——

Q. Wait a moment! A. Excuse me. Long enough for him to pronounce a sentence of half a dozen words, probably.

Q. Is that all? A. That is all, Sir, on the subject.

Q. That is the whole length of the conversation you had with him? A. That is the whole length of the conversation that I had, with Mr. Evarts this morning, on the subject of my evidence. I talked with him in other respects, on another subject entirely.

Q. Not on the subject of the case? A. Not on the subject of the case, or the evidence of the case.

Q. Or on any matter connected with the case? A. A matter connected with it, in regard to me personally; yes, Sir.

A CONFIDENTIAL TALK BETWEEN GEN. TRACY AND MRS. MOULTON.

Q. Yes, I was calling your attention, Sir, yesterday, to a conversation you had with Mrs. Moulton; when was that, with reference to the statement which was made by Mr. Moulton before the Committee? A. It was the statement—the short statement, you mean?

Q. It was on that night—— A. The same evening.

Q. At the time of that interview had you learned—did you understand that that short statement had been substituted for a proposed long statement? A. I did.

Q. And that Mrs. Moulton had been to a degree instrumental in accomplishing the substitution? A. To a very large degree, I understood.

Q. To a very large degree. Is that the short statement to which you refer, Mr. Tracy [indicating a statement in "The Great Brooklyn Romance"]? A. [After looking.] Glancing at it, without reading it, Mr. Beach, I assume that it is.

Q. That is the statement in this book which purports to have been given on Aug. 10? A. Yes, Sir, Aug. 10.

Q. 1874? A. Yes, Sir.

Q. Did you have, upon the occasion to which we refer, this conversation with Mrs. Moulton in substance——

The Witness—Before you proceed to read, Mr. Beach, will you allow me to say——

Mr. Beach—Anything, Sir.

The Witness—That at the time that I had that conversation I regarded it as confidential, with Mrs. Moulton. I assume, by your going into it, that you have the lady's consent to open that conversation here.

Mr. Beach—Well, I have not asked her consent. I do not understand, though, that she makes any objection to your speaking of it.

The Witness—Very well, Sir; I assume that the lady consents.

Mr. Evarts—We shall assume, if your Honor please, if this conversation is drawn out in part by the plaintiff's counsel, that, so far as any question of confidence goes, this witness is relieved in regard to any of the rest of it.

Mr. Beach—Well, I do not know what all this solemn formality means, Sir. I have never understood that there was any confidential intercourse between Mr. Tracy and Mrs. Moulton.

Mr. Evarts—Very well.

Mr. Beach—I am very sure the lady does not consider it so.

Mr. Evarts—That is enough, Sir.

Judge Neilson—It would be desirable to respect the confidential character of the intercourse, if the witness so regards it, as far as is consistent with your duty. That is all. You are the judge about that.

Mr. Beach—Yes, Sir. [To the witness.] Well, you don't put the idea of confidence upon the relation of client and counsel?

The Witness—Oh, no, Sir. It was a conversation which I held with a lady, in her own house; a lady who I supposed at the time had confidence in me, and then regarded me as her friend. It was a conversation when she was in an excited state, to a degree, and it is a conversation that I have sacredly respected up to the time when you broached it here last night, never having communicated it to my associates, even.

Mr. Beach—Yes.

JOKES BETWEEN THE LAWYERS.

Mr. Evarts—The only point is this, if your Honor please, that we shall claim the right to go into the whole conversation, so far as it is pertinent to the cause, and important; and it cannot be imputed to Mr. Tracy that he acts with impropriety, under that rule of law which requires him to state the whole conversation, in order to make it an exhibition of the interview—states the rest of it, when they have drawn out this part of it. That is all I have to say about it.

Mr. Beach—Well, I suppose, Sir, that the witness upon the stand, as a counsellor of this Court, and the gentle-

man who makes this minatory address to us, understand perfectly well that when I call out a conversation, or a part of a conversation, from this witness on the stand, it is entirely competent for them to ask attention to the remainder of the conversation which relates to the subject about which I have inquired, and I do not see any necessity for this grand formality.

Judge Neilson—Mr. Evarts's suggestion proceeds upon the theory that if you call out a part of the conversation he might not feel at liberty to respect the idea that it was confidential, and might be obliged to call out the rest of it.

Mr. Beach—This idea of a confidential communication is entirely a figment of the other side. There is no confidence about it. It was an ordinary conversation in regard to a transaction, then occurring, with which the husband of Mrs. Moulton was then connected.

Judge Neilson—You have a right to examine in regard to it, of course.

Mr. Evarts—I am sorry my learned friend thinks it necessary to apply opprobrious epithets.

Mr. Beach—How opprobrious?

Mr. Evarts—To me.

Mr. Beach—Certainly not, Sir.

Mr. Evarts—Or to my statement?

Mr. Beach—Certainly not, Sir; certainly not.

Mr. Evarts—I supposed that what I said was said in the calmest manner, and with the utmost good faith, and with the best intentions; and yet my learned friend has chosen to characterize what I said as minatory.

Mr. Beach—That is not opprobrious.

Mr. Evarts—I think it is. Whether it is as opprobrious as some epithets might be——

Mr. Fullerton—It is a Brooklyn term, Sir, not used in the ordinary sense. [Laughter.]

Mr. Evarts—He says it is not. It was said in a tone and with apparent feeling, as if my remark implied some discredit. I had no such intention.

WHAT WAS NOT SAID BETWEEN GEN. TRACY AND MRS. MOULTON.

Mr. Beach—I am not going to say any more. [Laughter.] [To the witness.] Did you have, in substance, this conversation with Mrs. Moulton at the time referred to:

"Emma, you are a brave woman; you have saved the old man to-day; I have just come from him, and he has sent his love to you, and says he relies upon you to save him;" Mrs. Moulton replying, "I don't know how I can save him;" and you replying to that, "I will tell you. Burn Frank's long statement, and burn all the papers he has on the subject;" to which Mrs. Moulton said, "I think the time has passed for the destruction of papers;" to which you said, "Won't you destroy the papers if Jeremiah Robinson advises?" and Emma said, "No, I won't do that on any one's advice;" to which you said, "Well, if Frank ever uses that statement and letters, you will be ruined, socially, financially, and in every way."

A. You ask me if I had that conversation, in substance?

Q. Yes. A. I had a conversation with her on the subjects——

Q. Answer me that. A. I will in a moment—on the subjects alluded to there.

Q. What? A. I had a conversation with her——

Q. Did you have a conversation in substance like that? A. No, Sir; not in substance like what you have read to me.

Q. Very well. It is easy to answer that.

Mr. Evarts—He was going to state, not what the conversation was, but that he had a conversation with her on the subject.

MR. MOULTON'S SHORT STATEMENT.

Mr. Beach—I shall probably ask him about that—I will now. [To the witness.] Did you have a conversation referring to, or based upon, the circumstance that Mr. Moulton had substituted the short statement for the long statement before the Committee? A. I did.

Mr. Beach—I propose to read that statement, Sir, as evidence.

Mr. Evarts—It is in evidence, as I understand.

The Witness—Oh, no.

Mr. Beach [in reply to a suggestion by one of the defendant's counsel]—No, this is not the one that was read to Mr. Beecher.

Judge Neilson—Mr. Shearman, has that short statement been put in evidence?

Mr. Shearman—No, Sir. There are so many long statements, that some statements are, by comparison, short.

Judge Neilson—I put the question to you because you seem to understand this better than anyone else.

Mr. Beach then read the statement as follows:

GENTLEMEN OF THE COMMITTEE: When I was last before you I stated that I would, at your request, produce such documents as I had, and make such statements of facts as had come to my knowledge on the subject of your inquiry. I fully intended so to do, and have prepared my statement of facts as sustained by the documents, and made an exhibit of all the papers that have come in any way into my possession, bearing on the controversy between the parties. That statement must, of course, bear with more or less force upon one or the other of them. On mature reflection, aided by the advice of my most valued friends, I have reconsidered that determination, and am obliged to say to you that I feel compelled from a sense of duty to the parties, to my relation to their controversy, and to myself, neither to make the statement nor produce the documents. When I first became a party to the unhappy controversy between Beecher and Tilton, I had no personal knowledge, nor any document in my possession, which could affect either. Everything that I know of fact, or have received of papers, has come to me in the most sacred confidence, to be used for the purpose of composing and settling all difficulties between them, and of preventing, so far as possible, any knowledge of their private affairs being brought to the public notice. For this purpose all their matters have been intrusted to me and for none other. If I should now use them, it would be not for the pur-

pose of peace and reconciliation, but to voluntarily take part in a controversy which they have seen fit to renew between themselves.

How faithfully, earnestly, and honestly I have labored to do my duty to the parties for peace, they both know. The question for me to settle for myself, and no other, is now, ought I to do anything to aid either party in a renewed controversy by use of that which I received and have used only to promote harmony? On my honor and conscience I think I ought not. And at the risk of whatever of misconstruction and vituperation may come upon me, I must adhere to the dictates of my own judgment, and preserve, at least, my own self-respect.

I call attention again to the fact that yours is a mere voluntary tribunal, and whatever I do here is done by a voluntary and not compelled witness. Whether before any tribunal having the power to compel the production of testimony and statement of fact I shall ever produce these papers or give any of these confidential statements, I reserve to myself to judge of the emergency, which I hope may never come.

Against my wish—as I never have been in sympathy with a renewal of this conflict—a part of these documents have been given to the public. In so far confidence in regard to them has ceased. It is but just, therefore, and due to the parties, that the whole of those documents, portions of which only have been given, shall be put into your hands, in response to the thrice-renewed request of the Committee. I have, therefore, copies of them, which I produce here and place in the hands of the Committee, with the hope and request that after they have been examined by them they may be returned to me.

If any controversy shall arise as to the authenticity of the copies or of the documents, on that point I shall hold myself open to speak. With this exception—except in defense of my own honor and the uprightness of my course in all this unfortunate and unhappy business, the purity and candor of which I appeal to the consciences of both parties to sustain—I do not propose, and hope I may never be called upon hereafter to speak, either as to the facts or to produce any paper that I have received from either of the parties involved herein.

FRANK MOULTON.

Q. Mr. Tracy, were you present at the meeting of the Committee upon the 10th of August, at which that short statement was presented by Mr. Moulton? A. I was.

Q. Did you have an interview with him upon the subject of that statement before he went before the Committee? A. You mean at Mr. Storrs's house, before he went before the Committee?

Q. Yes, at Mr. Storrs's house, before he went before the Committee? A. Yes, Sir, for half a minute or so, or something like that. I just spoke to him on the subject of his statement before he went before the Committee.

Q. Did he not, before he went before the Committee, state to you the substance of the statement? A. No; except by referring to the character of the statement in a way so that I understood it was not to be the long statement which he had proposed to submit, but a substituted statement.

Q. Well, a substituted statement in general to the effect of the one which I have just read? A. Well, from previous conversation I inferred from what he said that it was to be of the character, or something of the character, of that statement.

Q. Was not that conversation in the presence of Mr. Munson, the gentleman who sits before me? A. It was; Mr. Munson was present at that meeting.

Q. Well, Sir, was not Mr. Munson present in the front parlor of Mr. Storrs's house on that occasion, at a conversation between you and Mr. Moulton, in regard to this statement, and in that conversation did not Mr. Moulton, in the presence of Mr. Munson, communicate to you the substance of the statement I have just read? A. I cannot remember whether Mr. Munson was present in the front parlor or not. I know he came with Mr. Moulton that day, and was present with the Committee; and I understand that Mr. Moulton did communicate to me in substance——

Q. That will do. A. So I understood—that the short statement was to be substituted for his contemplated statement, in substance what it proved to be; although I never had seen or heard read that statement until I heard him read it there.

Q. Did you, upon the occasion of that interview, express your approval of the change of policy adopted by Mr. Moulton? A. I have no doubt I did.

Q. Had you before that labored to produce that result? A. Yes, Sir; in a sense I had.

Q. Did you have another conversation with Mrs. Moulton prior to the one to which I have just called your attention, in the Summer of 1874, and, I think, after the call of the Investigating Committee? A. Well, without more definite specification, I cannot say, except to say that I had several conversations with Mrs. Moulton during the Summer of 1874.

Q. Well, it was after the Bacon letter? A. Oh, yes; I had nothing to do with any of it until after the Bacon letter in 1874.

Q. I have omitted one question in regard to this other conversation, which was on a separate memorandum and not brought to my attention. Did you, in the interview with Mrs. Moulton, of which I have inquired, say in substance to Mrs. Moulton, "Kick Tilton out of the house, and destroy the statements and letters. If you do not, they will destroy you and your family, socially and pecuniarily?" A. No, Sir; not in the sense that that is put there; not in the manner.

Q. Well, you did not say that in substance? A. No; not in the manner that question——

Q. No; I am not asking about the manner—did you say that in substance? A. No, Sir; not in substance; I can tell you why I did not, if you want to know. The question, as you put it there, conveys an entirely different meaning from our talk—my talk at Mr. Moulton's.

Q. Well, Mr. Tracy, I did not refer to manner or association? A. No; I refer to subject matter.

Q. I refer to the substance of this language. A. So do I.

Q. Very well; I understand it. Now, Sir, in the prior

conversation to which I have just alluded, did you in substance say to Mrs. Moulton, "The truth must not come out in this case; Mr. Beecher must not go down; think of the effect upon the church, and its demoralizing effect upon young men!" A. No, Sir; I never had any such conversation with Mrs. Moulton, except the last phrase, probably—the subject of the demoralizing effect of this scandal has been the subject of conversation between Mrs. Moulton and myself.

MR. RICHARDS'S APPEARANCE BEFORE THE COMMITTEE.

Q. Did you see Mr. Richards when he was before the Committee? A. I did.

Q. Did you have a conversation with him at the place where the Committee met, before he presented himself to the Committee? A. I did.

Q. Did you ask him any questions in regard to what he knew? A. I did.

Q. Did you ask him whether his sister had ever confessed to him to adultery with Mr. Beecher? A. I did; I did in substance, I think.

Q. In substance? A. No, I did not; that is not the form of the question.

Q. Well, in substance that? A. No; I asked him if his sister had ever——

Q. One moment. A. Excuse me.

Q. I do not ask what you asked him. Did you not, in substance, inquire of him whether his sister, Mrs. Tilton, had ever admitted to him adultery with Mr. Beecher? A. I don't think I did, Sir.

Q. Did not, in answer to your question, Mr. Richards say to you that he declined to answer it, or in substance that? A. Mr. Richards declined to answer——

Q. Oh, I don't ask what it was—I ask you if he did not say that, in substance? A. Well, I say I don't remember putting such a question to Mr. Richards.

Q. Then you do not remember his declining to answer? A. Oh, yes, Sir; I remember his declining to hold any conversation with me, or communicating to me anything of what he knew in regard to this case.

Q. What? A. I know that Mr. Richards said that he would communicate nothing to me of what he knew or did not know in regard to that matter; that it was a family matter, into which he had refused to be drawn, and would not be drawn.

Q. Well, I did not ask you about that, Sir; my question has altogether a different significance. Did you not in that interview put a question to Mr. Richards calling upon him to state whether or not his sister, Mrs. Tilton, had confessed or admitted to him (Mr Richards) or to Mrs. Richards, his wife, the fact of illicit connection, or adultery, or sexual intercourse, with Mr. Beecher? A. No, Sir—not as specifically as you put it, nor in substance that.

Q. I asked you whether you, in substance, put any inquiry of that character? A. I answered you, not in substance.

Q. Very well. Now, did not, in answer to such an inquiry upon your part, Mr. Richards decline to answer any such interrogatory? A. Mr. Richards declined to answer any interrogatory, and gave me notice that he would not answer any interrogatory concerning his family relations.

Q. Well, we have got that before? A. Well.

Q. Now, was not such an inquiry, in substance, put him, and did not Mr. Richards then decline to answer it; and did you not, in substance, reply: "That won't do; that in substance affirms the truth of it?" A. No; I can tell you what did transpire, Mr. Beach, if you wish to know exactly.

Q. Well, you have very often addressed that to me, and you have found that your very kind offer has not been accepted? A. I know it has not.

Q. And it won't be accepted in future, so you can keep it back. A. You frame a question to call for a particular answer, which I cannot give.

AN INTERVIEW BETWEEN GEN. TRACY AND MISS TURNER.

Q. Certainly I do; the substance of a particular answer I call for. Did you have an interview with Bessie Turner before she went before the Committee? A. I did.

Q. Where was it? A. At Mrs. Ovington's, I think.

Q. When did you become acquainted with Miss Turner? A. The same evening she went before the Committee; never saw her before.

Q. And about what time of the day did you form her acquaintance? A. Well, I can't tell you definitely; it was in the afternoon, some time.

Q. Where? A. At Mr. Ovington's.

Q. And did you have a conversation with her that afternoon upon the piazza of Mr. Ovington's house? A. I should say not, Sir.

Q. Sir? A. I should say not.

Q. Did you have one with her in the back parlor? A. In the back parlor—I should say it occurred in the back parlor, but I am not certain about that.

Q. You are right, I think? A. It occurred in the back parlor somewhere.

Q. Do you know Mr. A. B. Martin? A. I do not think I do.

Q. Did you see a gentleman of that name, at the time of your conversation with Bessie Turner, sitting upon the piazza, right in the rear of the back parlor? A. No, Sir, I did not.

Q. Didn't you see him? A. No, I don't know that I did; I don't recollect any such thing.

Q. Well, do you remember of seeing a gentleman there,

Mr. Martin, or a stranger to you, at the time—on the occasion when you had an interview with Bessie Turner? A. I don't remember any such thing, Sir.

Q. How long was that interview? A. Well, I have no definite recollection, except that it was short.

Q. Did you not have an interview upon that occasion with Bessie Turner, in which you conversed with her in regard to her knowledge of this discussion, of over an hour? A. I should say not, Sir, over an hour.

Q. Will you swear it was not? A. I won't swear definitely as to the time; I cannot do that.

Q. Will you swear that it was not over two hours? A. Yes.

Q. You will? A. Yes.

Q. And that is the only positive oath you will give as to the length of the interview? A. Well, I should say, my best recollection——

Q. No; wait, wait, wait! A. Yes; I am going to answer, Sir.

Q. No; I don't think you were. A. Well, I thought so.

Q. Is that the only positive statement you will make in regard to the length of the interview? A. Well, I don't know what you call a positive statement, Mr. Beach.

Q. Well, I mean a statement, sworn to positively, under oath. A. I can't say; according to the best of my recollection, Sir——

Q. I don't ask you that, according to your best recollection. A. [Continuing.] It was not over an hour.

Q. Very well; is that all you will say about it? A. That is as positive as I will be; I cannot be more positive than to give you my best recollection.

MR. WOODRUFF'S INFORMATION ABOUT THE MONEY TRANSACTIONS.

Q. Well, that answers it, Sir. Yesterday I omitted to ask you a question in regard to Mr. Woodruff and the subject of your having conversed with him in regard to money for Mr. Tilton or his family furnished by Mr. Beecher—after the conversations to which your attention was directed yesterday, did you not have an interview, and shortly after (last Summer, though, I think it was) an interview with Mr. Woodruff, in which he reproached you for having revealed to Mr. Moulton the fact that he (Mr. Woodruff) had told you in regard to money? A. Yes, Sir; I did.

Q. And did you apologize to him for having revealed it? A. In a sense I apologized.

Q. Well, do you still say that Mr. Woodruff did not give you any information in regard to money furnished by Mr. Beecher? A. No; I say he did.

Q. And when do you say that was? A. I say that that was from—not less than three—in my judgment from three to six months after the interview at Mr. Moulton's house on Sunday; I remember it very well.

Q. And at what interview was it that you communicated to Mr. Moulton the fact that you had obtained this information from Mr. Woodruff? A. I told you yesterday that it was at some interview that I had with Mr. Moulton between the 13th and 20th of July, 1874, I think.

THE SUMMONING OF MR. TILTON BEFORE THE COMMITTEE.

Q. Yes. Were you present when Mr. Tilton was summoned before the Committee? A. I don't remember; if you will call my attention to the place where it occurred I can refresh your recollection—refresh my recollection.

Q. Well, it was in the street, Sir—that is a pretty indefinite place—as near as I can get it, in front of the Academy of Music? A. Who was present beside? I don't recollect.

Q. Well, I don't care to state just now. A. Well, I don't recollect.

Q. How? A. I don't recollect.

Q. Don't you recollect that you were present when he was summoned before the Committee, and that you advised him not to go? A. No, Sir; I don't.

Q. Will you swear you did not? A. No, I will not swear to that; I don't recollect the occurrence at all.

GEN. BUTLER'S WRITTEN OPINION.

Q. You stated yesterday, Mr. Tracy, that the document of which you spoke as having been dictated, or prepared, or sent forward to you by and from Mr. Butler was returned to him. A. Yes, Sir; that is, I state, as I stated yesterday, that it was found in—by a young man who was overhauling my papers and regulating them this Winter, and I directed him to put it in an envelope and return it to Gen. Butler. directed to Boston.

Q. Do you know whether it was put in? A. I don't know, Sir; I assumed it was, and I have never inquired since.

Q. Have you received two letters from Mr. Butler requesting the return of that document? A. No, Sir.

Q. What? A. No, Sir; Mr. Butler requested the return of it.

Q. Well, don't—— A. I never received any letters that I am aware of, Sir, requesting its return.

Q. Mr. Tracy, you have been very active in this matter in all the departments of this scandal, on behalf of Mr. Beecher, have you not? A. Well, the scandal has so many departments that I can hardly say that.

Q. Well, you have got drawn into most of them, have you not? A. No, I have not; some of them I have never entered.

Q. What one did you keep out of? A. I had nothing to do with the church proceedings, for instance—one department of the scandal, I suppose.

Q. Well, by the church proceedings you don't mean the Investigation Committee? A. No; I mean the West charges and the Council.

PLAINTIFF'S COUNSEL REBUKED BY THE JUDGE.

Mr. Beach—No, no; Mr. Beecher took charge of that.

Mr. Evarts—Oh, no; that is not part of Mr. Tracy's testimony, nor of any inquiry that has been made.

Mr. Beach—No; that was my remark, Sir, founded upon the evidence.

Mr. Evarts—Well, we should get into a great debate whether it was founded on the evidence, or the result of imagination.

Mr. Beach—We probably won't get into the debate here.

Mr. Evarts—No; but then it ought not to be begun.

Mr. Beach—It is not begun.

Mr. Evarts—You began it, I think.

Mr. Beach—No, I don't think I began any debate.

Mr. Evarts—You made a statement, as you say now, based upon the evidence concerning my client.

Mr. Beach—Yes.

Mr. Evarts—That is a matter to be debated to the jury.

Mr. Beach—Certainly.

Mr. Evarts—You say it cannot be continued, and I say so, too.

Mr. Beach—I didn't say that it could not be continued; if I should say that it could not be continued I should state an untruth, because the gentleman does continue it.

Judge Neilson—The real fact is that the observation ought not to have been made.

Mr. Beach—Well, I don't know, Sir.

Judge Neilson—Nor should it be continued. It would have been better not to have made it, of course.

Mr. Beach—Well, perhaps it would have been better not to have made it, because it has brought my friend, Mr. Evarts, to his feet.

Mr. Evarts—And you from yours.

Mr. Beach—From my feet? Oh, no, no! it will be a long time before the gentleman shall succeed, Sir, in throwing me from my feet; he had better not indulge in any triumphant anticipations until the time arrives.

Mr. Evarts—Only this is not an anticipation.

Mr. Beach—Speak up loud so that I can hear you.

Mr. Shearman—It is a matter of realization, not anticipation, so far as this question is concerned.

GEN. TRACY'S ACTIVITY IN MR. BEECHER'S BEHALF.

Mr. Beach [to the witness]—Well, will you answer my question?

The Witness—If you will repeat it; I have forgotten what it was.

Q. Whether you have been an active and ardent friend of Mr. Beecher during the progress of this scandal, or the agitation of this scandal? A. During some portion of it I have.

Q. From what period? A. Well, I have since the Bacon letter, more active than before—much.

Q. Well, weren't you active before? A. No; I can hardly say I was active before that, Mr. Beach; I was a friend of Mr. Beecher's——

Q. Did you make any statements for the papers before that? A. Before the Bacon letter?

Q. Yes. A. No, I think not, Sir; I don't remember any. I am confident I did not.

Q. Confident you did not? A. I think not.

Q. Nor write any statements for the papers? A. Before the Bacon letter?

Q. Yes, before the Bacon letter? A. I have no recollection; if you will suggest any article, Sir, I will be able to answer it promptly, but I have no recollection of any article or proceeding before the Bacon letter; I should confess myself very much mistaken if there is any.

Q. Did you converse much on the subject before the Bacon letter? A. Oh, yes; with certain parties I did a good deal—that is in the period of December—November and December, 1872; after December, 1872, I was practically out of the scandal, and out of the matter until the publication of the Bacon letter, and talked but very little about it; of course incidentally as people talked, and the subject came up.

Q. Well, did you at any time before the Bacon letter make suggestions to leading and influential journalists in regard to notices of the scandal? A. I recall no instance of the kind; I suppose you mean by journals some prominent editor or some prominent writer on a journal.

Q. Certainly. A. I recollect nothing of the kind.

Q. Well, is your recollection so accurate that you are willing to say that you did not? A. Oh, no, Sir; when you broach a subject that happened two or three years ago, and it is sprung upon me in an instant, I would not say positively whether I did or not, without reflection, on the instant; I may have done so and forgotten it, but I have no recollection of it now. If you will name the person or occasion, I will tell you very quick whether I did or not.

Q. Well, I understood from your evidence that since the Bacon letter you have done these things? A. I have.

Q. Written articles for the journals on the subject? A. No, not written.

Q. Haven't written any? A. No.

Q. And haven't consulted in regard to the form of any or the publication of any? A. Well, that would be too broad——

Q. No, it ain't too broad. A. Yes.

Q. No. A. I have published two interviews of my own.

Q. No, I don't speak of interviews. A. Well, then, you mean——

Q. I speak of other articles in the papers. A. You mean editorials?

Q. Articles in papers; I don't know whether they are editorials, or communicated, or what? A. Well, I will answer and see if I can cover your ground; I have never——

Q. Never mind now; I will put my question, and I will ask you to answer that; have you not, since the Bacon letter, written and published, or dictated and caused to be published, articles favorable to Mr. Beecher concerning this scandal? A. No, Sir, I think not; I recall no instance of the kind; if you mean by articles that I have talked with newspaper reporters——

Q. No, I don't mean that. A. Don't mean that?

Q. No, Sir. A. Aside from that I have no recollection at all.

Q. Have you assisted in the composition of any article of that character since the Bacon letter? A. Since—the—Bacon—letter? [Reflecting.] I don't recall, Sir; I think not; I speak largely, though, from my recollection; I don't think I have written myself, or dictated, to be published, any article, as an article for a newspaper, on any subject, since 1871; I don't believe I have, on any subject, since 1871.

Q. And you have not consulted or advised with any editor of a paper in this vicinity upon an article, or the subject of an article, in regard to this matter? A. Oh, well, I cannot say that; I talked with men on the press, and they have talked with me, and we have talked different views of the scandal, and this view and that view——

Q. Well, has any proposed communication, or article, or statement been brought to your attention in regard to which you have given advice or made suggestions? A. I recollect nothing of the kind; you mean an article presented and embodied in the form of an article—

Q. Oh, I don't know that it was written out in full. A. Well, your question is so indefinite that it is impossible for me to answer it, Mr. Beach.

Q. The question is not indefinite. A. I have talked with a great many people, some of them editors, no doubt, on newspapers, as to different phases of this scandal, and they have undoubtedly asked my views on different phases of it, and different features of it, but——

Q. Well, since the Bacon letter—perhaps this will cover it, Mr. Tracy—since the Bacon letter you have been an ardent advocate of Mr. Beecher? A. I have, Sir.

Q. I don't know but I asked the question yesterday, but I repeat it if I did—when did you first have any interview with Mr. Beecher in regard to this scandal? A. As I said, my recollection of it is that it was within a week after the interview at Mr. Moulton's house.

Q. Which interview—what date? A. Well, I cannot—it is the interview on Sunday.

Q. The long interview? A. The long interview on Sunday; I cannot fix the date of it.

Q. Well, it was about November, 1872, in or about? A Yes, November or December, 1872.

Q. And did you tell me yesterday how frequent your interviews were with Mr. Beecher on this subject after that? A. I think I did, Sir.

Q. Very well, I had that impression that you did. I am requested to ask you, Sir, whether you have not solicited or spoken to a prominent editor of a leading journal, in this city or New York, for the purpose of procuring its friendly notice or advocacy of Mr. Beecher in relation to this scandal? A. I recall no such thing, Sir.

Q. Well, is your recollection so definite that you would be willing to swear that you have not? A. I am willing to swear that I never had an interview with any editor for that purpose.

Q. Oh, well; please answer my question. A. I cannot.

Q. Very well, then, say so. A. If you will repeat it again I will see how definitely I can answer it.

Q. Why, I asked you whether your recollection was so definite upon the subject that you would swear positively that you had not made such an application to a leading editor? A. To a leading editor—for what purpose?

Q. Why, for the purpose of enlisting it in favor of Mr. Beecher in relation to this scandal? A. No, Sir; no, Sir, I think not; I have had conversations with editors on the subject of the scandal.

Q. And did you not, Sir, labor to induce, or attempt to induce one or more of the editors with whom you conversed to write favorably or publish favorably in their papers for Mr. Beecher? A. No, Sir; I think I did with one editor on the subject of the course of his paper——

Q. Wait—yes. A. [continuing]—But I did not try to influence him.

Q. Who was it? A. Who was the man?

Q. Yes. A. That I refer to?

Q. Yes, Sir. A. I refer to John Russell Young.

Q. [Looking at a newspaper.] Did Mr. Moulton at any time, accompanied by Mr. Tilton, other than on occasions of which you have spoken, come to you and in an interview which followed was the story of this affair told to you, and, after that communication, did you express views to Mr. Moulton as to what he ought to do, to which Mr. Tilton objected, and in which Mr. Moulton finally declined to act upon your judgment? A. Read that again, will you, Mr. Beach?

Mr. Beach—Well, I rather think I will depute somebody to read it. I don't think I could myself.

[Question read by The Tribune stenographer.]

A. No, Sir; I remember no interview after the Sunday interview where Mr. Moulton and Mr. Tilton came to me together and the subject of this story was gone over.

Q. Well, at that interview did you express to Mr. Moulton what you thought he ought to do? A. I said on my direct examination Mr.——

Q. Oh, I don't care what you said on your direct examination. A. Well, I said either at the close of that interview—and I think it was at that interview—or at a subse-

quent interview between myself and Mr. Moulton, I did——

Q. Well, did Mr. Tilton object to what you suggested? A. Mr. Tilton objected at the time to what I suggested—he was present when I suggested about the destruction of the papers; that he objected to.

Q. Well, was that the suggestion which you made? A. That is one of the suggestions I made as to what ought to be done; yes, Sir.

Q. Well, then you suggested that the papers ought to be destroyed? A. I did.

Q. And Mr. Tilton objected to that? A. Mr. Tilton objected to that.

GEN. TRACY EXPLAINS SOME OF HIS WORDS.

Q. A single other question, Sir. You stated upon your direct examination, as I can repeat it in substance, that you said at one of those interviews to Mr. Tilton, that the publication of the paper which he read to you would ruin him and ruin his wife and ruin Mr. Beecher—if I recollect right? A. I made some remark of that substance; yes, Sir.

Q. Mr. Tracy, if at that time you understood the charge against Mr. Beecher to be impure solicitations addressed to Mrs. Tilton, which had been virtuously repelled by her, and which she immediately afterward communicated to her husband, how did you suppose that the disclosure of that circumstance would ruin Mrs. Tilton? A. I supposed in this way, and in this manner: As I understood it, Mrs. Tilton had made an accusation against Mr. Beecher to her husband; that after that she had retracted that accusation to Mr. Beecher; I understood from the documents then presented to me, and the talk, that she had renewed the accusation; I always assumed that if the publication was made, it was to be made on the renewed authority of Mrs. Tilton; I supposed that would bring a collision between Mr. Beecher on one side, supported by her retraction and his denial, and Mr. Tilton and Mrs. Tilton on the other, supported by her first accusation, contradicted by her retraction, and then renewed; and I thought that such a scandal published, and such a conflict inaugurated, would be the ruin substantially of all of these parties.

Q. Well, you understood that at the time of these contradictory statements made by Mrs. Tilton she was ill? A. I did; I will not say about the letter; I don't think I got the exact details of that.

Q. What letter do you speak of? A. The letter that is referred to in the retraction; I am not sure that the date or the time or the occasion of the giving of that letter, or the details of how Mr. Tilton obtained that letter, were stated; I don't think they were——

Q. Well? A. [Continuing.] But I understood that she was ill when Mr. Beecher got the retraction from her.

Q. And you understood that in that retraction she had expressed the fact that she was wearied into the statement which she made by the importunities of her husband? A. Yes.

Q. And you thought that, under these circumstances, the making of these statements—contradictory statements—would operate as her ruin? A. Yes, Sir.

Q. You did not suppose the communication——

The Witness [interrupting]—Of course I assumed that she would adhere to her husband in the renewed charge.

Q. You did not suppose that the fact—the mere fact of the communication—the mere fact of the solicitations of Mr. Beecher, repelled by Mrs. Tilton, being made public, would ruin her, did you? A. No, I did not.

Q. Well, Sir, if Mr. Beecher was innocent of that accusation, did you suppose the making of it public would ruin him? A. I did, Sir; I supposed that as the case then stood——

Mr. Beach [interrupting]—Will you simply answer my questions?

The Witness [continuing]—And as it was presented to me——

Q. [Interrupting]—You supposed it would ruin him, even if he was innocent of the charge? A. Substantially ruin him, if made and supported by the wife, and backed by the papers as then presented to me; I thought there was great danger of its ruining Mr. Beecher.

Q. Even although he was able to maintain his innocence? A. Even although he was able to assert his innocence, and even although he might in fact be innocent.

Q. You therefore labored for the suppression of the scandal and of these documents? A. I did, Sir; the word "suppression" does not exactly express it; I labored for their extinguishment; I labored to have it killed outright, so that it could never be revived again.

Q. And did those labors continue after the Investigating Committee was called? A. Yes, Sir, I think they did, in a sense.

Q. Well, did they in fact? A. Yes, in fact.

Q. Then, after the Investigating Committee was called, and after Mr. Beecher had determined to have a full and radical examination of this matter, you labored to extinguish it? A. I labored then——

Q. Did you labor then to extinguish it? A. To extinguish it—to kill it—yes, Sir; to have such a result of the proceedings as would extinguish the scandal for all times.

Q. And the papers? A. I did not say the papers; that is an addition.

Q. No, it is not an addition; it was in my question. A. Then I misunderstood your question.

Q. Very well. Then did you not, after the Investigating Committee was called, strive to have the papers destroyed? A. No, Sir, I think not.

Q. What? A. I think not, Sir.

Q. Will you swear to that? I will.

Q. That you never advised the destruction of the papers? A. I think I do so swear, Sir; I never remem

ber it; I don't recollect that I did; I know that I did not.

Q. Will you swear positively you did not? A. Yes, Sir.

Q. Either to Mr. Moulton or to Mrs. Moulton? A. Yes, Sir.

Q. Or in the presence of Mr. Butler? A. Yes, Sir.

Mr. Beach. That is all.

RE-DIRECT EXAMINATION OF GEN. TRACY.

Mr. Evarts—Mr. Tracy, at this stage last spoken of did your efforts to extinguish the papers, as separate from destroying the papers, what had occurred that made a distinction between that stage and that time and the previous time when you had desired to extinguish the scandal and destroy the papers? A. The scandal had become public; the Bacon letter had been written, and a part of the letters quoted—the public documents quoted; so that I understood perfectly that the extinction or destruction of the papers then would add fuel to the flame; and there was no object in extinguishing the papers after part of them had been published—made public.

Q. Do you remember its being a feeling of anxiety or solicitude on your part lest these papers should be destroyed? A. I do, Sir, very well; and the subject of conversation also.

Q. And did you direct efforts to find out whether they were still in existence? A. I did, Sir.

Q. Now, Sir, you have spoken of a desire, and labors, at an earlier period, to extinguish the scandal, including then the extinguishing of the papers. In what stage, and what manner, did you so labor? A. That was in November or December, 1872. What manner? I do not know that I exactly understand your question as to the manner.

Q. In what manner did you labor to extinguish the papers and the scandal? A. In the manner I have stated, by a conversation with Mr. Tilton and Mr. Moulton.

Q. As you have given it? A. Which I have given.

Q. You have been asked about an opinion which you formed and expressed as to the scandal if made public, that it would be the ruin of Mr. Tilton and Mrs. Tilton and Mr. Beecher. Do you remember the precise phrase, as to whether you said it would be the ruin of these parties, or it would be ruinous to these parties? A. I don't remember whether I said the ruin, or ruinous, or destructive; I used some phrase which conveyed my meaning that it would be exceedingly injurious and damaging to all of them.

Q. You have been asked, toward the close of the cross-examination, within a few moments, something about an occasion of Mr. Moulton, in company with Mr. Tilton, coming to you and telling the story of this matter, and Moulton asking your advice, and you giving it, and Tilton objecting, and Moulton declining to follow your advice. When was that occasion? A. All of that occurred at the interview in November, 1872, or December, 1872; except as I stated in my direct examination, possibly the latter part of that statement occurred between myself and Moulton at a subsequent period.

Q. That is as to his determination not to follow your advice? A. Yes, Sir, not to follow it.

Q. How do you remember that occurring between you and Mr. Moulton at any subsequent, or consequent, interview? A. My general recollection is that Mr. Moulton was silent on that subject at the interview in November or December, 1872; that afterward I talked with him, and he said he would not consent to the destruction of the papers, as Mr. Tilton opposed it; but he may have indicated that there in that interview; I am not certain about that, Sir.

Q. You have been asked about some meeting with Mr. Woodruff after you had spoken to Mr. Moulton about his (Woodruff's) informing you that money had been paid in his business? A. Yes, Sir.

Q. When was that interview with Mr. Woodruff? A. Well, it was a few days after my interview with Mr. Moulton; Mr. Moulton, Mr. Woodruff said to me, had attacked him for having told me that; and he came round and asked me why I did it.

Q. How is that? A. Mr. Woodruff told me that Mr. Moulton had attacked him for having communicated the fact of the payment of the money to him.

Q. What passed then between you? A. I told him the circumstances; I told him that I very much regretted the seeming necessity which compelled it, but I had deemed it my duty to warn Mr. Moulton of how I thought the disclosure of that money matter would injure him; and that he thereupon attacked Mr. Beecher for having told me, and attacked him so violently that I felt constrained to tell Mr. Moulton the truth that I did not get my information from Mr. Beecher about that, but that it was from Mr. Woodruff; that I regretted it, but under the circumstances I thought I had done right and proper in so doing.

Q. Did you inform him as to whether Mr. Moulton had pressed you, after you told him it was not Mr. Beecher, to inform him who it was? A. Yes; I told Mr. Woodruff that Mr. Moulton pressed me very hard before I consented to tell him.

Q. And what did Mr. Woodruff say after you told him that? A. He said he thought I ought not to have told him; that he did not intend I should communicate the fact to Mr. Moulton.

Q. Did he express any opinion that you ought to have left him under the impression that Mr. Beecher had told you? A. No, he did not say that; he said he thought I ought not to have told Mr. Moulton that he communicated the fact to me.

GEN. TRACY ADVISES MRS. MOULTON ABOUT MR. TILTON.

Q. You have been asked in regard to a conversation with Mrs. Moulton, after the Bacon letter and prior to a principal conversation that had been previously made the subject of inquiry from you and of answers, and you have been asked respecting that earlier interview, but after the Bacon letter, whether you advised Mrs. Moulton to "kick Tilton out of the house, and destroy the papers, or they will destroy you?" A. I did not understand the question so, Mr. Evarts; I understood that it related to an interview on the night of the 10th of August. [Addressing Mr. Beach.] Am I mistaken about that?

Mr. Beach—No; you are right.

The Witness—I think you are under a misapprehension, Mr. Evarts.

Mr. Evarts—I made a memorandum of this.

The Witness—I think it is a misapprehension, however, nevertheless.

Mr. Evarts—It may be that the advice as to kicking Tilton out was on the 10th of August.

Judge Neilson—I suggest that you form your question with regard to the interview referred to, the date not being perhaps material.

Mr. Evarts—Yes, but the date was not given, and it was earlier than the 10th of August, as I understood it.

Q. Now, will you state whether there was any earlier interview with Mrs. Moulton—earlier than the 10th of August, and after the Bacon letter? A. There were interviews with Mrs. Moulton.

Q. Several that you have mentioned? A. Several; there is none which so impresses itself upon my memory that I have stated it separately from all others except this one on the night of the 10th of August.

Q. Well, at those previous interviews with Mrs. Moulton, had anything been said by you about kicking Tilton out of the house? A. No such language as that, Sir, or the substance; not of kicking—no, Sir; Mrs. Moulton expressed her opinion to me——

Mr. Beach—Wait a moment.

The Witness [Continuing]—And perhaps I assented to it; I do not know.

Mr. Evarts—Now, what in that nature, or on that subject, was said at any such interview?

Mr. Beach—That we object to, Sir.

Judge Neilson—I think you must take it. If the word "kicking" was not used, some expression akin to it may have been used, and it is right that the witness should state it.

Mr. Evarts—Probably the word "kick" was used in a moral sense. [Laughter.]

Mr. Beach—My objection is that any inquiries which I address to the witness on that subject do not give them the right on the other side to open the conversation. That, perhaps, would be proper if we put Mrs. Moulton on the stand to contradict the witness. *Non constat.* we may do that; we may leave it as the witness has left it.

Judge Neilson—Assuming that to be so, you put to the witness clear-cut, definite questions, embracing certain inquiries as to expressions which he said he did not use; it is possible that he may have used words which were in sense akin to those, and he has the right to give them.

Mr. Evarts—No doubt the word "kick" was used in a metaphorical sense. It would not do to suggest to a lady that she should kick a gentleman out.

Mr. Pryor—It might, where some one else was to do the kicking.

Mr. Evarts—Did you ever know it to happen, Mr. Pryor?

Judge Neilson—All your kicking has been intellectual.

Mr. Evarts—I suppose, of course, the meaning of kicking out of the house was a metaphorical expression. [To the witness.] Well, Mr. Tracy, I understand you can answer.

The Witness—Repeat your question, then, Mr. Evarts.

Q. What was said by you of any such connection or import, if anything? A. Well, I don't recall any particular expression which would be "kicking," or the import of "kicking;" I only know that Mrs. Moulton——

Mr. Beach—Oh! well! wait, wait!

The Witness—Ah!

Mr. Evarts—Well, did anything occur between you and Mrs. Moulton as to the desirability of her being rid of Mr. Tilton in the house? A. I think there has been a conversation on that subject.

Mr. Beach—One moment.

Mr. Evarts—There has been a conversation on that subject? A. Yes, Sir.

Mr. Beach—Well, I object to it.

Mr. Evarts—I think we have a right to that.

Judge Neilson—I think that is as far as you can go.

Mr. Beach—I put the question to the witness as to whether any such expression as that, or in substance that, was used. Now, I concede that the witness, upon the examination by the counsel, can answer the question whether any phrase or remark of that substance or character was used; but to give the language that was employed in that conversation, that is, to give the conversation itself, or any portion of it, I submit to your Honor, is not, in this stage of the examination, open. It may be, in case we shall choose to put Mrs. Moulton upon the stand in opposition to the testimony of Mr. Tracy; and it seems to me that it is utterly useless to pursue that inquiry and get a conversation as between Mrs. Moulton and this gentleman in evidence in this case, when Mrs. Moulton may not be produced as a witness to that transaction.

Mr. Evarts—Well, isn't it true, if my learned friends will allow me to ask, that it is settled as a rule of evidence

that when a foundation is laid for collateral impeachment by the calling of another witness, that in advance of the determination of the counsel whether that witness will be called or not, and in consequence of the opening of the point, the witness, prior to the calling of any contradictory witness, is not only in his own right at liberty to state what did occur, but it is the right of the party to draw from him what did occur. That, I believe, is a matter not new in the law of evidence, and I suppose it is to be well settled. And then, if after what he has said on his direct and what he has said on his cross, the other side call the witness to contradict him; then it is just to the witness so attacked. And if, after hearing both sides—that is, the direct and cross—the party conclude not to call the contradicting witness, why, that is very well. I believe that is settled. [To counsel.] Is not that so? The point is, the reason that you are required to ask the first witness about the matter is that he shall have his opportunity to state what the thing is concerning which you propose to contradict.

Judge Neilson—I recognize that, in assuming that interview, the witness thinks he did not use the very expression put to him by the counsel; yet if in a certain sense, however remote, he does remember to have used some expression which would amount to the advice to get rid of Mr. Tilton, or discourage his presence, I think the witness is competent to state that.

Mr. Evarts—Yes, and that is already stated just now.

Judge Neilson—Yes.

Mr. Evarts—I asked him if anything had been said about the desirability of having him out of the house.

Judge Neilson—Yes, it seems to me that is proper, Sir.

Mr. Evarts—Now, Mr. Tracy, I will ask you whether whatever you did say on that subject was said by you as a voluntary remark, or in answer—or was elicited by what Mrs. Moulton said?

Mr. Beach—Well, I suppose that must be, Sir, by stating what was said, if we are to go into it. We certainly don't want to take the judgment or conclusion of the witness.

Mr. Evarts—Well, Sir, merely whether it was voluntary or not?

Judge Neilson—I think he can answer that.

Mr. Evarts—Mr. Tracy, how is that? A. It was in answer to the suggestion and statement of Mrs. Moulton.

Q. Now, as I understand, at this interview—not the 10th of August interview, but a prior one—you were asked whether you said anything about "destroying the papers or they will destroy you," meaning the Moultons, and "that the truth must not come out; consider the influence on society; Mr. Beecher must not be cut down," or something of that kind? Wasn't it so, Mr. Beach?

Mr. Beach—Yes.

Mr. Evarts—Very well; now, did anything of that kind arise in conversation between you and Mrs. Moulton at these interviews, separate from the interview of the 10th of August? A. No, Sir.

Q. Now, what did pass between you and Mrs. Moulton at any of these prior interviews that have relation to this subject about the injury to society and to Mr. Beecher, or what not? A. I say nothing that I remember; I recall nothing; that is, at the prior interviews, prior to——

Q. Prior interviews—at the prior interviews, prior to the 10th of August; that is the whole subject of my inquiry. I will come to the 10th of August afterward. A. If I correctly understand your question, I mean to say that I do not remember anything passing between me and Mrs. Moulton in regard to the ruining of Mr. Beecher or the ruining——

Q. It was not the ruin——

Mr. Shearman—"The injury to society"——

The Witness—Oh! "the injury to society."

Mr. Evarts—I read it to you: "The truth must come out; consider the injury to society"—— A. Well, now, there was nothing said between Mrs. Moulton and I about the truth not coming out; there was a talk between Mrs. Moulton and I—more than one—as to the effect upon society of this scandal, after the Bacon letter, and when the scandal was going on, and how demoralizing it was, and what great injury was flowing from it. There was that talk once or twice, perhaps more, between Mrs. Moulton and I.

Q. Did you introduce the subject or did Mrs. Moulton? A. Oh, well, I can't hardly say; when I was there I saw Mrs. Moulton, and we became acquainted, and we used to be conversing together; I cannot undertake to say who introduced any particular subject of conversation.

Q. Was there any dispute, or difference of opinion, between you on these topics? A. No, Sir; Mrs. Moulton and I always agreed.

AN INJUNCTION TO PREVENT THE DESTRUCTION OF THE PAPERS.

Q. Now, Mr. Tracy, do you remember a period and an occasion when you were considering, with others with whom you conferred, as to getting an injunction to prevent the destruction of these papers? A. I do.

Q. When was that?

Mr. Beach—What? What? What is this, Sir?

Mr. Evarts—I ask him if he remembers an occasion in which he considered, in consultation with others, as to the propriety of getting an injunction to prevent the destruction of these papers?

The Witness—You asked me when it was?

Q. Yes. A. I think it was after Mrs. Tilton's sworn statement.

Q. Was made public? A. Yes, Sir.

Q. Do you remember whether or not it had any concurrence with Mr. Moulton's return from the East? I think it has been in evidence that he went to the East. A. Well, Sir, I cannot remember whether it was his return or about the time he was going. It was on or about that

time; it was about the time that he refused, or followed his refusal to deliver the papers to Mr. Beecher, or copies of them.

THE CONVERSATION WITH MRS. MOULTON ON AUG. 10.

Q. Now, you had a conversation with Mrs. Moulton on the 10th of August, I believe? A. I did.

Q. Concerning which you have been inquired of. What occurred at that conversation in reference to the subjects which had been brought to your notice? A. Now, Mr. Evarts, if you will excuse me, I desire to say again that I don't understand that the other side have called for the details of that conversation, or any part of it has been given. I regarded it as confidential; it was a talk that I had with the lady in her own house. If that conversation is to come out I prefer to leave it for the lady to bring out before saying anything on the subject. If that will suit you, it is my wish that it should take that course.

Mr. Evarts—Provided an objection is not made on the other side as to the order of proof.

Judge Neilson—I think it may be reserved in that form, Sir, on the suggestion of the witness.

Mr. Beach—We make no objection to the witness stating it now, Sir.

Judge Neilson—I think the view the witness now has might as well be respected.

Mr. Beach—I have no objection to it, Sir; whatever course they choose. I will acquiesce in; but if the gentleman's views are correct, Sir, I should suppose that the examination should proceed now in regard to it.

Judge Neilson—If Mr. Beach is prepared to avow his intention to call Mrs. Moulton and have her testify as to the interview between them, then I think you may proceed with this witness, now.

Mr. Beach—Certainly; we intend to, Sir.

Judge Neilson—Then I think we will proceed now, as we have the witness here. That absolves the witness from the sense of obligation.

Mr. Evarts—Yes, Sir.

The Witness—I would prefer otherwise.

Judge Neilson—Well, I think we had better proceed, Sir, with that view of the evidence.

Mr. Evarts—My own impression, if your Honor please, is that aside from the question of a witness's respect for what he supposed was to be confidential on the part of this lady, it would be the regular course—the proper course for us to go on. The difficulty is that the lady is not represented by counsel. She is not a party to this litigation, and her husband is no party to this litigation, he is only a witness.

Judge Neilson—Well, the suggestion of respectable counsel——

Mr. Evarts—Oh, I understand that, Sir, of course.

Judge Neilson [continuing]——of their intent to call and examine her, is sufficient. That ought to relieve a witness from any sense of restraint, I think.

Mr. Evarts—Now, I will confine you to the subject which I understand was referred to, and that is, about burning the papers? A. There was no talk that night about burning the papers then or at any future time. There was talk about the desirablity of having burned the papers at an earlier period.

Mr. Beach—Mr. Evarts, it was the long statement I inquired about—burning the long statement.

Mr. Evarts [after consulting with counsel]—Well, I supposed it was the papers. Now, there was a conversation between Mrs. Moulton and yourself as to the propriety or the desirability of the papers having been destroyed at a preceding time? A. There was.

Q. Was there any difference of opinion between you and Mrs. Moulton about that? A. No.

Q. Now, was there anything said about destroying or suppressing the long statement? A. Not a word; that is entirely new; I never heard of that until to-day.

Q. Well, Mr. Tracy, I understand you to have said—and you will consider it a question if you have not said so—that at this interview on the 10th of August, nothing was said about the destruction of the papers then or in future? A. No, Sir.

Q. Nothing? A. Nothing at all.

THE TALK ABOUT THE SHORT STATEMENT.

Q. Now, you have been asked something about this short paper—short statement, that has now been read by the learned counsel. What occurred between you and Mr. Moulton, if anything, regarding that statement? A. At what interview, Mr. Evarts, do you ask?

Q. At any interview concerning which you have been inquired of and have spoken, in the cross? A. Well, I think the only interview I have been inquired of, or spoken in regard to that paper, as a paper, after its existence, was the interview at Mr. Augustus Storrs's house just before it was delivered.

Mr. Evarts [To Mr. Beach]—That is it?

Mr. Beach—Yes; his answer was entirely satisfactory in regard to that.

Mr. Evarts—Now, how did any conversation arise there? A. I don't think I can add anything to it.

Q. You have said the whole? A. I think I have said the whole; with the permission of counsel I will say that Mr. Moulton was expected before the Committee, and he was expected there with one or the other of these statements.

Q. That is, the long or the short? A. Or the short, and I didn't know positively which he was coming with until he came. When he came I went out into the front parlor, and saw him, and he announced to me what had been the conclusion in the council at his house in the forenoon of that day, what the result was about what sort of a statement he has going to make.

Q. And that was the first knowledge you had of what conclusion he came to? A. It was.

Q. And you were gratified at it? A. I was gratified at it; highly so.

GEN. TRACY'S ADVICE TO MR. RICHARDS.

Q. Now, you have been asked about some talk you had with Mr. Richards; will you please state what was said at that talk? A Mr. Richards had been summoned before the Committee, and I went to the Committee rooms and found him in the front parlor, and I supposed it was my duty to examine him before the Committee.

Q. You mean openly examine him? A. Openly examine him before the Committee. I went to have a preliminary conversation with him preceding this examination, so as to know what his statement was to be, how to frame my questions.

Mr. Evarts—Mr. Beach wishes to ask a question.

Mr. Beach—I omitted to put you one question in regard to that interview, Mr. Tracy. I now give it, that your attention may be called to it. Did you, at that interview with Mr. Richards, when you applied to him for information as to what his knowledge was, or statement would be, and upon his answer to you that he came to appear before the Committee, and not to make a statement to you, did you say to him that you was the counsel for Mr. Beecher? A. No; I said I was the counsel for the Committee.

Q. No—Mr. Beecher, is the question. A. No, no.

Mr. Beach—That is all.

Mr. Evarts—Now, Mr. Tracy, will you be good as to give what occurred? A. Mr. Richards cam here, and I went to him, as I say.

Q. Did you know him? A. I did not know him. I said, "Is this Mr. Richards?" He said it was. I told him who I was, and I said, "You have come to appear before the Committee?" He said, "Yes, I have come;" and I said to him, "I shall conduct your examination," or something to that effect, "and I would like to know what you have to state." He says, "I am to state nothing; I have come before the Committee, but I shall decline to answer any questions that the Committee put to me." "Well," I said, "do you mean to say, Mr. Richards, that you are going to give the Committee no information at all?" "I do," he says; "I am going to decline to answer any question that they put to me." "And yet you mean to appear," I said, "before them, as if you came for an examination?" "Yes," says he, "they summoned me, but I am going before them; and when they ask me any question about my sister, or anything relating to my family affairs, I am going to say to them that I decline to answer the question, on the ground that this is a family matter, into which I have refused to be drawn hitherto, and I will not be drawn at all, and I will say nothing on the subject." And I said, "Mr. Richards, if that is your determination, why did you come before the Committee?" "Well," he said, "I came because they summoned me." "Well," I said, "if you have determined not to give them any information at all, it seems to me it was a useless ceremony for you to come. "Well," he says, "I supposed I ought to come, but I shall decline to answer any questions." "Well," I said, "Mr. Richards, you will be asked whether your sister has made any confession to you, by the Committee, if you go before it; and if you go there and are asked that question, and decline to answer it, and that question is published, and with your declination, it will place your sister in a very awkward position." And I said to him: "I assume you do not wish to injure your sister?" He said, "No, certainly not; I do not." Well, I asked him if the consequences of such action had occurred to him. He said, no, it had not; it had not occurred to him; he said he supposed that was the way to do. Well, I pointed out to him the effect upon his sister of his going before the Committee and having such questions put to him, and saying, "I decline to answer that question." After talking with him a moment he realized the position, and thanked me for the suggestion, and said he would not go before the Committee and submit to any examination; went out into the committee-room where they were in session, and said, "Gentlemen, you have summoned me"—in substance I am repeating—"but I have come to say to you that I will not appear before you to submit to any examination whatever; I will not be examined by you."

Q. And went off? A. And went off.

GEN. TRACY'S SUGGESTIONS TO HIS ASSOCIATES.

Q. Mr. Tracy, you have been asked about an interview with Gen. Butler, had at your lodgings; that was the 11th, wasn't it? A. The 11th of July; yes, Sir.

Q. The 11th of July? A. Oh! the 11th of August.

Q. The 11th of August, so I supposed; after the Fifth Avenue interview of the 10th of August? A. Yes, Sir.

Q. The 9th; was it the 9th? A. The 9th of August, at the Fifth Avenue.

Q. You were asked something about Mr. Beecher's being in the house; was Mr. Beecher in any way a party to that interview? A. Not at all, Sir.

Q. Either by himself or by you? A. No, Sir.

Mr. Beach—Well, that is calling, Sir, for the conclusion of the witness. I don't think it competent.

Mr. Evarts—Well, you did not represent Mr. Beecher in that interview? A. No, Sir; I did not represent him——

Mr. Beach—That is a question of argument, resulting from the proven facts in the case, Sir.

Mr. Evarts—I inferred that the object of the inquiry whether Mr. Beecher was not in the house was whether it was a matter of his participation. [To the witness.]

And in regard to the visit to the Fifth Avenue Hotel, did Mr. Beecher before that know anything of it? A. No, Sir.

Q. Or of any intent to have it? A. No, Sir.

Q. Mr. Tracy, reference has been made in the examination to the fact of your having been counsel for Messrs, Woodruff & Robinson while Mr. Moulton was a member of that firm, in some litigations of theirs. You were such counsel? A. I was counsel in one litigation for them, and in the Government matter, which did not result in a litigation, technically speaking.

Q. Well, Sir, you were their lawyer? A. I was.

Q. The usual professional relations? A. Yes, Sir.

Q. Of client and counsel, and for compensation? A. Yes, Sir. [*Sotto voce.*] Very modest, too.

Q. Now, Sir, you were asked whether you made any suggestions to the then cross-examining counsel, Mr. Porter, when Mr. Moulton was on the stand, concerning any of the matters in which you were counsel for them.

Mr. Beach—Oh, no!

Mr. Evarts—Yes.

Mr. Beach—Oh, no!

Mr. Evarts—Yes, he was.

Mr. Beach—Oh, no!

Mr. Evarts—He was, about this specific thing.

Mr. Beach—The question I put was whether, when Mr. Porter was examining in regard to that Government difficulty, he made any suggestion to Mr. Porter, and he said not upon that subject.

Mr. Evarts—Well, I understand that to be the point, when Mr. Porter was cross-examining Mr. Moulton concerning the Government matters whether Mr. Tracy did not make him suggestions at that point of the examination.

Mr. Beach—Certainly I did ask him, and he said "no."

Mr. Evarts—Very well; he said no. [To the witness.] Now, Sir, at any time in the conduct of this case have you ever made any suggestions or given any intimations concerning any examination or any introduction into this cause of those litigations? A. I have not, Sir; on the contrary, I have protested against it.

THE DEFENSE RESTS.

Mr. Beach—Wait, wait.

Judge Neilson—That answers it.

Mr. Evarts—I think he has a right to say——

Judge Neilson—I think so.

Mr. Beach—Well, a brother lawyer on the stand. I shan't object to it, Sir—simply the denial of the fact. I don't think it is competent.

Mr. Evarts—That is all the re-direct. [To Mr. Beach.] Do you wish to cross-examine?

Mr. Beach—No, Sir.

Mr. Evarts--We rest, if your Honor please.

Judge Neilson—Gentlemen, will you get ready to retire?

PLAINTIFF'S COUNSEL CONSENT THAT MRS. TILTON MAY TESTIFY.

Mr. Beach—Wait one moment, if your Honor please. If your Honor please, in the course of this trial much allusion has been made to the fact that Mrs. Tilton was an incompetent witness by the rules of evidence, and was excluded from taking the witness-stand in regard to a subject matter which so deeply affected her position and interest. We have deemed it due, Sir, to her, to ourselves, to the case which we represent, to announce to your Honor and to the counsel for the defense that we make no objection whatever to Mrs. Tilton being produced by them as a witness, and that whatever objections we might legally present against her competency as a witness we waive entirely, and shall raise no question if our friends upon the other side choose to produce her. And I may be permitted to say, perhaps, in addition, that Mrs. Tilton is an incompetent witness very much in the same sense with any other witness who is disqualified, or was disqualified before our recent laws upon the subject, by interest and by relationship, and that it is an objection which may be waived by the parties to the litigation. Your Honor will remember the phraseology of the statute relating to the competency of husband and wife as witnesses when either is a party, and declaring that neither the one nor the other shall be competent or compellible to testify in certain cases and in regard to certain transactions. I suppose, Sir, from the language of the statute, and from the known practice under the common law declaring the disabilities of witnesses, that it is a matter which rests entirely in the discretion of the parties to the litigation, except, possibly, so far as it may be esteemed the policy of the law to exclude the revelation of confidential communications; and I suppose, and I understand it to be so intimated by the decisions, that even in regard to those matters, it is entirely within the pleasure of the parties, or the party, the husband or the wife, to object, or of the witness himself or herself, to object to the revelation of even those matters which are considered as sacred to the domestic relation. All we wish to say, Sir, is that we consent upon our part that our friends upon the other side can use Mrs. Tilton as a witness in this case if they choose.

THE DEFENSE DECLINE TO CALL MRS. TILTON.

Mr. Evarts—The question whether Mrs. Tilton could be a witness in this case has never been an actual question. The law prohibits it; the policy of the law prohibits it; the general sense of the wisdom of that policy prohibits it. There was a period during the progress of this cause when the Legislature of the State was understood to be considering whether the interests of society, under the provocation of the importance of a particular case, required that they should abrogate the rule

of law and abandon the policy of society, and open the discords of husband and wife swearing against one another in court; and the Legislature by an unanimous judgment (as we must understand), and the concurrence of all the people of the State, said, our law wisely and firmly determines that question. Now, if Mrs. Tilton at any time could legally have been proposed and admitted as a witness, there would then have been two practical questions for us, as counsel, to determine—grave and important questions, which have never yet arisen for our determination, because the law has sealed her lips in any litigation in which her husband is a party. Those two grave questions would have been (first), in our sole relation of duty to our client. If we thought his case, as we had presented it, had any such defect in volume or force of evidence that any other were needed, then it would have been our duty to adduce such evidence, further, as the law opened to us. We have now no such opinion, and no such view, that our case needs any more testimony than we have given. If, however, we had come, in the sole relation of duty to our client, to dispose of that practical question, and the wife were a witness that the law permitted to be introduced, then we should have the grave duty of determining whether some injury, even some weakness that we felt might need to be supplied in our client's case, should properly be supplied by this grave antagonism, tearing to pieces the last shred of respectability and hope in the future for this family. Fortunately we have not been brought by any doubt or hesitation as to the force and fullness of our defense, into that grave moral question. But your Honor sees that these are all hypothetical inquiries, and to which I should not have alluded in the least, but for the introduction by our learned friend of this proposition.

WHY PLAINTIFF'S COUNSEL WITHDREW OBJECTION TO THE TESTIMONY.

Mr. Beach—I did not suppose, Sir, that the suggestion which I made was to give occasion for a discussion or an address of this character. I do not propose to follow it. Nor is it necessary for me to present the motives which induced me to withdraw any possible objection which we might have to the competency of this lady as a witness. I shall not pursue the question whether the necessities of the defendant's case would properly lead them to the consideration of the propriety of examining this lady; nor shall I consider, Sir, the other question whether her presentation as a witness in this case would lead to an antagonism productive of the results anticipated by the learned counsel. Very much might be said upon that subject, Sir, as to how much of the garment of respectability is left in the present condition and attitude of this family, and as to the responsibility, rest where it may, for producing these sad results. Those are matters, Sir, which I do not care to allude to, though I might possibly answer with some force, and perhaps emphasis, the suggestions of the learned counsel. I may say, Sir, that in my view of the policy of the law, the counsel is entirely mistaken in his construction, both of the legal intent of our legislation and of the public sense in regard to the propriety of a woman being permitted to defend herself, if she can, under the circumstances in which Mrs. Tilton is placed. In a former discussion, Sir, we alluded somewhat, and somewhat extensively, to the policy of our legislation upon that subject, and I think it was very clearly demonstrated to your Honor that by the policy of the law it is now possible for husband and wife compulsorily to be placed, as witnesses in a cause in a court of justice, in positive and direct and humiliating antagonism to each other. It is not the policy of the law of our State to forbid that adverse position. But I do not propose, Sir, to discuss it. My only object was to announce to your Honor, and to give to our learned friends the benefit of the announcement, that if they chose to avail themselves of the testimony of this lady in this case, in a legitimate way, our objection being withdrawn, and to present her testimony in such a shape and before such a tribunal that it could be examined and tested by the ordinary rules of evidence, and not by indirection before another tribunal and in another shape, they were at perfect liberty to do so.

JUDGE NEILSON APPROVES THE COURSE OF THE DEFENSE.

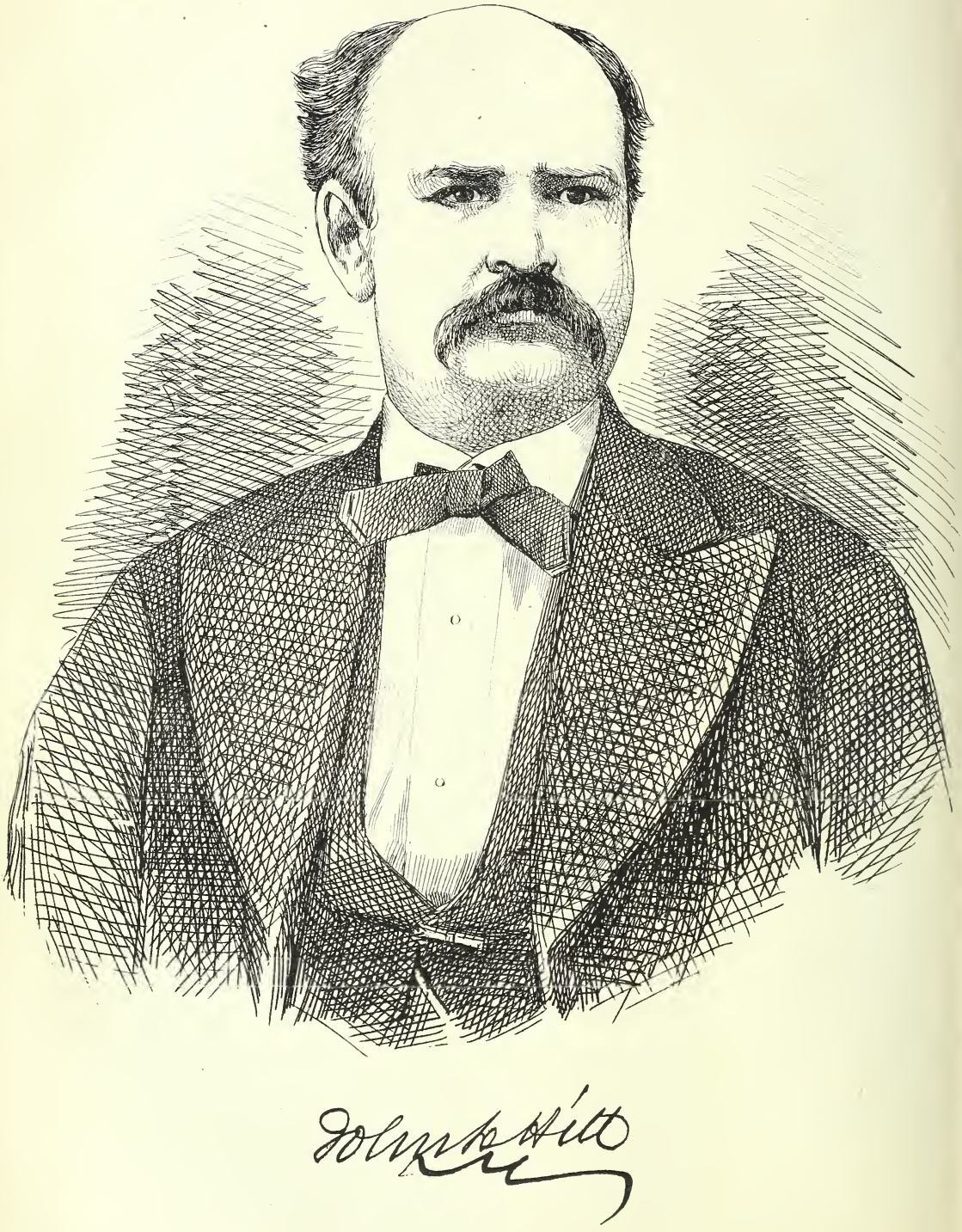
Mr. Evarts—But a word, if your Honor please. I presented in full, as your Honor will remember, my view of the law and the policy of the law on this question, as presented by the situation when Mr. Tilton was offered as a witness, and I do not propose to repeat that. In conclusion—conclusion upon my part, I mean—I only need to say that we do not regard consent or stipulation between parties to the violation of a law which excludes, on grounds of public policy, a witness as making him or her a competent witness.

Judge Neilson—The question here would be very different from that which was presented when the competency of the plaintiff was under consideration.

Mr. Evarts—That I understand.

Judge Neilson—Because we have here a statute directed to the relation of a husband or a wife, a party to the action in an action of this character. I have only to say, that the question having been presented, and the offer having been made, and the learned counsel for the defense thinking it their duty to decline to accept the suggestion, I confess I feel gratified that the lady is not to be called. [To the jury.] Gentlemen, please prepare to retire.

The Court here took the usual recess until 2 o'clock.



REBUTTING TESTIMONY FOR THE PLAINTIFF.

After recess, at 2:10 o'clock, the taking of the rebutting testimony in behalf of the plaintiff was begun. The first point taken up was, in what way Mr. Tilton took part in the procession in honor of Rossel, the Communist.

TESTIMONY OF CHARLES C. STANLEY.

Charles C. Stanley was called by plaintiff and sworn.

Mr. Morris—Mr. Stanley, where do you reside? A. No. 77 Ralph-ave., Brooklyn.

Q. In Brooklyn? A. Brooklyn; yes, Sir.

Q. And what is your business? A. I am a journeyman pocket-book maker.

Mr. Evarts—Mr. Stanley, won't you speak a little louder, so that these gentlemen (the furthest on the jury) can hear you.

Mr. Morris—Are you acquainted with Mr. Tilton, the plaintiff? A. I never spoke to the gentleman until this morning.

Q. You know him by sight? A. Know him by sight.

Q. In December, '71, did you know Gen. Ryan by sight or personally? A. I am not positive that I could point the gentleman out.

A Juror—Speak a little louder.

Mr. Morris—Did you then know Mr. Tilton by sight? A. Yes, Sir.

Q. Were you present at the procession called the Rossel procession, on the 17th of December—Sunday, the 17th of December, 1871? A. Yes, Sir.

Q. Did you see Mr. Tilton in the procession? A. Yes, Sir.

Q. Where did that procession form? A. In the neighborhood of the Cooper Institute, on Third-ave.

Q. At about what point did the different sections of the procession come together and the procession complete was formed? A. The procession was completed at the corner of Great Jones-st. and the Bowery; the different sections joined in the procession, passing into Great Jones-st.

Q. Did you see Mr. Tilton in the procession? A. Yes, Sir.

Q. At what point did you first see him? A. In Great Jones-st., in the vicinity of Lafayette-place.

Q. And that is the point that you designate where the procession formed complete? A. Yes, Sir.

Q. Where the procession was completed, completely formed; was Mr. Tilton in company with any person? A. Well, he was walking in the procession with one of the sub-divisions; I didn't notice particularly whom he walked with; he seemed beside a gentleman who was some inches shorter than himself.

Q. And in what, about what part of the procession was he walking? A. He was in a sub-division, which was led by some ladies, in company with a banner; Mr. Tilton was distant from them eight or ten paces in the rear, some thirty or forty persons intervening between them.

Q. Do you know who those ladies were, any of them? A. Well, they were—my attention was called to them, and I asked who they were, and I was told that it was Mrs. Woodhull and her sister, Miss Claflin.

Q. And was either of them carrying a banner or flag? A. I didn't notice that they carried it; there seemed to be a man between them; I can't say who carried the banner; there was a banner there and a man and two women.

Q. Do you know who that gentleman was? A. No, Sir.

Q. It was not Mr. Tilton? A. It was not Mr. Tilton.

Q. As to size, was it a tall man or medium size? A. That I can't say.

Q. You don't recollect as to that; did you accompany the procession? A. Yes, Sir.

Q. From there during the rest—during the route they took? A. Not through the entire route.

Q. Did you see Mr. Tilton in the procession at any other point afterward? A. Yes, Sir.

Q. At what other point did you see him? A. In the vicinity of the corner of Fourteenth-st. and University-place; I think that was the street; at any rate, it was on the way up, in the vicinity of Fourteenth-st.

Q. And at any other point? A. On the return, in Fourteenth-st. before the breaking up.

Q. And can you state whether he and the gentleman who was with him maintained their relative positions in the procession? A. Whenever I noticed Mr. Tilton—I didn't go there especially to watch him—he maintained the same relative position.

Q. Do you know whether he continued walking in company with the same person? A. That I can't remember.

Mr. Evarts—What did he say just now?

Mr. Morris—He could not say whether he continued walking in company with the same gentleman. [To the witness.] Did you at any time see him walking in company with any lady? A. No, Sir.

Q. And did you see him at any time in a carriage? A. No, Sir.

Q. Did you see carriages? A. Yes, Sir.

Q. Can you state about how many carriages there were in the procession, according to your recollection? A. Well, my recollection is very poor; the carriage—division of carriages formed on Houston-st.; if I remember correctly there were four or five; something like that.

Q. And what part of the procession did they occupy? A. That I don't remember.

Q. In front or in the rear of Mr. Tilton? A. I can't say.

Q. Can't say as to that—how near were you to Mr. Tilton at any time? A. Well, within 15 feet.

Q. So that you could not be mistaken as to the person? A. No, Sir.

Q. At the time the procession broke up how near were you to Mr. Tilton? A. Well, I did not accompany the

procession as far as the statue, so that I do not remember seeing Mr. Tilton at any point above the last corner opening on the square.

Q. And that was how near where it finally broke up—the place where it——? A. Well, I cannot say the distance to the statue; probably 200 feet.

Q. Did the procession go above that point in its march? A. Above—I walked with the procession to some distance above Fourteenth-st., crossed over and met it on its return on Sixth-ave., about Twenty-second-st.

Mr. Beach—You did not accompany it up to its highest point? A. No, Sir.

Mr. Evarts—I did not hear his last answer.

Mr. Beach—He did not accompany the procession up to the highest point of its route.

Mr. Morris—That is all.

CROSS-EXAMINATION OF MR. STANLEY.

Mr. Evarts—Were you one of the procession? A. No, Sir.

Q. Had you any interest in the occasion or subject that was celebrated there by them? A. No, Sir.

Q. You were not drawn there, then, by any interest in the procession or its object? A. No, Sir; no particular interest.

Q. You then lived in Brooklyn? A. Yes, Sir.

Q. What was the occasion of your being in New-York that day? A. Curiosity.

Q. Do you mean about this procession? A. About the procession.

Q. Well, you did feel that interest? A. Yes, Sir.

Q. You went over to see it? A. Yes, Sir.

Q. But not interest enough to join in it? A. No, Sir.

Q. Perhaps you didn't sympathize with its object; how was that? A. Not—in the general object of the celebration, but not with any of the "isms" represented in the procession.

Q. Exactly; you sympathized with the general objects, but in none of the particular doctrines of the people that were celebrating? A. No, Sir.

Q. Now, were you alone, or did you take some companions with you? A. I was alone.

Q. At what hour did you get in sight of this procession or its preliminary organization? A. I can't say exactly; I think it was about 2 o'clock.

Q. What hour did you leave Brooklyn? A. Well, after dinner.

Q. What hour was that? A. That I don't remember.

Q. Well, you know what you—— A. We sometimes—I took my dinners at very irregular hours, according to my disposition about going out; sometimes at 1 o'clock, sometimes later.

Q. Yes, but not earlier? A. Not earlier.

Q. And did you go straight over, with no other object? A. No other object.

Q. But as a spectator—after your dinner? A. As a spectator—curiosity.

Q. Now, Sir, how far did you follow the procession, and did you take up any companions to talk with you on the way? A. No, Sir.

Q. Now, will you state the route that you followed from Cooper Institute? A. I did not start with the head of the column from Cooper Institute; I joined in and passed along on the sidewalk at the corner of Great Jones-st. and Bowery.

Q. Yes, and kept up with the head? A. No, Sir; I lingered along; there was some halts; I kept moving along, and took general observations.

Q. Well, when you started with your purpose of keeping abreast of the procession, were you abreast of the head of it? A. I saw the head of it pass; I saw the head of the procession a number of times.

Q. Well, my question was a very simple one. As I understand, you undertook to follow the procession a certain way, some ways, didn't you—follow it along? A. I had no fixed resolution to follow it.

Q. No, I didn't say that; I said you undertook—you started? A. Yes, Sir, I started.

Q. Very well, now; when you so started did you start abreast of the procession? A. Yes, Sir.

Q. You did—well, did you keep abreast of the procession for any length of time? A. Not abreast of the head of the procession or any other part—any——

Q. Any particular part? A. Any particular part, any length of time that I could specify.

Q. Very well, then, the procession was rather getting ahead of you all the while, was it? A. Yes, Sir.

Q. Now, at what point did you cease following that procession—— A. I know that I passed——

Q. [Continuing] or keeping up with it? A. I cannot recollect at what point I stopped.

Q. On what avenue? A. Well, I don't remember, but I think it was University-place; I don't——

Q. Going up, then—it was going up further, the procession was? A. Going up, yes, Sir.

Q. And you stopped there? A. Yes, Sir.

Q. Then, as I understand you, whenever that procession crossed Fourteenth-st. for the first time, you ceased to pay attention to it?

Mr. Beach—He said above Fourteenth-st.

The Witness—That is the last street that I remember crossing.

Q. Its crossing, yes—or your crossing—— A. Yes, Sir.

Q. With it—was Fourteenth-st.? A. Yes, Sir.

Q. And that was the first time that the procession crossed that street? A. Yes, Sir.

Q. And thereafter you paid no attention to it? A. Yes, Sir.

Q. Well, what further? A. I must have walked up that street some distance, because on the return I was on the

corner of Twenty-second-st. and Sixth-ave.—about the corner of Twenty-second-st. and Sixth-ave.

Q. How did you get over there? A. Crossed over.

Q. From where? A. From the route—street, that the procession was moving to Sixth-ave.

Q. Yes; you think you crossed from University-place to Sixth-ave.? A. Yes.

Q. And in what street did you cross over—through what street? A. I cannot remember.

Mr. Beach—I did not understand him to say that he crossed over from University-place.

Mr. Evarts—What he now supposes.

Mr. Beach—No; Twenty-second-st. is above University-place, as I understand. A. Yes, Sir.

Mr. Evarts—Well, then, it would be Broadway, then.

Mr. Beach—Yes, Sir.

The Witness—I remember walking up Sixth-ave. a short distance after I crossed over.

Q. After you crossed over? A. Yes, Sir.

Q. And what street you crossed on, then, you do not remember? A. No, Sir.

Q. Now, did you cross through Fourteenth-st.? A. No, Sir.

Q. Well, did you cross through Fifteenth-st.? A. I could not be positive.

Q. Well, so far as you know. Can you name any other street? A. No, Sir; I cannot name any other street.

Q. Yes; very well—— A. Nor can I designate that street.

Q. What did you cross over to Sixth-ave. for? A. To see the procession, and the parts of it, on its return.

Q. On its return—see whether it held out? A. Yes, Sir.

Q. As many on the return as there were on the advance? A. Yes, Sir.

Q. That was your idea. Now, Sir, you have stated that you saw Mr. Tilton there that day? A. Yes, Sir.

Q. And, as I understood you, at the formation of the procession? A. Well, by the formation I don't exactly understand you; I saw him in the procession after all of the sections started to join in at Great Jones-st.; and you may say I saw him as the procession was forming.

Q. Yes; was being—was forming. Well, that I understood you. Now, how near the head of the procession was Mr. Tilton? A. I don't remember.

Q. You haven't the least idea. Well, how near the tail of it was he? A. That I don't remember.

Q. How near the middle was he? A. I can't say.

Q. Now, before you left the procession, to cross over toward Sixth-ave., how far had the procession—what proportion of the procession's length had passed you? A. I don't remember.

Q. Don't know whether it was a third, or a quarter, or—— A. No, Sir——

Q. Or any at all—— A. No, Sir; it was not a very large section.

Q. You were pretty near the head? A. That I cannot say—it was not a large procession.

Mr. Beach—Not a large procession.

Mr. Evarts—Oh, I beg pardon; well, give us, if you can, any notion how near you were being abreast the head of the procession when you deserted it and crossed over to Sixth-ave.? A. Well, I cannot remember——

Q. Can't give us any idea? A. No, Sir.

Q. Now, Sir, I understand you that you saw Mr. Tilton afterward? A. Yes, Sir.

Q. After the formation? A. Yes, Sir.

Q. After that point—where did you see him again? A. At some point in Fourteenth-st., after turning out of Sixth-ave.

Mr. Beach—That is, as the procession was coming down? A. Coming down; yes, Sir.

Mr. Evarts—Coming back—returning upon its route; did you follow the procession after it got down to the Sixth-ave. where you were—did you follow it then to the end? A. As near as the crowd would permit.

Q. Yes. A. I did not reach the statue, which was the point for the breaking up; there was much confusion at the close.

Q. But you followed it substantially to the end of the route? A. Yes, Sir.

Q. Now, in so following, on this return part of the route, were you abreast of the head or of the tail, or of the middle of the procession? A. I met the head and loitered along.

Q. With it? A. And allowed it to pass me, and before we had reached Union-square I suppose I was near the end of the procession.

Q. Well, this procession was not on a trot, was it? A. No, Sir.

Q. And you were walking down—you walked about as fast as the procession? A. No, Sir.

Q. Well, you started, then, abreast of the head from Sixth-ave., about? A. Yes, Sir.

Q. And how much of the length of the procession had got ahead of you before you started? A. Well, the route of the procession was on my way home, and, as I say, it had nearly passed me when I arrived at Union-square.

Q. Yes; on the Sixth-ave. you had gone so much slower than that? A. Yes, Sir.

Q. That it had passed you. Now, Sir, when you saw Mr. Tilton the second time in the procession, what was his position as respects the head, the middle, or the tail? A. The same as when I saw him in Great Jones-st.

Q. Well, which was that? A. A distance of some 30 or 40 feet intervening between him and this banner that was carried and accompanied by two women.

Q. Well, was there more than one banner? A. There were several banners.

Q. Well, which banner was it? A. The one accompanied by two ladies, being carried by a man.

Q. Very well, and who was in the rear—that is, after

that? A. He was in the rear of that particular subdivision of the procession.

Q. Yes, and he formed a part of that division? A. Well, he seemed to; he was walking with them.

Q. Now, did you know the man that was in this carriage with the two women? A. No, Sir.

Q. Did you say that you knew Gen. Ryan? A. No, Sir; he was pointed out to me on that day, but it made no impression.

Q. You don't know his appearance by sight? A. No, Sir.

Q. Did not before? A. No, Sir.

Q. Did you say where you saw him? A. No, Sir.

Q. Well, now, these women that were in this carriage—were there also women in other carriages? A. I took no particular notice of the carriages with the exception of one in which there was a woman holding a red flag.

Q. Yes? A. That is all that I remember of that part of it.

Q. Was she alone in that carriage? A. I don't remember; I think not—likely not.

Q. Who was with her? A. I don't remember.

Q. Who was she? A. That I don't know.

Q. Did you inquire? A. Yes, Sir; one of the passing crowd said that she was a late arrival from Paris.

[Laughter, in which the witness joined.]

Q. Well, did you laugh as much then as you do now? A. Sir?

Q. Did you laugh then as much as you do now? A. Yes, Sir; I was amused.

Q. And your friend also? A. I was with no friend.

Q. Well, I mean the gentleman who gave you this information? A. No, Sir; he was walking along.

Q. He didn't laugh? A. I don't remember.

Mr. Beach—He ran away.

Mr. Evarts—Well, Gen. Ryan was not in that carriage? A. I don't remember, Sir.

Q. Mr. Tilton was not? A. No, Sir.

Q. You are sure of that—now this carriage which you say Miss Claflin was in? A. I didn't say that Miss Claflin was in that.

Q. Well, some one. A. Some one was in the carriage.

Mr. Evarts—I thought he said so. Didn't you in the direct? Oh, you saw somebody that was pointed out to you as Miss Claflin? A. Only walking in the procession.

Q. On foot; yes, Sir? A. On foot.

Q. Now, whereabouts was this lady that was pointed out as Miss Claflin to you in the procession? A. She was accompanying a flag and banner of some kind.

Q. And who carried it? A. A man.

Q. A tall man? A. I don't remember.

Q. Well, was there any other lady that accompanied it? A. Yes, Sir.

Q. Was she also described to you—named to you? A. In a general way; I asked who they were; I was told it was Victoria Woodhull and her sister.

Q. And her sister—and were they carrying the tassels? A. I don't remember.

Q. Well, see if you cannot bring that picture back now to your eye, that there was a man carrying the flag and Mrs. Woodhull and her sister with the tassels in their hands? A. I don't remember; it might have been; I cannot say.

Q. Now, can you describe that man in any way, so that we can get at it? A. No, Sir.

Q. Can't say? A. No, Sir.

Q. Whether he was tall, whether he had blue eyes—can you? A. No, Sir.

Q. Long hair? A. No, Sir; I can't describe him.

Q. Now, during the whole time that this procession was engaged on its route—from the time you left it in University-place, or the extension of University-place, until you resumed your observation of it in the Sixth-ave.—you don't know what happened to it, do you? A. No, Sir.

Q. You don't know whether they changed hands, got into the carriage and others walked, so they rode and tied as they went on about those banners or not, do you? A. I don't know what they did while they was out of my sight.

Q. Now, when do you remember first seeing Mr. Tilton in connection with that procession? A. In Great Jones-st.

Q. After the procession was formed? A. Just as it had formed.

Q. Well. after it was proceeding along? A. Yes, Sir.

Q. You did not see him while they were standing about? A. No, Sir.

Q. Organizing? A. No, Sir.

Q. But as it strung along, when he was in it? A. Yes, Sir.

Q. The first time you saw him he was in it? A. Yes, Sir.

Q. Now, how many ranks were there between Mr. Tilton and this banner that some one was carrying, and Mrs. Woodhull and Miss Claflin attending? A. From six to ten; I cannot say exactly; at some times they were nearer, as the procession became crowded—perhaps within 20 feet, and then again perhaps 40 or 50 feet.

Q. But with the same number of ranks? A. Yes, Sir.

Q. And how many people walked abreast in these ranks? A. I think four—an average of four.

Q. You think Mr. Tilton was in sight of this banner and its standard-bearers? A. Yes; I should think so.

Q. When did you first think of being a witness here? A. Perhaps three weeks since.

Q. What directed your attention to it, or anybody's attention to you? A. Well, the fact that I thought there was some misstatement, and I being a witness of it——

Q. You thought that this statement about Mr. Tilton was wrong, and you had seen something that would contradict it, and you made it known? A. Yes.

Mr. Evarts—Well, that is all.

Mr. Morris—That is all, Sir.

TESTIMONY OF GEORGE W. MADDOX.

Mr. Morris then called Lewis Payne, but Mr. Pearsall spoke to him as Mr. Payne was coming forward, and Mr. Morris called Mr. Maddox in place of the other.

George W. Maddox, being duly sworn, testified as follows:

Mr. Morris—Mr. Maddox, where do you reside? A. In New-York.

Q. Are you acquainted with Mr. Tilton, the plaintiff, by sight, or personally? A. I know him by sight.

Q. And did you know him in December, 1871, by sight? A. I have known him by sight from six to ten years.

Q. Were you acquainted with Mrs. Woodhull at that time? A. I was.

Q. Did you see the procession on Sunday, the 17th of December, 1871, that has been spoken of? A. The Rossel procession?

Q. Yes, the Rossel procession? A. I was in it.

Q. And what part of the procession were you in? A. My recollection is that I was near the head of the line.

Q. Did you see Mr. Tilton in that procession? A. I saw him once or twice.

Q. In what part of the procession was he? A. My recollection is that it was near the center of the line.

Q. And at what points of the route did you see him? A. I cannot now designate any particular point.

Q. Was he in company with any person? A. He was in company with gentlemen.

Q. Did you know either of those he was marching with? A. I did not know anybody but Mr. Tilton as I noticed then.

Q. And at the different points at which you—you cannot designate, you say, the points, but at the different points at which you did see him, did he occupy the same relative position with reference to the procession? A. That is my recollection.

Q. Did you see Mrs. Woodhull in that procession? A. A great many times.

Q. And Miss Claflin? A. Both of them.

Q. Now, state where you first saw them in the procession, with reference to its formation? A. I saw them at the formation of the line; indeed, before the line was formed.

Q. Before the line was formed. Where did it form? A. My recolleetion is it was formed on Seventh-st.; at all events, the section to which I belonged was formed on that street. Sections formed in different parts and places, and then came together at a general rendezvous.

Q. And when was the procession completed—do you recollect? A. At about Cooper Union, or the square there.

Q. Now, when did you first see Mrs. Woodhull and Miss Claflin? You say you saw them before the procession formed; whereabouts? A. In different parts of the route from the beginning to the end; I have stated that I saw them before the formation and afterward; they belonged to Section 12, and were in that section; I cannot now designate the particular part of the line that that section occupied.

Q. But you saw them at various points; now what part of the procession did they occupy, as near as you can state? A. I have just stated that my recollection is that they occupied about the center of the line.

Q. About the center? A. About the center of the line. I may be mistaken as to that, for I took no note of anything particular.

Q. Did either of them carry a banner or flag? A. One did certainly, and perhaps both.

Q. Did you observe whom they were marching with—any gentleman escort? A. When they came on to the ground, there was Col. Blood and Mr. West, and my recollection is that there were others, but I cannot recall their names.

Q. What was Mr. West's first name? A. William.

Q. Do you know where he is now? A. I do not.

Q. And when you saw Mrs. Woodhull at different parts of the procession, did you see Col. Blood? A. Yes, Sir.

Q. Was he in company with her? A. I should say so, but he would not impress me, on my recollection, as the ladies would, because it was a sort of daring adventure for the ladies to march in that procession, and consequently it impressed itself upon my attention.

Q. How far were you from Mrs. Woodhull and Miss Claflin in the procession? A. Well, perhaps, 100 feet; it might have been 200; I cannot recollect now how long the line was, or how many were in it.

Q. Where you behind them or in front? A. I think I was in front; yet I may be mistaken as to that.

Q. Now, where did you see Mr. Tilton? A. In the line of march?

Q. Yes. A. And that you have asked me two or three times.

Q. I mean with reference to the ladies, Mrs. Woodhull and Miss Claflin—how far from them? A. Well, not near them; perhaps it might have been as far as across this room; it might have been twice as far; I can positively swear that they were not together when I saw them.

Q. And did you march the whole entire length of the procession? A. I did.

Q. Now, at any time during the march of that procession, did you see Mr. Tilton in company either with Mrs. Woodhull or Miss Claflin? A. I did not see him in company with any lady whatever.

Q. Now, state the route that that procession took from Cooper Institute. A. My recollection is that we started from Cooper Institute, marched down Fourth-st. to Fifth-ave. or University-place, thence to Fifth-ave., thence up Fifth-ave.; that is my recollection; now, I do not say that that is true.

Q. Give us the best of your recollection. A. We marched up as far as Thirty-second-st.—up to Stewart's—what place is that?

Mr. Morris—That is Thirty-fourth-st.

The Witness—Well, Thirty-fourth-st. and returned; but we did not return the same route, so we must have gone, perhaps, up Sixth-ave., and we were disbanded at Fourteenth-st. as we went round the Lincoln statue; and waved the flags, and then were disbanded.

Q. And did you see Miss Claflin and Mrs. Woodhull at the time the procession disbanded at that point? A. Yes, Sir; I did.

Q. Were they in a carriage at any time in the procession when you observed them? A. I should say no if you had not asked the question.

Q. Well, you have no recollection of seeing them in a carriage at any time? A. I have no recollection of seeing a carriage there, or them in a carriage.

Q. Did you know Gen. Ryan at that time? A. I did not, nor never knew him.

CROSS-EXAMINATION OF MR. GEORGE W. MADDOX.

Mr. Evarts—What is your employment or profession? A. I am a real estate broker.

Q. Where do you carry on your business? A. No. 29 Broadway.

Q. Have you been connected with the press heretofore at all? A. Well, in scraps.

Q. As a reporter? A. Not as a reporter.

Q. As a writer, do you mean? A. I published a paper myself—got out three whole numbers. [Laughter.]

Q. Three? A. Yes.

Q. What paper was that? A. *The International.*

Q. When was that? A. Last year—a year ago.

Q. It has passed into other hands now? A. It has passed into—defunct. [Laughter.]

Mr. Evarts—It has left the undertaker's hands and gone into the hands of the undertaker. [Laughter.]

Q. Well, you say you are acquainted with these ladies—Mrs. Woodhull and Miss Claflin? A. Yes.

Q. Do you mean that you had personal acquaintance with them? A. Personal acquaintance with them.

Q. And of how long duration? A. In the neighborhood of six years.

Q. Have you been allied at any time with the political fortunes of Mrs. Woodhull as a candidate for the Presidency? [Laughter.] A. Partially.

Q. Did you nominate her? A. No, I did not; I was the temporary chairman of that convention.

Q. That did nominate? A. That did nominate her. [Laughter.]

Q. Well, now, Mr. Maddox, you were a member of this procession? A. I was.

Q. And sympathized with it? A. Helped to get it up.

Q. Well, as you helped to get it up, perhaps you can tell us how the different parts of it were got up; for instance, the corps or division in which Mrs. Woodhull moved—where was that formed? A. We were organized in sections; the Internationals were Sections 1, 2, 3, 4, and so on; I belonged to Section 12.

Q. Of the Internationals? A. Of the Internationals.

Q. What other component parts of the procession were there beside the Internationals? A. Probably many; there were French and German sympathizers and actual coöperators and workers, of whom I knew but little.

Q. But you knew there were such persons? A. Yes.

Q. And there were 12 International divisions? A. I do not say there were 12 International divisions in the procession.

Q. Ah! A. I say they were organized in that way.

Q. In the city? A. In the city and in the country, and everywhere.

Q. As an organization. And this paper of yours was the organ of that organization? A. It was the organ of myself.

Q. Ah! as the head of the organization? A. No, Sir; as the head of the principles put forth by the Internationals.

Q. I mean that. A. And I took on myself the responsibility; it certainly represented myself, if it did not represent them.

Q. You took the name "International" in reference to this organized body of Internationals? A. Yes; to be sure.

Q. That is all I intended. What is the organ of that organization now, since your paper has been defunct? A. It has no particular organ. Indeed, the whole organization, largely in this country and in Europe, has suspended for the time being.

Q. Not defunct? A. Well, not as bad as my paper. [Laughter.]

Q. No? A. They are operating partially through secret organizations under different names.

Q. Now, were you a member of the division of this procession where Mrs. Woodhull and her sister were? A. No; I was not.

Q. Do you know where the section in which these ladies were was formed—where it started from? A. Its incipient formation?

Q. Yes. A. It grew out of Section No. 9.

Q. But I am not connecting it with the divisions of the Internationals at all; I mean this section of the procession, where it formed itself—whereabouts did it form itself—at Cooper Institute or somewhere else? A. I do not know.

Q. You don't know? A. The Marshal of the Day would be able to tell you quite correctly.

Q. Can you tell us who he is? A. I think Theodore Banks.

Mr. Morris—He will be here; he is subpenaed.

Q. Now, were you in the division of this procession where Mr. Tilton was? A. No; my recollection is that he was not in Section No. 9.

Q. You were in No. 9? A. Yes, I was in No. 9.

Q. And Mrs. Woodhull was not in No. 9? A. No.

Q. Was Mr. Tilton in the same division in which Mrs. Woodhull was? A. Mr. Tilton?

Q. Yes. A. Well, it would be very difficult for me to say, for I do not know how large the divisions were; No. 9 had in the neighborhood of 100 persons; I don't know that one half that number attended; I don't know how many belonged to Section 12; there may have been 100 there, for aught I know.

Q. What number was Mr. Tilton in? A. I don't know.

Q. That you do not know? A. No, I do not.

Q. Well, it is natural you should not. Now, in what number was Mrs. Woodhull? A. In her own part.

Q. What part was that? A. No. 12.

Q. How large that was you do not know? A. I do not.

Q. Now, you say you saw Mr. Tilton twice? A. I do.

Q. You saw Mr. Tilton twice? A. My recollection is that I saw him twice.

Q. You recollect that you saw him twice? A. Perhaps I saw him more times than that.

Q. But you have said that you saw him twice. Now, how did you happen to see him at all if you were not in the same division? A. At the turning of the street and as I looked around to see what was coming after me and to look at the flags, and he would be a prominent figure because he would be taller than almost anybody else; and my recollection is, moreover, that somebody called my attention to the fact that Theodore Tilton was marching in the procession, and I was surprised.

Q. You were? A. But I am very glad.

Q. You were surprised and delighted? A. Yes.

Q. Oh! Well, he was then in sight if you turned around and looked back? A. I presume so.

Q. Was he between you and the Woodhull's carriage, or branch, wherever they were? A. No, I think he was in the rear of both.

Q. You think he was behind them? A. I do.

Q. So you think when you looked back you saw the Woodhulls and Mr. Tilton at the same glance? A. It would be naturally so.

Q. Now, Sir, once you saw him in that way by looking back, did you not? A. I suppose so, too.

Q. I suppose so from your testimony. A. Yes, I should suppose so.

Q. And once you think when the procession, turning on itself, brought those who were in different parts of it in sight of one another? A. I don't know; but then I saw him at both times, and more times than twice when I turned the corners, or made an angle in the procession; it would be quite impossible for me to designate the particular points at which I saw him; I can't do it.

Q. Well. A. That is, I think I can't. However, peg away; I may be able to get at something. [Laughter.]

Mr. Evarts—You know I am not trying to prove anything by you; I am only trying to prove that there was not anything to prove by you. It is not my business to help you to prove anything.

Mr. Beach—He is trying to unprove what has been proved.

The Witness—Oh, is that it? [Laughter.]

Mr. Evarts—Now you can argue your cue. Now, can you say at what corner it was that you saw him, or at what point of the procession, some part of it being at an angle with the other? A. No, I cannot.

Q. You cannot? Can you say whether he was always behind you in the procession? A. I would not dare to say that either. I am not sure but that he was ahead of me when we were discharged or broken up, and I am not sure that I even saw him there.

Q. Can you say whether Mrs. Woodhull and Miss Claflin were always behind you in the procession? A. Yes; I should be very safe to swear they were always behind us; yes, I think I would be very safe to do that.

Q. On what ground would you be safe? A. On the ground of the position that they occupied; now, I am not certain but they were ahead of Section No. 9.

Q. Oh, you don't know. A. I am not sure of these things; I am sure of certain facts; but I cannot outline them particularly.

Q. I understand. You don't know, then, but Mr. Tilton, and Mrs. Woodhull, and Miss Claflin in this procession were ahead of you instead of behind you? A. I am sure of one thing—if they were ahead of me, they were not together; if they were behind me, both at the same time, they were not together.

Q. Yes; that you are sure of? A. Yes; no doubt about that.

Q. You mean by that, that you are sure that you did not see them together? A. I am sure I did not see them together.

Q. Do you mean anything more than that? A. No; I don't mean anything more than that.

Q. No; I should think not. Now, did this procession go from Fifth-ave. to Sixth-ave., through Thirty-fourth-st.? A. Well, that I can't recollect.

Q. Well, what is your impression? A. My impression is that—and it is made up, too, from the naturalness of the story——

Q. That you are going to tell? A. That I am going to tell; that we went up Sixth-ave.

Q. Went up Sixth-ave. instead of down? A. Yes; and came down Fifth-ave.

Q. Instead of up? A. Now, it might be the reverse; and I am not certain but we marched up Fifth-ave. and down Fifth-ave.; I can swear positively that we did march. [Laughter.]

Mr. Evarts—Well, I suppose so. I guess that is all. [Laughter.]

TESTIMONY OF JOHN SWINTON.

John Swinton was called and sworn on behalf of the plaintiff.

Mr. Morris—Mr. Swinton, where do you reside? A. In New-York.

Q. Connected with the press? A. Semi-detached.

Q. Are you acquainted with Mr. Theodore Tilton? A. Partially.

Q. Were you acquainted with him in December, 1871? A. Slightly.

Q. And were you acquainted with Mrs. Woodhull—Victoria C. Woodhull—at that time? A. I had seen her.

Q. Knew her by sight? A. Knew her with more or less definiteness by sight; I had seen her in Broad-st. many times and oft.

Q. And Miss Claflin? A. I had seen her in the same place and under the same circumstances.

Q. You recollect the Rossel procession on the 17th of December, 1871? A. Yes, Sir.

Q. Did you take part in the procession, or were you in the procession? A. As a processionist.

Q. In company with any one? A. In company with some one.

Q. Who? A. Mr. Theodore Tilton.

Q. And did you march in company with him in the procession? A. Arm in arm.

Q. Now, at what point, Mr. Swinton, did you and Mr. Tilton start with the procession? A. Between Eighth—between Ninth and Fourteenth-sts. and Fifth-ave.

Q. Did you start together there? A. He was in the procession when I joined it.

Q. You joined it at that point? A. I joined it at a point between these points.

Q. And did you continue with him then during the rest of the procession? A. The entire continuity of the procession.

Q. Did you see the procession approaching, and notice Mr. Tilton in what position he was? A. I did.

Q. Who was he marching with, if you know? A. When I saw him he seemed to be with—he was with an elderly-looking gentleman, a dignified, respectable, over-age citizen, who I did not know; I think I was introduced to him when saluting Mr. Tilton.

Q. Was it Mr. Gregory? A. I think Mr. Tilton said, "Allow me to introduce you to one of the pioneers of Land Reform."

Q. The name does not occur to you? A. I have thought since it was Gregory by looking over a sketch of the affair.

Q. Sketches of the procession? A. Yes, some inferential idea of that kind; I hardly can trace it.

Q. Did you see Mrs. Woodhull in the procession? A. No, Sir.

Q. Or Miss Claflin? A. No, Sir.

Q. You didn't see either of them? A. No, Sir.

Q. Now, from between Ninth and Fourteenth-sts., when you joined the procession, will you describe the line of march after that that the procession took? A. The line of march was up Fifth-ave. to Thirty-fourth-st., across Thirty-fourth-st. to Broadway and Sixth-ave., down Sixth-ave. to Fourteenth-st., and across there to the Lincoln Monument; there the disbanding took place by a salutation of the figure on the monument.

Q. Now, was Mr. Tilton marching with you or by your side during the whole of the line of march after you joined it? A. The whole line of march; yes, Sir.

Q. Until the disbandment of the procession? A. Yes, Sir.

Q. And walking arm-in-arm? A. Arm-in-arm.

Q. You say you didn't see Mrs. Woodhull or Miss Claflin at any time? A. No, Sir.

Q. Did Mr. Tilton, during any part of that procession while you were with him, march in company with either Mrs. Woodhull or Miss Claflin? A. Not from any point between what might be called the point of departure and the point of termination he was with nobody, and with neither of these ladies.

Q. When the procession disbanded, did you and Mr. Tilton separate? A. I went with him to the corner of Fourteenth-st. and Union-square, and there parted to take the Fourth-ave. cars to my house; I was very sick, and it cost me six months' sickness and $5,000 or $10,000.

Q. At the point where you separated from Mr. Tilton that day, did you see either Mrs. Woodhull or Miss Claflin? A. No, Sir.

Q. How long was it after the procession disbanded before you parted with Mr. Tilton? A. I should say five or ten minutes; we stopped to see the rather imposing ceremony at the conclusion—the colored regiment presented arms; and we were detained, perhaps, five or ten minutes; I think Mr. Tilton said that he was hungry, or I said that I was hungry.

Q. How long did that line of procession take? A. I think it was over an hour; I should imagine so from the fact it was nearly dusk when I got home.

CROSS-EXAMINATION OF JOHN SWINTON.

Mr. Evarts—What was this procession in honor of? A. It was in honor of the martyrdom of Satory, Bourgeoise, Ferrier, and Rossel.

Q. Not of Rossel alone? A. No, Sir, it was in honor of the first execution under the military tribunal.

Q. The first execution of the Commune? A. The first execution; there had been murders innumerable, but no legal execution up to that time.

Q. Of the Communists? A. Yes, Sir, of the Communists.

Q. That was the first execution of the so-called Communists? A. Yes, Sir.

Q. Now, was your joining that procession at the point you did a casual thing with you, or did you start with the

purpose of joining it? A. I started with the purpose of martyrdom.

Q. Absolute? A. Absolute.

Q. And that you missed? A. Hardly; I have been in that condition ever since. [Laughter.]

Q. Yes—ready to start again? A. Yes.

Q. Any moment? A. Any moment.

Q. But my point, Mr. Swinton, was simply this—whether you joined that procession at the point you did at the Fifth-ave. from a casual circumstance, or whether you had started to join the procession and reached it at that point by accident only? A. Shall I tell you how I came to that point?

Q. Yes. A. In regard to the sympathetic emotions that led me there, thus and so—I reached the Cooper Institute about one o'clock; the procession was to start at that time; I saw the colored people, and I saw the Germans and Americans and others, and before I very well knew, while looking around at the catafalque and various adornments, etc., the procession started; I, somewhat negligent, slightly alarmed, started across Eighth-st. to Broadway to head off the procession; when I got there I found that I had not headed it off, and that the head of the procession had crossed Broadway. In order to make another attempt to head them off I started up Broadway and took a cross street—I am not positive as to the street at which I crossed—and I did not there, either, succeed in heading them off. I struck what I supposed was about the middle of the procession, from the fact that I saw neither its head nor its tail, and there I saw Mr. Tilton.

Q. Was this procession on a trot, that it got ahead of you so often? [Laughter.] A. Well, I am of an indolent habit, and probably was musing on the infinite as I went there. [Laughter.]

Q. And you struck the infinite about the middle, so that you could see neither end of it? [Laughter.] Well, Mr. Swinton, when did you first think of your having been a companion of Mr. Tilton in this procession, after you parted with him that night? A. I habitually thought of it, from the apprehension—the alarm that I suffered on seeing him there.

Q. Alarm for his martyrdom as well as your own? A. Alarm for his martyrdom; yes, Sir. I had not known that he was a gentleman who had any sympathy with a thing with which I had such heartfelt sympathy.

Q. You say you had it continually in mind? A. He has not occupied the entire mind that I claim to possess, for the whole time that the mind has been in existence, but whenever I have thought of it at all, I have thought of Tilton, for the reason mentioned. It was a very impressive incident, my seeing a man there whom I had so little expectation of seeing. I supposed I was going to a procession that Mr. Tilton would not appear in, because I supposed he was a man who had some regard to his own interests.

Q. You don't respect such people? A. Not the slightest. I have an inexpressible contempt for them. [Laughter.]

Q. And this meeting with Mr. Tilton rescued him from that? A. I hope so.

Mr. Evarts—That is all. [Laughter.]

Mr. Beach—It is suggested, your Honor, that it will be convenient for some of the gentlemen who are connected with this trial, in one or another of its departments, if at this point we could take our usual adjournment.

Judge Neilson—Gentlemen of the jury, get ready to retire.

The Court then adjourned until 11 a. m, Monday.

SEVENTY-SEVENTH DAY'S PROCEEDINGS.

REBUTTAL TESTIMONY—MRS. TILTON WISHES TO BE HEARD.

THE WIFE OF THE PLANTIFF DESIRES A COMMUNICATION READ—JUDGE NEILSON TAKES THE MATTER INTO CONSIDERATION—STIR CAUSED BY MRS. TILTON'S ACTION—SEVEN WITNESSES TESTIFYING CONCERNING THE ROSSEL PROCESSION—ALBERT B. MARTIN AND FRANKLIN WOODRUFF CALLED TO REBUT A PART OF MR. TRACY'S TESTIMONY—MR. TRACY'S INTERVIEW WITH MISS TURNER—WHAT HIS KNOWLEDGE OF THE CHARGE AGAINST MR. BEECHER WAS.

MONDAY, May 3, 1875.

One of the most dramatic scenes of the trial, and the only one which has relieved the monotony of its latter days, occurred at the opening of to-day's session, and was evidently a surprise to all except one or two of Mr. Beecher's lawyers. The court had no sooner been organized than Mrs. Tilton, rising like an apparition in her place, and facing His Honor cried out in her low voice, a little tremulous from embarrassment—

"Judge Neilson."

The Judge heard without distinguishing her, and looked around as if to discover whence the call had proceeded, when his attention was called to Mrs. Tilton by Mr. Tice, a spectator who sat near, and who repeated her call, at the same time pointing toward her. Mrs. Tilton, observing that she had the Judge's attention, again spoke up, saying:

"Your Honor, I have a communication which I hope your Honor will read aloud."

Judge Neilson asked Mr. Evarts to attend to the matter. The envelope held by Mrs. Tilton was given to him, and he, remarking that it was addressed to the Judge, passed it to Judge Neilson, who, after reading the communication, said:

"Mrs. Tilton, this matter will be considered deliberately."

The full contents of the communication were not made public, all parties to the suit declining to give a copy for publication. Judge Neilson said that the matter was one to which he felt he ought to give the utmost deliberation. Notwithstanding the request of Mrs. Tilton that it be read aloud he felt compelled, at least for the present, to consider it as a confidential communication, and even should Mrs. Tilton consent to its immediate publication by him he should decline to give a copy for publication at once. He said the matter would be considered to-day, and possibly, if both counsel for Mr. Tilton and Mr. Beecher consented and Mrs. Tilton insisted, it might be made public.

CHARACTER OF THE TESTIMONY.

The testimony produced by the plaintiff in rebuttal, was directed in the main toward proving that Mr. Tilton did not ride in the Rossel procession in 1871 with Mrs. Woodhull or Miss Claflin. Seven witnesses were called to testify on this point, and were examined by Mr. Morris and cross-examined by Mr. Evarts. Their evidence was mainly corroborative, and went to show that Mr. Tilton had walked in the procession with John Swinton, and had not been in the company of any lady. The first of these witnesses was Albert Berghaus, an artist attached to *Frank Leslie's Illustrated Newspaper*. A copy of that paper, containing a sketch which he had made of the procession was produced, and the witness pointed out the figures intended to represent Mrs. Woodhull, Miss Claflin and Col. Blood. Henry O. Fox, a printer; William Force, a candy manufacturer, Lawrence S. Kane, a newspaper reporter; Theodore H. Banks, the marshal of the procession; James W. Stillman, a lawyer, and Henry P. McManus, a printer, gave substantially similar accounts of the procession. A small carved head of Gen. Ryan, representing him as wearing a broad-brimmed military hat and long flowing hair, was shown to all of the witnesses who professed to have known Gen. Ryan, and was recognized by them as a good likeness. The similarity to the outlines of the face and head of Mr. Tilton was striking, and tended to confirm the theory of the prosecution that Gen. Ryan was mistaken in the procession for Mr. Tilton. Several of the witnesses swore that Gen. Ryan rode in a carriage with one or more ladies.

Much laughter was caused by a remark of Mr. Force, one of the witnesses who saw the procession. He had said that two of his friends who had stood watching the procession with him had died since that time. Judge Neilson asked if they had died after the procession. "Yes," replied the witness in the most matter-of-fact manner, "after that, Sir. Oh, it could not have been before." Several more witnesses were called by the defense in regard to this procession, but they were not present in court.

Albert B. Martin, the Superintendent of the free reading-room of the Church of the Pilgrims, was called to testify in reference to the interview at Mrs. Ovington's house between Gen. Tracy and Bessie Turner just previous to her appearance before the Investigating Committee. The witness said that he had called at Mrs. Ovington's on that day to see Mrs. Tilton, and had found Bessie Turner and Gen. Tracy talking together in the parlor. Mrs. Tilton and himself sat for two or three hours on the back piazza, and Gen. Tracy remained with Miss Turner during all that time. The object of the plaintiff's lawyers in bringing this witness was to disprove the statements of both Bessie Turner and Mr. Tracy. Miss Turner testified that the interview lasted only ten minutes, while Mr. Tracy stated that it was about an hour in length. A few sharp words passed between Mr. Beach and Mr. Shearman during the examination of this witness. One asserted that the other's statements about Gen. Tracy's testimony were incorrect.

"Well, Sir," said Mr. Beach, "I have some memory and intelligence, and there I differ somewhat from the gentleman."

The jurymen appeared to take a deep interest in Mr. Martin's testimony, and one of them asked him a question in reference to the time consumed by the interview.

The plaintiff's counsel recalled Franklin Woodruff with a view to impeach the testimony of Gen. Tracy. Mr. Beach's first question to him was in reference to an interview with Gen. Tracy in 1872. Mr. Evarts objected to the question, and long arguments between the senior counsel on both sides took place. Mr. Beach said that his object was to prove that Mr. Tracy knew that the charge against Mr. Beecher was adultery long before 1874. Judge Neilson finally allowed the question to be asked. The witness then said that in 1872 he told Mr. Tracy that the charge was adultery. He called Mr. Tracy's evidence in question in several other particulars relating to the interviews between them in 1872. Mr.

Evarts objected to nearly every question put to this witness on the ground that the previous rulings of the Court would not allow them. Judge Neilson instructed Mr. Beach to make his questions the same in substance as those which had been asked of Mr. Tracy, and all new matter was excluded. The Judge wished to have the examination of Mr. Woodruff finished before the close of the session, but, as it was nearly 4 o'clock, the counsel for the defense said they could not finish their cross-examination if it were begun. The Court accordingly adjourned.

THE PROCEEDINGS—VERBATIM.

MRS. TILTON PRESENTS AN OPEN STATEMENT TO THE JUDGE.

The court met at 11 a. m., pursuant to adjournment.

After the Clerk had called the jury, Mrs. Tilton rose from her seat and said:

Mrs. Tilton—I have a communication which I hope your Honor will read aloud.

The communication, being contained in an unsealed envelope, was handed to Mr. Evarts, who said: "It is addressed to your Honor," and it was then handed to Judge Neilson. After reading it, Judge Neilson said:

Judge Neilson—This matter will be considered deliberately. Mr. Morris will you proceed?

Mr. Morris—Albert Berghaus.

TESTIMONY OF ALBERT BERGHAUS.

Albert Berghaus was called and sworn on behalf of the plaintiff, and testified as follows:

Mr. Morris—Where do you reside, Mr. Berghaus? A. In Hoboken, State of Jersey.

Q. What is your business? A. I follow the profession of what is commonly called artist.

Q. In what line—what branch? A. I am engaged in illustrating newspapers.

Q. How long have you been engaged in that business? A. For nearly 20 years.

Q. In 1871 were you connected with *Frank Leslie's Illustrated Newspaper?* A. I was, Sir.

Q. Did you see the procession the 19th of December—the 17th of December—1871, the Rossel or Communist procession? A. I did.

Q. Where was it that you first saw that procession? A. I saw portions of the procession for the time of an hour's duration before it started as such, and afterward, after the procession formed, after they were in rank and line, I saw them pass by me.

Mr. Beach—Did you see the different deputations gather?

Mr. Morris—The different sections of it—delegations? A. I did; I saw them all together.

Q. Where was that—what point? A. From a point which I occupied in Great Jones-st.

Q. Did you make a sketch of the procession? A. I did.

Q. Will you look at that and say whether that is the sketch that you made? [handing witness a copy of *Frank Leslie's Illustrated Newspaper.*] A. This is a picture which represents what I saw.

Judge Neilson—Taken from your drawing? A. Taken from my sketches, and also engraved from a drawing which I executed on wood, from my own sketches.

Q. And under your supervision? A. Under my supervision.

Mr. Morris—Will you state who that is carrying the banner there—that lady? A. This lady is, as I understand to be, Miss Tennie Claflin.

Q. And who is *that* intended to represent? A. Mrs. Victoria Woodhull.

Q. And that gentleman there, between? A. Col. Blood, as I ascertained to be.

Q. How many women were there—ladies—in the procession there? A. To judge from this drawing, which I have no hesitancy in pronouncing pretty nearly correct, from six to ten.

Mr. Evarts—From six to ten women?

The Witness—From six to ten women.

Mr. Morris—[To Mr. Evarts.] Shall the jury see this?

Mr. Evarts—If it is put in evidence. I have no objection to their seeing it as a matter of curiosity. If it is to be offered in evidence, of course the jury are to see it.

Mr. Beach—Where were Woodhull and Claflin, with reference to the head of the procession? A. The two ladies were in the immediate rear of a colored band of soldiers.

Mr. Morris—And what was their position with reference to the head of the procession? A. The band of soldiers?

Mr. Beach—Yes. A. At the head altogether, following, if I am not mistaken, two or three marshals.

Mr. Morris—That is, the soldiers, you speak of? A. That is a company of colored soldiers.

Q. And they were immediately in the rear? A. In the rear.

Mr. Beach—Does he mean the colored soldiers were in the rear?

The Witness—The women were in the immediate rear of the soldiers—following the soldiers.

Mr. Morris—All the women? A. All the women.

Q. And who was in company, if any person, with Miss Claflin? A. A gentleman whom I ascertained to be, at a later period, Mr. Stephen Pearl Andrews and Col. Blood.

Q. And who were immediately behind the ladies? A. Several women whose names I don't know

Q. But behind the ladies; they were in one section together, were they not? A. Yes, Sir.

Q. Who were immediately behind? A. A crowd of about from 40 to 50 foreigners—apparently foreigners—carrying banners of different denominations, French, Cuban, and, I believe, Italian; and I am quite sure that there was a Swiss flag carried by one of them.

Q. This sketch is intended, is it not, to represent the main feature of the procession? A. That represented the center of attraction.

Q. Now, Mr. Tilton, did you see him in the section represented in this drawing? A. I did not.

Q. This drawing does not represent the whole line of the procession? A. Only a portion of it.

Q. Only a section? A. A section; the center point, as it is generally called.

Mr. Beach—By that does he mean the center of the procession?

Mr. Morris—Do you mean the center of the procession, or the center point of attraction? A. The center point of attraction. Generally there is in such processions one point of attraction.

Q. And about what length did that occupy—that section, which is represented? A. Which is represented here—about a block and a half of our streets.

Q. And how long was the procession altogether, do you think? A. I should judge it to be about half a mile.

Q. You say that after the procession was formed, and you made your sketch, the whole procession passed you? A. I beg your pardon?

Q. The whole procession, after it was formed, passed you—you saw the whole procession? A. It passed the position which I occupied.

Q. Did you observe Mr. Tilton at all? A. I did not.

Q. Do you know him? A. I do.

Q. Did you then—did you at that time? A. I am not positive.

Q. By sight? A. I am not positive; I may have known him from pictures, but I am not positive whether I knew him by sight.

Q. But you since have become acquainted with him? A. Oh, yes.

Q. And was he in the vicinity of the ladies at all? A. I believe not.

Q. If he was you did not see him? A. I did not see him.

Q. At all events, he was not in company with Mrs. Woodhull and Miss Claflin? A. Positively not.

Mr. Evarts—Now, Mr. Morris, do you offer it in evidence?

Mr. Morris—Yes.

Mr. Evarts—Your Honor will remember that we offered in evidence the written description of the locality of these people, and it was disputed. I am not aware that a graphic one is any better.

Mr. Morris—It is more graphic; we bring the procession here—a portion of it.

Mr. Evarts—At any rate I will cross-examine about it before it is offered—before it is admissible.

Mr. Morris—Well, we offer it.

Mr. Evarts—Are you through?

Mr. Morris—No.

Mr. Evarts—I will cross-examine about it.

CROSS-EXAMINATION OF ALBERT BERGHAUS.

Mr. Evarts—Mr. Berghaus, this paper is dated January, 1872. When did it pass through the press? when was that picture printed? [Handing the paper to witness.] A. This picture was printed the week following the event.

Q. Following the 17th day of December? A. The 16th.

Q. The 16th?

Mr. Morris—The 17th.

Mr. Evarts—The 17th?

The Witness—Was it the 17th?

Mr. Evarts—So we say—we two.

The Witness—Yes, Sir.

Q. What day of the week was the 17th? A. On a Sunday.

Q. Oh, yes, I remember now. Now, during the following week that picture was printed, was it? A. It was drawn and engraved, but whether it was published in that same week I am incapable of saying; or whether it was published the week after, that I could not say.

Q. Well, besides being drawn and engraved, when was it, as distinct from publishing? A. As far as I believe, it was published as soon as the facilities of the establishment afforded, after the event.

Q. Well, that is interesting information to me; I don't know anything about that. Do you know anything about it? A. I know that a certain time is required before a paper, in order to engrave—to draw, engrave, and set the type—a certain time is required for the issuing of a number of these papers.

Q. I dare say. Now, what is that certain time? A. That certain time varies; it may require, according to circumstances, so many days, and perhaps less or more.

Q. Well, that is your definition of "a certain time?" A. There is certainly a certain time required.

Q. Well, what is that certain time that is required?

Mr. Morris—It is an uncertain time.

The Witness—Mr. Evarts, that is not within my ability to tell you exactly.

Q. Very well. Then by "a certain time" you mean that some time must necessarily be taken in the preparation of such a picture as that for the press? That is about it? A. Exactly, Sir.

Q. Now, as matter of fact, do you know anything as to how long it was before that picture of this procession was

in condition to be put on the printing press? A. I could not say, Sir.

Q. Now, what share did you have in the production of that picture? A. I made sketches on paper on the Sunday on which the procession took place; then from my own sketches I made a drawing on wood.

Q. As an engraver, yourself? A. No, Sir; as what is commonly called artist on wood—draughtsman on wood.

Q. Draughtsman on wood; for the use of the engraver? A. For the use of the engraver.

Q. And from that the engraver made the engraving? A. The engraver engraved my drawing.

Q. Did your drawing as you thus prepared it for the engraver's burin—did it contain that whole procession, as it now looks? A. Yes, Sir.

Q. When did you compose that procession? A. I did not compose the procession.

Q. Who did? A. That I don't know.

Q. I mean this picture. A. Ah! This picture I composed on Monday.

Q. You composed that on Monday. Now, when you began to compose that on Monday, what had you already in the shape of a picture? A. Nothing, save my sketches.

Q. What were they? A. They were sketches made on paper.

Q. Well, I know; but what were they sketches of? A. Of different features of this procession.

Q. Which features? A. Those features that I have represented in this picture; such as the band of soldiers—a company of soldiers; ladies, women, representatives of different nationalities; a band of drummers, a catafalque on wheels drawn by six horses, and a crowd of different people following that, etc.

Q. How many pieces of paper was all that on? A. I could not tell you.

Q. About how many? A. I do not recollect whether I had a sketch-book—a bound sketch-book—with me, or flying leaves.

Q. Well, how many pages of a sketch-book and how many flying leaves—take it either way—was all this on? A. I could not tell you.

Q. How long were you in making all those pictures that you had in your possession before you composed this engraving of the procession? A. You mean those sketches?

Q. Yes; how long in actually making those pictures? A. I believe it took me about an hour or an hour and a half to collect the material for this picture.

Q. You mean on the spot? A. On the spot.

Q. Now, after you had done that, on the spot, how long did it take you to make the sketches and reduce them to the shape in which you used them for the composition of this entire picture?

Mr. Beach—He made the sketches, I understand, on the spot?

Mr. Evarts—Yes, certainly. A. If I understand you rightly, Mr. Evarts, the question is, how long it took me to make the drawing on wood?

Q. No; my question is this: You say you spent an hour and a half on the spot? A. I think so.

Q. Making certain sketches. Now how long—how much work did you do on those sketches before you commenced the actual composition of this entire picture? A. Nothing further but what I took there on the spot, in the street.

Q. Very well. Now, where did you stand that hour and a half? A. I stood in different positions, in different streets.

Q. Could you draw while you were moving from place to place? A. Well, these sketches were made when I was walking from one street to another, looking at the different portions of the intended procession; they were in Seventh and Eighth-sts., and, if I am not mistaken, in Fourth-st. The principal portions of what I sketched I found in Seventh-st., in front of the Armory of the Lafayette Guards.

Q. Now, where are those original sketches? A. I have been trying to find them but have not been successful.

Q. Well, don't you—did you preserve, as a habit, the sketches? A. That would accumulate an immense amount.

Q. So you cannot give us your original drafts? I could not.

Q. No part of that was furnished to you by a photograph? A. Not a single portion.

Q. How much was there of detail or finish in your sketches—anything but mere hints for you when you came to the principal work? A. No, Sir.

Q. Nothing but mere hints? A. No, Sir; positive drawings.

Q. Well, I asked you. A. (Continuing.) So as to enable me to be correct in outline and even in color.

Q. Well, how much of detail or finish was there on these sketches? A. Sufficient for me to produce the picture as it is represented here.

Q. Was it more than hints to you, and the grouping and arrangement of the procession made by yourself afterward when you composed this picture? A. It was what I would call *pro memoria* sketches.

Q. Well, that is what I call hints. A. I would not call it a hint.

Q. What would you call it, in common English? A. I would call it the outline of a future drawing.

Q. To fix in your memory to have you compose? A. It would be utterly impossible to compose a picture of a procession on flying leaves.

Q. I should think so. Now, how many of these people did you know personally? A. Very few.

Q. Did you know any of *this* group of ladies, I will call them [showing paper to witness], and gentlemen that accompany them? A. I did.

Q. Which of them? A. I did know the lady represented there as carrying the flag.

Q. Yes? A. And the one in her immediate rear; I knew them then.

Q. That is Miss Claflin and Mrs. Woodhull? A. Mrs. Woodhull.

Q. Yes. Well, these other ladies—— A. I did not know any of them.

Q. Well, are you quite sure that they are all real ladies that you saw? A. Real ladies?

Q. Well, I mean real persons? A. Oh, certainly.

Q. Or were they put in to enliven the scene? A. No such a thing.

Q. No; is the exact number of women here that were in that procession? A. I believe that at the time the exact number was sketched by me.

Q. And put in here? A. Put in here.

Q. And you are quite sure that there were no women in any other part? A. I am quite sure that there were no women in any other part of the procession that I saw.

Q. Oh; now, what did you mean by this picture being composed to show the center of attraction? A. The center of attraction for myself or for the general public—which answer would you prefer?

Q. Oh, I would take either. What do you mean by the center of attraction, and who determines that? A. Well, I did; I took leave to determine in this case the center of attraction—the mourning car, with the catafalque on the top of it, and the immediate neighborhood of that, in front and behind, which I have tried to represent there.

Q. Well, now, do you think that you put the catafalque and the preceding procession and the immediately following so as to present the line as you saw it formed, or did you group it as you thought it would make an effective and attractive picture? A. I represented it so as it represented itself to me when passing that point of view which I occupied.

Q. Yes; but you went, you say, to various points of view to make your sketches? A. I beg your pardon; I told you I had collected the material for this picture before the procession started, and then I took a position in Great Jones-st. in order to see that procession for the representation of which I had collected the necessary material, and I saw it pass by, and I was enabled to place every sketch, or every object I had sketched, in its proper position according to the way it passed by.

Q. And all your sketches that you had made beforehand came into that order that they are here? A. Whether they were all in or not I could not tell you.

Q. But these certainly were? A. Those features that you see represented there were certainly drawn from the sketches I made.

Q. Well, in regard to the sketches in these papers, are not a good many of them made without an absolute inspection of the scene? A. Yes, Sir.

Q. And sometimes made before the thing takes place? A. I think not.

Q. You don't remember any instance of that kind? A. I may remember if I search in my memory.

Q. Yes, Sir, well—— A. But I could not give you a positive fact now.

Q. But still such a thing might have happened? A. Perhaps in former years, at the time when illustrated newspapers were started, and not a sufficient number of artists on hand to furnish the necessary material, such a thing might have taken place.

Q. Yes; now did you write the letter-press that accompanies this picture? A. No, Sir.

Q. Did you ever read it? A. I happened to read it?

Q. You did happen to? A. A portion of it.

Q. I observe a statement here, "In the middle of the line appeared Theodore Tilton and John Swinton." Now, this picture was of the middle of the line, wasn't it? A. No, Sir, that would not be the middle of the line regarding the extent of it; this procession was a pretty long one, so to speak, and the feature represented in my picture was the head of the procession.

Q. The head? A. The head; the beginning of the procession.

Q. So the center of attraction in this case was at one end? A. The center of attraction was nearer the commencement of it.

Q. Now, Sir, were you personally acquainted with the gentleman that is represented there? A. Not then.

Q. Not then—well, he is a pretty tall man, isn't he? A. A pretty tall man.

Q. And had long hair, flowing locks? A. Long hair, apparently.

Q. Flowing locks? A. Could not say that.

Q. And a broad-brimmed, clerical hat—like? A. Clerical?

Q. Well, that is what I call them—clerical? A. Well, they call them very often Communist hats.

Q. Well, I don't care about the name of it, a broad-brimmed, round top hat? A. Yes, Sir.

Q. And that is all you knew of that man at the time? A. I beg your pardon; he also wore a long beard, a brownish beard, flowing beard, as I well recollect.

Q. Now, who is this gentleman *here*, with the spectacles on? A. I don't know.

Q. And who is this lady—has she got a baby in her arms? A. She carries a baby in her arms.

Q. Well, who is the baby? A. That I could not tell.

Mr. Beach—Did you ask whose it was?

Mr. Evarts—No; I ask who it was. [To the witness.] One of the jurors asks a question—I think you have been asked it—you did not see Mr. Tilton at all, you have stated? A. I did not.

Q. In the procession? Now, I was not attending to your answer to the question which I believe was asked

you, whether you at that time knew Mr. Tilton by sight? A. I am not positive.

Q. You have no knowledge that you did know him? A. I could not say, Sir.

Mr. Morris—Were you acquainted with Gen. Ryan at that time? A. I may have been so.

Q. Look at that [showing witness a small plaster cast of the head of Gen. Ryan] and see if you can say? A. I recollect having made a drawing of a face like that.

TESTIMONY OF HENRY OTIS FOX.

Henry Otis Fox was then called on behalf of the plaintiff, sworn, and examined as follows:

Mr. Morris—Where do you reside? A. In Brooklyn, Sir.

Q. What is your business? A. I am a printer.

Q. Connected with what paper? A. *New-York Independent.*

Q. How long have you been upon that paper? A. I have been there eight years, Sir.

Q. Are you acquainted with Theodore Tilton? A. I have a business acquaintance with him only, Sir.

Q. How long have you known him? A. I have known him eight years in that capacity, simply a business capacity.

Q. Did you know Gen. Ryan? A. I did, Sir, by ——

Q. Sight? A. Sight.

Q. Will you state whether that is a representation of him? [Showing witness a small plaster cast of Gen. Ryan.] A. I should say that was a good representation of Gen. Ryan.

Q. How tall a man was Gen. Ryan? A. Well, Sir, I could not say; perhaps—he was not so tall a gentleman as Mr. Tilton, but a somewhat tall man and of slight build.

Q. Did you see this procession that has been spoken of on the 17th of December? A. I did, Sir.

Q. At what point did you first see it? A. My impression is that I first saw that procession during its formation near Cooper Institute; and from that time I saw it at different points, and perhaps continuously until it broke up in Union-square.

Q. You saw it at different points, you say? A. Yes Sir.

Q. Did you see the procession—did you see the whole of the procession? A. I did, Sir.

Q. Did you see the head of the procession when it started? A. I saw the whole procession, whatever there was of it.

Q. Did you observe the colored troops? A. I did, Sir.

Q. And by whom were they followed immediately in the rear, ladies or gentlemen? A. My impression is, at this time, that they were followed by, if not immediately quite directly followed by, a lady and a red banner, the banner of the Commune, I presume it would be called.

Q. Did you ascertain who that lady was? A. I did not, Sir. I have no knowledge who she was.

Q. Accompanied by any gentleman? A. There were gentlemen in and around; I could not say, perhaps, that she was accompanied by them.

Q. How near to her were the other ladies who were in the procession? A. Well, my remembrance is that other ladies whom I saw in the procession were in a carriage; those are the only ones I remember of at this time, Sir.

Q. Did you know Col. Blood at that time? A. I did not, Sir.

Q. Mrs. Woodhull? A. No, Sir.

Q. Did you at any part of that procession see Mr. Tilton? A. I did, Sir, several times during that procession.

Q. In company with any ladies? A. With no lady at all, Sir; accompanied by a gentleman.

Q. What? A. Accompanied by gentlemen, at all times when I saw him.

Q. Walking arm in arm? A. Arm in arm, Sir, I saw him.

Q. Now, can you state the different points of the procession at which you saw Mr. Tilton? A. I should not be able to state that, Sir.

Q. Would you recognize Mr. Swinton—turn round and see if you would? A. [After looking toward Mr. Swinton.] I think the gentleman with the gray hair is the gentleman that I saw by the side of Mr. Tilton; that is the gentleman, I think, I saw.

Q. And was he in company with Mr. Tilton at the different points that you saw Mr. Tilton? A. He was, Sir; whenever I saw Mr. Tilton.

Q. Did you see Mr. Tilton when the procession broke up? A. I saw Mr. Tilton in Union-square, near the Lincoln Monument.

Q. Did you see where he went? A. I did not follow him, Sir; I simply saw him as the procession came there and dispersed; I dispersed with the spectators.

Q. Do you recollect of seeing Gen. Ryan in the procession? A. I saw Gen. Ryan riding in a carriage in the procession.

Q. Riding in a carriage; and at about what part of the procession was that? A. I should not be able to identify it, Sir; perhaps it was not far in rear of the body of colored troops: if I remember it correctly the colored troops led the procession; I may be mistaken, however.

Q. Do you know who was with him in the carriage? A. I do not, Sir.

Q. Was he accompanied by any person? A. There were persons in the carriage with him.

Q. Male or female? A. I think there were two ladies in the carriage with him.

Q. Did you know who they were? A. I did not, Sir.

Mr. Beach—Did you see Mr. Tilton at any time in a carriage? A. I did not, Sir.

Mr. Morris—Either before, during, or after the procession broke up, did you see him? A. At no time during the day did I see Mr. Tilton in a carriage.

Q. And when you did see him, he was in company with

Mr. Swinton, you say? A. I think that is the gentleman there; I am not able at this——

Q. At all events, some gentleman? A. Gentlemen on each side of him there were.

Mr. Morris—That is all.

CROSS-EXAMINATION OF MR. FOX.

Mr. Evarts—Mr. Fox, what acquaintance had you with Gen. Ryan? A. I had no general acquaintance with him at all, Sir.

Q. How, and to what extent, had you been in the habit of seeing him? A. I have seen him several times on public occasions; he had been pointed out to me.

Q. Yes; well, was he a gentleman that you would think of comparing in hight with Mr. Tilton? A. I should not in hight, Sir.

Q. Is he a gentleman that you would think of comparing with Mr. Tilton in build or frame? A. I think that from a general description a person never having seen either of the gentlemen might be confused as to identity, on reading a description of them.

Q. Oh, yes; you think a man that never had seen either of them could not tell them apart? A. Well, no, Sir; I didn't say that; not at all.

Q. Now, Sir, the question is of a man that had seen either or both of them and knew their persons—was there any danger of confusing them? A. I should think not, Sir.

Q. Was not Gen. Ryan a very dark-haired man? A. His hair was dark; he was a dark-haired man.

Q. Yes; well, quite dark? A. Well——

Q. Black? A. I should think not decidedly black, Sir.

Q. How many shades this side of black? A. Well, Sir, I could not enter into an analysis of that sort, Sir.

Q. Well, wasn't it as dark as your own? A. Perhaps it was as dark as mine.

Q. Now, did he wear his hair flowing? A. He did, Sir—wore it combed behind his ears, and it was in general appearance not altogether dissimilar to Mr. Tilton's—

Q. Now, don't you know that his hair was very straight and stiff, and not flowing and curly? A. I don't know any such thing.

Q. Well, what is your view on that subject? A. Why, I told you.

Q. Well, was it flowing and curling? A. It was not particularly curly; it was long hair—perhaps you might say it flowed—it was flowing.

Q. Well, I leave that for you to say whether it flowed or not? A. Well, that would depend on the construction which one puts on the term flowing.

Q. Now, if you know that a man's hair is merely stiff and straight, it would not flow from being long? A. Well, I don't know, Sir.

Mr. Beach—He means it would not run; it certainly could not flow, in one sense of the word.

Mr. Evarts—Now, how was Gen. Ryan in respect to a beard or mustache? A. I think he wore no beard or mustache.

Q. Well, are you quite positive about that? A. I feel quite positive of it, Sir; he might have had a slight mustache; I am not positive; I will not swear to that; he wore no other beard.

Q. Than a mustache? A. Than a mustache, but I will not swear that he wore the mustache or that he did not wear a mustache.

Q. You won't swear that he did wear a mustache? A. No, Sir; not at that time.

Q. Isn't it your impression that, being a military man, he did wear at least a mustache, if not a beard? A. My impression is that he had no beard at all, Sir.

Q. Not even a mustache? A. Not even a mustache.

Q. At that time—now about this effigy—[showing witness the plaster cast]—do you know where that came from? A. No, Sir; I do not; I never saw it until the gentlemen passed it up to me.

Mr. Morris—Do you want to show it to the jury?

Mr. Evarts—Oh, no; not yet; not yet.

Q. And, of course, you don't know when it was made or——. A. I know nothing of it, Sir, at all.

Q. Now, where did you stand when you saw women at this procession carrying a banner? A. Well, Sir, that would be a hard question to answer, because I stood all over the lot, so to speak; I was there as a spectator, and a part of the time I stood on the sidewalk and a part of the time in the street; I was there to see the procession, and I saw it.

Q. Well, I mean was it at the point of formation? A. I could not be definite in that respect, Sir.

Q. Did you see Mr. Tilton at the time or point of the formation of the procession? A. A. I would not swear that I did see him at the initial point of that procession.

Q. What is your best recollection? A. My best recollection is that I went and saw the formation of the procession, the formation of the body, or whatever it might be termed.

Q. The line? A. The line coming together; a gradual formation of it in the vicinity of Cooper Institute; I will not be positive as to where I stood, or exactly where the procession itself formed.

Q. Well, did you then see Mr. Tilton? A. I saw him about there, Sir.

Q. At that time? A. At that time, yes, Sir.

Q. And Mr. Swinton in his company? A. I will not swear at that—at the time I speak of, Mr. Swinton was not in company at the moment I speak of—Mr. Swinton at the formation—after the procession was formed and under way, Mr. Swinton was in his company.

Q. That is when they started from that square? A. Yes, Sir.

Q. That you are sure of? A. I feel very positive of it, Sir.

Q. Well, was I wrong in understanding you to say that, at all the times you saw Mr. Tilton, Mr. Swinton was walking with him? A. Mr. Swinton—I will not swear that Mr. Swinton was with Mr. Tilton every time.

Q. I ask you the particular question——

Mr. Beach—Well, he was giving an answer.

Mr. Evarts—Well, have I not understood you to say that at all times that you saw Mr. Tilton in that procession, Mr. Swinton was walking with him? A. After the procession was formed and under way——

Q. At all times that you saw him in the procession? A. Yes, Sir; Mr. Swinton, that gentleman——

Q. Was with him? A. I think so, Sir.

Q. Yes; that you have already answered, as I understand you? A. Yes, Sir.

Q. And did you see Mr. Tilton in the procession as it drew itself into line and went off from that spot? A. I did, Sir.

Q. Yes. Now, Sir, at what other point did you stand and observe this procession while it was on the march? A. Well, Sir, at various points.

Q. Well, just give them all. A. I couldn't do it, Sir.

Q. Well, give me two of them. A. I don't know that I can identify a single point.

Q. Will you give me one—oh, well, not even one? A. Wherever the procession—wherever it was, whatever street it was from which the procession turned from Fifth-ave. across into Sixth-ave.—at the corner where it turned into Sixth-ave.—I saw, and held a position on the curb-stone, directly by the sidewalk, and saw, I think, every face in the procession.

Q. Very well; that is one point? A. That is one point, and that is the only point that I can positively identify.

Q. How did you get up there? A. I walked up there.

Q. Abreast of the procession? A. Abreast of it?

Q. Yes? A. Well, I walked there as spectators would naturally walk.

Q. Well, off its line? A. Seeing the procession marching along.

Q. Exactly—you followed? A. I walked on the curb-stone sometimes, if not obstructed by the crowd; at other times I walked in the street.

Q. Yes, abreast of the procession—took its route and kept it in view? A. I did, Sir.

Q. Very well? A. Except on one or two occasions, I think, I crossed corners in order to see it pass by; I am not sure.

Q. Head it off? A. Head it off, Sir; I am not sure about it; I think that is it.

Q. Now, Sir, what part of the procession as you thus followed it in its march, were you abreast of? A. Well, at times I might be said to be abreast of the whole of it.

Q. Well, you might and might not; I mean while you were marching along—while you were walking along? A. I was abreast at different times; abreast of the whole of it.

Q. Did you start abreast of the head of it? A. I could not say that I did, Sir.

Q. Well, you must have started abreast of some part of it, didn't you? A. Well, I presume so.

Q. Well, can't you tell us at all? A. I cannot identify the particular point, and the number of files, or anything of that sort.

Q. Well, I haven't asked you any very precise question; I have asked you the head, and now I will ask you the tail—whether you were abreast of the tail of it? A. I cannot tell you, Sir, whether I was abreast when it started.

Q. When you began your concurrent march with that procession, were you abreast of its head or its tail? A. Well, my impression is, Sir, that I was about abreast the colored troops.

Q. Well, where were they; at the head or the tail? A. They were at the head of the procession, I believe.

Q. Then, you think you were ahead? A. I think so, Sir.

Q. Abreast of the head—now, did you keep there? A. No, Sir, I did not.

Q. As you walked along with it? A. Not altogether, no, Sir.

Q. Well, did they get ahead of you? A. Well, yes, Sir, they did get ahead of me simply because I——

Q. Although you cut across once or twice? A. Simply because I chose; I wanted to see the procession file by me, and they got ahead of me, I think.

Q. And then you caught up to them? A. Yes, Sir.

Q. Now, Sir, in what part of the procession, as respects its head and tail, did you see Mr. Tilton? A. My impression is that Mr. Tilton perhaps might have been 800 feet in the rear of the lady who carried the red flag.

Q. Might have been, of course? A. That is my impression as to where he was.

Q. Yes. A. He might have been; I don't swear positively to any particular point, understand me, Sir; I am not able to do it at this distance of time.

Q. Well, I suppose not; I am sure I don't want you to do it if you cannot. How many feet was he ahead—you say he was 800 feet behind the lady with the banner—how many feet was he ahead of the extreme rear of the procession? A. I cannot say, Sir; I never computed it.

Q. How many other ladies did you see in the procession? A. I could not say; three or four, or perhaps five ladies who took part in the procession.

Q. Besides the lady who carried the banner? A. I think I remember; I would swear to only four, and perhaps not more than three.

Q. Well, you saw every face in the procession? A. I did at that time, certainly, Sir.

Q. And you knew the women from the men? A. I did.

Q. How many women were there? A. I am not able to state.

Q. Three, possibly? A. I don't remember distinctly enough to say.

Q. You swear to three? A. I will swear that there were three there; yes, Sir.

Q. And you won't swear to more? A. I won't swear to more.

Q. How many of those three did you know? A. I didn't know any of them.

Q. You didn't know the lady with the banner, then? A. No, Sir.

Q. And you did not inquire, or she was not described to you at the time? A. I did inquire.

Q. Was she pointed out to you, or was she described to you? Do you say that you knew then who she was? A. Well, I was told that that was Claflin.

Q. Now, was there any other of the three ladies known to you or made known to you by being pointed out? A. I was told that one of the ladies in the carriage with Gen. Ryan was Mistress Woodhull.

Q. Now, about the other ladies. A. I don't know, Sir; I don't remember.

Q. Then, as I understand it, Miss Claflin carrying the banner and Mrs. Woodhull and another lady in a carriage with Gen. Ryan are the only ladies that you saw in that procession? A. I am not able to say that I saw Miss Claflin, in the proper essence of the word, of my personal knowledge.

Q. I understand that; but the lady pointed out to you? A. I saw the ladies that were pointed out as such.

Q. A lady pointed out as Miss Claflin? A. Yes.

Q. And a lady pointed out as Mrs. Woodhull, in a carriage with Mr. Ryan, and another lady not pointed out or not known to you—those are the only ladies that you can say you saw? A. They were the only ladies that I can say I saw; I don't say that there were not other ladies there.

Q. Did you see any lady in that procession carrying a baby? A. Not that I remember.

Q. Would not that have attracted your notice? Don't you think it would have attracted your notice if you had seen a lady carrying a baby? A. Very possibly it might have done so at the time; but if it did it has passed from my memory.

Q. Oh, I dare say. I am not sure there was any one there [showing witness the picture in *Frank Leslie's Illustrated Newspaper*]. Now, Sir, do you think there was any such group of women in the procession as that shown in that picture? A. Well, I remember nothing that impressed me with that view of it, Sir.

Q. Now, Sir, what was the route of the procession? A. I could not give that; I paid no attention to the route.

Mr. Evarts—That is all.

Mr. Beach—Mr. Morris, will you ask this gentleman whether he is sure of seeing Mr. Swinton with Mr. Tilton below Eighth-st.? Let him not be mistaken in regard to that.

Mr. Morris—Can you say positively whether you saw Mr. Swinton in company with Mr. Tilton below Eighth-st.? A. Below Eighth-st.—I would not like to swear that I saw him, Sir.

Mr. Morris—That is all.

TESTIMONY OF WILLIAM FORCE.

William Force was called on behalf of the plaintiff, and sworn.

Mr. Morris—Where do you reside? A. In Brooklyn.

Q. What is your business? A. Confectionery.

Q. Whereabouts do you carry on that business? A. In New-York, and at No. 292 Court-st., Brooklyn.

Q. Are you acquainted with Theodore Tilton? A. I have known Theodore Tilton since he was a boy; that is, not intimately, to speak to him, since he has grown to be a man, but when he was a boy.

Q. You have known him by sight since he has grown to be a man? A. Yes, Sir.

Q. And have been in the habit of seeing him frequently? A. Yes, Sir.

Q. Did you see the procession that has been spoken of here on the 17th of December, 1871? A. Yes, Sir; on Sunday.

Q. At what point did you first see it? A. In Great Jones-st.

Q. Did you see the whole procession? A. I saw the whole procession pass through Great Jones-st.

Q. Did you see Mr. Tilton? A. I did.

Q. In company with any one? A. There was a gentleman walking with him.

Q. Would you recognize that gentleman? A. Well, it was rather a cloudy day, and the gentleman appeared to me to have a cloak on.

Q. Did you see any ladies in the procession? A. I did.

Q. How far were they from Mr. Tilton and this gentleman that you saw? A. As far as from here to Atlantic-st.

Q. Did you see either of the ladies carrying a banner? A. I did.

Q. Were you acquainted with Col. Blood at that time? A. No, Sir.

Q. Or with Mr. Andrews? A. No, Sir.

Q. Do you recollect how many ladies there were in the procession—have you any idea? A. Well, there appeared to me to be—it astonished me to see so many; I saw five or six ladies in the procession; it was the first time that I ever saw any ladies in a procession of the kind.

Q. Were they near together? A. Yes, Sir.

Q. Was Mr. Tilton near those ladies? A. No, Sir.

Q. Was he in front of them or behind them? A. Oh, he was away behind.

Q. Did you see the procession at any other point in its route? A. No, Sir; I just saw them go through Great Jones-st.

Q. Did the entire procession pass you? A. The whole procession went through.

Q. Did you observe the colored troops? A. Yes, Sir.

Q. How near to them were the ladies? A. They appeared to me to be just behind them; I thought they were there; it occurred to me to kind of protect the ladies, or something or other; I didn't know but there might be a row.

Q. Did you see the baby? A. I saw a woman with a baby in her arms.

CROSS-EXAMINATION OF MR. FORCE.

By Mr. Evarts—Where do you reside? A. No. 292 Court-st.

Q. In this city? A. Yes, Sir.

Q. And your business is? A. In New-York and Brooklyn—Riddle & Co., successors to R. L. & A. Stuart.

Q. You have shops in both cities? A. Yes, Sir; this here is separate.

Q. Did you go over to New-York to see this procession? A. Purposely.

Q. And to see the whole of it? A. Yes, Sir.

Q. Had you any special interest in the objects or enthusiasm of that occasion? A. Well, I had; because I heard that they had killed a priest in the Old Country, and I wanted to see the parties——

Q. To see what kind of people they were that were celebrating the occasion? A. Yes, Sir; that is what I wanted to see. I felt a little prejudice against them at that time; but since I have not.

Q. You have changed your views? A. I have changed.

Q. From seeing that procession? A. Well, from what I have read.

Q. Not from the impression that the procession made on you? A. No, Sir.

Q. Where did you take up your point of observation? A. In Great Jones-st.

Q. Were you there before the procession was formed? A. Yes, Sir; before it came through.

Q. Did you stand still until it passed by you? A. Yes, Sir. There were two gentlemen with me and we stood still. There were two gentlemen with me at the time, that were sick, and they scolded me for standing there, and I told them it would be all right.

Q. Who were those two gentlemen? A. Mr. Martin and Mr. McDermott; they are both dead.

Q. Both dead? A. Yes, Sir, both dead.

Q. Did you regret it afterward that you had kept them standing there? [Laughter.] A. It was not the——

Mr. Morris—One moment.

Mr. Beach—Oh, let him ask it.

The Witness—It was not the cloudy day that made them sick; they were sick before that for years.

Q. And so they told you they did not want to stand? A. They did not want to stand, but I was determined to see it.

Q. Yes; and they both died? A. Not from that.

Judge Neilson—After that?

The Witness—Yes; after that, Sir. Oh, it could not have been before. [Laughter.]

Mr. Evarts—Well, Mr. Force, the whole procession did pass by you? A. Yes, the whole procession, Mr. Evarts, passed through Great Jones-st.

Q. And after it got by you, what did you do then? A. I walked down Broadway.

Q. You left and went about your business? A. Yes, Sir.

Q. Were those two gentlemen with you? A. Yes, Sir; I took them into a hotel and treated them.

Q. Treated them? A. Yes, Sir; because they were cold—they were very cold.

Q. Had that anything to do with their death, do you think? [Laughter.] A. Oh, not at all. You know, we take a little wine once in a while when we go out to suppers.

Q. Very well. So that was your sole point of observation? A. Yes, Sir.

Q. Now, as Mr. Tilton passed you, along through Great Jones-st., was he alone? A. No, Sir.

Q. Who was with him? A. A gentleman.

Q. Who was he? A. I could not say.

Q. Was he Mr. Swinton—that gray-haired gentleman who is hiding himself over there? A. [Looking at Mr. Swinton.] Well, if he was dressed as he was dressed at that time, probably I could recognize him.

Q. He did not have his hat off, I suppose? A. No, Sir; he did not—the gentleman that was with him. I can tell a man, if I have once seen him, 20 years afterward. I have seen you (Mr. Evarts) thousands and thousands of times.

Q. Well, I hope you will be able to recognize me 20 years hence. A. I will recognize you, Sir; I have seen you when I was a boy. [Laughter.]

Mr. Beach—I hope you will see him a thousand years hence. [Laughter.]

The Witness—I hope so.

Q. You did not follow the procession throughout its route? A. No; on account of those two gentlemen being sick.

Q. Now, about this group of women; were all the women that were in the procession at the same point in the procession? A. I saw a number of women—ladies, walking together close to those, Tennie Claflin and Mrs. Woodhull——

Q. You knew them by sight, did you? A. Yes, Sir; by seeing them around town.

Q. And the other ladies, did you know any of them? A. No, Sir.

Q. Now, aside from that group, did you see any ladies in the procession? A. I saw ladies in a carriage.

Q. How many? A. Well, I think not over two.

Q. Was anybody [illegible] carriage with them? A. There was a gentleman.

Q. Did you know either of those ladies? A. No, Sir.

Q. Neither of them was Miss Claflin? A. Oh, no.

Mr. Evarts—That is all.

Mr. Morris [calling a new witness]—Mr. Kane!

Mr. Kane [from the reporters' table]—I have not been subpenaed.

Judge Neilson—Mr. Kane! Is that your name?

Mr. Kane—Yes, Sir.

Judge Neilson—Well, come forward; you don't need to be subpenaed; you are here. [Laughter.]

TESTIMONY OF LAWRENCE S. KANE.

Lawrence S. Kane, called on behalf of the plaintiff, sworn, and examined:

Mr. Morris—I will just ask a question or two, Mr. Kane; you are a reporter attached to the press? A. Yes, Sir.

Q. Did you see the procession on Sunday, the 17th of December, 1871? A. I did, Sir.

Q. At what point did you see it? A. Well, I saw it all along, I believe; I was sent by *The Sun* to report it, and my recollection is that I followed it all through; I am not sure, though.

Q. You were there in the capacity of a reporter? A. Yes, Sir.

Q. Did you know Miss Claflin and Mrs. Woodhull at that time, by sight? A. Yes, Sir; I did.

Q. Did you see them in the procession? A. I did, Sir.

Q. At what point? A. I believe they were right after the colored troops, the Skidmore Guards Company.

Q. Was either of them carrying a banner? A. Yes, Sir; Miss Claflin was carrying a banner.

Q. Was there any gentleman with them? A. There were one or two gentlemen with them. One of them was pointed out to me as Col. Blood (I did not know him), and another one as an old gentleman that swept out Mrs. Woodhull's office. [Laughter.] I don't know whether there were any others or not.

Q. And you knew Mr. Tilton at the time? A. No, Sir; I did not.

Q. You have seen him since, and know him since? A. I have seen him since.

Q. Did you see him in the procession? A. I did not see him.

Q. You did not notice him? A. No, Sir; he might have been there.

Q. Were you acquainted with Gen. Ryan at that time? A. I was very well acquainted with him.

Q. [showing witness the plaster cast of Gen. Ryan] Will you state whether that is a fair representation of his head? A. It looks something like him.

Q. He wore his hair long? A. He wore his hair long.

Q. And behind his ears? A. And behind his ears.

Q. And such a hat as is there represented? A. Yes, Sir; the brim a little broader than that.

Q. Any beard? A. He had no beard.

Q. Any mustache? A. No moustache; I never recollect him wearing any mustache, and I have known him a long time.

Q. How tall was he? A. He was about 5 feet 8 or 9, I don't think he was much taller than that.

Q. How tall, with reference to your hight? A. He was not as tall as me.

Q. You think he was not as tall as you are? A. No, Sir.

Q. Did you see him that day? A. I did, Sir.

Q. Where was he? A He was in a carriage.

Q. Any one in company with him? A. He was with O'Donovan Rossa, and, I believe, a Cuban, whose name I did not know, or don't recollect.

Q. And did you see how many ladies were there in the procession—do you recollect? A. Well, there were quite a number of them walking after Tennie Claflin; I think I counted them and gave the number in my report; I do not recollect what it was, but I think it was 23.

Q. Twenty-three? A. Yes, Sir; or 23 in the whole procession; I am not sure which; I do not recollect.

Q. But there was a number, at all events? A. There were a number.

Q. How were they situated with reference to the colored troops? A. They were right behind Tennie Claflin; Mrs. Woodhull walked right after Tennie Claflin.

Q. How did Miss Claflin walk with reference to the colored troops? A. She walked, I believe, right behind them; she walked in front as a kind of commander of these women.

Q. Was she carrying a banner? A. She carried a red flag with a red border, and a white circle in the middle, with an inscription on it—a white center.

Q. Did you follow the procession during its entire route? A. I believe I did.

Q. And did those ladies maintain that relative position during the entire route of the procession? A. So far as I recollect, they did, Sir.

Q. And during any part of the march did you see Mr. Tilton? A. No, Sir, I did not; I didn't know him; I didn't take notice of him; I do not recollect seeing him at all.

CROSS-EXAMINATION OF MR. KANE.

Mr. Evarts—You are a reporter, now connected with the press? A. Yes, Sir.

Q. And have been in attendance on the trial here? A. For the past two weeks, Sir.

Q. You noted these ladies, and there were 23 of them? A. I think so; I don't recollect the exact number.

Q. At any rate, you counted them? A. Yes, Sir, and gave the number in my report.

Q. And it was a considerable number? A. It was a considerable number.

Q. Did either of them have a baby? A. Yes, Sir; one of them carried a baby.

Q. One of them had a baby? A. Yes, Sir.

Q. Did you see any ladies or females in any other part

of the procession? A. Yes, Sir; I think there were some in a carriage.

Q. How many? A. I don't recollect; I think there was—I think there was two carriages full of them.

Q. And how many ladies in each? A. I think there were four in each; I am not sure, though.

Q. Four ladies in each? A. Perhaps so; I don't recollect.

Q. Did you know, or at the time were they made known to you in any way—those ladies in the carriage? A. I believe I asked who they were—yes, Sir; but I don't think I found out.

Q. They were not known to you? A. They were not known to me.

Q. And were Mrs. Woodhull and Miss Claflin known to you by sight? A. Yes; I had seen them before.

Q. Did you know any of the other 23 ladies that were in the principal group? A. No, Sir, I did not.

Q. Now, you say you saw the whole procession, as I understand; did you stand at a point and see it all pass by, or did you go after it? A. Well, I believe I went after it the most of the way, because I recollect being at the start and at the finish; I think I went around all the way with it, I don't recollect, though; I guess——

Q. Now, do you think that you were abreast of this group of ladies all the way? A. No, Sir; I do not.

Q. Were you, any part of the way, abreast of them? A. I think so; yes, Sir.

Q. How much of the way? A. I could not say.

Q. Now, what was the extent of your personal acquaintance with Gen. Ryan? A. Oh, I had known Gen. Ryan for a long time. I had been with him—talked with him, and had conversations with him in regard to their Cuban business, and he was also associated in a newspaper on which I was employed part of the time.

Q. What paper was that? A. *Our Society*, a fashionable paper in New-York.

Q. So that you knew him very well? A. So that I knew him very well.

Q. You have often stood up together in talking, haven't you? A. Yes, Sir.

Q. Do you know whether he was as tall as you, or not? A. He was not as tall as me.

Q. You put him at about five feet eight? A. I should judge so.

Q. Now, in regard to his hair, was it not black? A. No, Sir, it was not black

Q. As dark as yours? A. Yes, Sir; about as dark as mine; dark brown.

Q. Was it of a curly temper or tendency? A. Yes, Sir, it was at the end; and he wore it long.

Q. It curled? A. Well, yes; it was wavy.

Q. Wavy? Did he wear it down his shoulders? A. No, not quite as long as that. He wore it down to here [laying his hand on his neck.]

Q. Well, didn't he wear a military hat? A. Yes, Sir; he did.

Q. A broad-brimmed military hat, with a cord and tassel on it? A. Yes, Sir.

Q. And some gilding about it? A. I don't think there was any gilding about it.

Q. Not about the cord and tassel? A. Not about the cord.

Q. Nothing? A. No, Sir.

Q. In this procession he was with O'Donovan Rossa and some other gentleman? A. Yes; I think a Cuban gentleman; I got his name, I believe, at the time; he was sitting on the rear seat.

Q. That is, he was fronting the horses? A. Fronting the horses.

Q. And there was no lady in the carriage? A. No lady in the carriage—no, Sir, not that I recollect.

Q. Well, if you had seen a lady riding on the front seat, and three gentlemen, wouldn't you be apt to recollect it? A. Well, I don't recollect all the details of a thing that happened so long ago.

Q. Well, you made a sort of record of it, didn't you? A. Yes, Sir, but I have not seen that since—have not looked at it.

Q. Well, do you remember whether your record makes any mention of Mr. Tilton being in the procession? A. No, Sir, I don't remember.

Q. You have not examined it to see? A. No, Sir, I have not examined.

Q. But whatever record there is in *The Sun* of the next day is yours? A. Is mine, Sir.

TESTIMONY OF THEODORE H. BANKS.

Theodore H. Banks was called on behalf of the plaintiff, and being duly sworn, testified:

Mr. Morris—Where do you reside? A. In New-York.

Q. Are you acquainted with Theodore Tilton? A. Yes, Sir.

Q. And were you acquainted with Gen. Ryan? A. Yes, Sir.

Q. Do you recollect the procession which marched on the 17th of December, 1871? A. Yes, Sir; very well.

Q. You were marshal of that procession, I believe? A. Yes, Sir.

Q. Now, Mr. Banks, will you state where that procession formed, and the manner in which it came together—the different parts of it? A. Yes, Sir, as near as I can recollect. The right of the procession formed, or was to form, in Eighth-st.; in Seventh-st. the Cubans were to form; in Sixth-st. there were some trades-unions—I think the printers' or the painters'; in Fifth-st. there were some other organizations—I think they were the Swiss; in Fourth-st. were the Internationals, the catafalque, and the citizens; below Fourth-st. I think there were some other organizations—I don't know exactly. I think the Bricklayers; in Fifth-st.—I mean in Third-st.

and in Second-st. there was some—I don't know exactly who was there—I cannot remember who formed there; but the right of the procession formed in Eighth-st.—the Skidmore Guards and the band formed in Eighth-st. and started from Eighth-st. and marched down the Bowery to Great Jones-st., each of the different sections falling in. As the left of the division formed on each street marched down, the right of each division formed on the left of the other, and so on, until they had formed a continuous line. The march was through Great Jones-st. to Broadway, up Broadway a small piece, and through Waverley-place to Fifth-ave.; up Fifth-ave. to Thirty-fourth; across Thirty-fourth-st. to Sixth-ave.; down Sixth-ave. to Fourteenth-st.; along Fourteenth-st. to the Lincoln Monument; around the monument, and then they dispersed.

Q. Now, did you know Miss Tennie Claflin at that time? A. Yes, Sir, I was acquainted with her.

Q. And Mrs. Woodhull? A. Yes, Sir.

Q. Were they in the procession? A. They were in the procession.

Q. At what part of it? A. They were immediately after the band and the Skidmore Guards; they were both together; and after them came the women; that was the place allotted to them, and they marched there.

Q. About how many women, according to your recollection, were there in that procession? A. Well, marching, I think about 20; as near as I can recollect there was about 20 women marching.

Q. Was Mrs. Woodhull or Miss Claflin carrying a banner? A. Miss Claflin carried the banner most of the way there; I believe it was carried part of the time by Miss Morrill.

Q. Were they accompanied — Miss Claflin and Mrs. Woodhull—by any gentleman? A. Oh, several.

Q. Who? A. Col. Blood, Stephen Pearl Andrews, Mr. West, and several; I do not remember exactly who were all the gentlemen there.

Q. Did they maintain that position in the procession during its entire march? A. All the way, Sir.

Q. And did you see, or was, Mr. Tilton in company with them during any part of the march? A. Not in any part of the march; no, Sir.

Q. And were they in a carriage during any portion of it? A. They were not; I seen the ladies before the procession, and Mr. Tilton was not with them then—before they had started, because I had allotted them a place——

Q. Did you see Mr. Tilton in the—during the procession? A. I seen him at the finish.

Q. Do you recollect what gentleman he was in company with? A. I did not know him at the time; Mr. Swinton was with him, but I was not acquainted with Mr. Swinton until afterward.

Q. But it was Mr. Swinton who was with him? A. It was Mr. Swinton.

Q. And you were paying strict attention to the procession during its entire march? A. Yes, Sir; I had to do it to see that there were no breaks in the line; I had to be continually looking round to see that there were no breaks or halts; and at every corner I noticed the women marching, because it was a novelty, and I paid particular attention—looking after them and others.

Q. How many carriages were there in the procession, according to your recollection? A. Well, after the procession had marched past, the marshals and the band stood at the Lincoln Monument, and we opened out and they passed through; I do not think there were more than eight or ten carriages.

Q. Was Mr. Tilton in either of the carriages? A. No, Sir.

Q. You are sure of that? A. Sure of that.

Q. Was Miss Claflin or Mrs. Woodhull in either of the carriages? A. No, Sir; none of them.

Q. During no part of the procession? A. At no part of the procession.

Q. You say you knew Gen. Ryan? A. Yes, Sir; well.

Q. Did you see him in the procession? A. He was in the carriage with O'Donovan Rossa and the Vice-President of the Cuban Junta, and some other Cuban.

Q. And did he maintain that position during the march of the procession? A. Yes, Sir; that is I cannot say that he did, but I know that he rode past the marshals at the end of the procession, because we would not allow carriages; we were opposed to carriages anyhow, or horses, but they came there and rode after the procession; we would not allow them to ride *in* the procession, and they rode after it.

Q. Were they at the foot of the procession? A. At the foot of the procession.

Q. Now, where were you when the procession was disbanded? A. Standing at the Lincoln Monument; the Skidmore Guards had presented arms and been halted there, and the ladies halted—Mrs. Woodhull and Miss Claflin halted there, and Col. Blood, and I guess most of them that marched halted there with the ladies, halted there with the marshals, and at the halt Mrs. Woodhull and Miss Claflin were both alongside of me during all the time that the procession was marching through, uncovered.

Q. And the procession disbanded as they passed through? A. Yes, Sir; as they passed through, or marched past us.

Q. Where did you go after the procession disbanded? A. After the procession disbanded, after it marched through, there was a tremendous crowd there and no police protection—not one policeman anywhere—we had to fight our own way through the multitude, although it was peaceable, and Mrs. Woodhull and Miss Claflin and Col. Blood hailed or hired a carriage there, and after they had got in I intended to go away, but there was such a crowd calling on me for speeches, together with considerable opposition that I had——

Mr. Morris—Never mind that.

Mr. Beach—Yes, let him state.

The Witness—I had received several letters threatening me with almost assassination, so I was very glad to accept their invitation to get into the carriage, and I got into the carriage.

Q. You got into the carriage, when the procession disbanded, with Col. Blood, Miss Claflin, and Mrs. Woodhull. A. Yes, Sir.

Q. And rode away with them? A. Yes, Sir; rode away.

Q. Did you see Mr. Tilton there at that time? A. While we were standing he was pretty well towards the latter end of the procession, and when we were standing there, perhaps ten minutes, he marched past without either looking at the ladies or at the Marshals, or at any one else, and went away.

Q. In company with this same gentleman? A. In company with this same gentleman and a great many other citizens—American citizens I take them to have been.

Q. You were the only persons in the carriage? A. The only ones were us four.

Q. And you didn't see Mr. Tilton after he marched past in company with Mr. Swinton? A. No, Sir.

Q. Where did you leave the carriage? State now where you went with Mr. Blood and Mrs. Woodhull and Miss Claflin? A. I rode from the Lincoln monument around the square, took off my sash and crape, so that I would not be recognized as an officer, and rode up Fifth-ave. as far as Twentieth-st., and there got out of the carriage and came back to disperse the crowd; and they went home—went up the avenue.

Q. In the direction of ——. A. Up the avenue.

Q. You left them at Twentieth-st.? A. I left them at Twentieth-st.

CROSS-EXAMINATION OF MR. BANKS.

Mr. Evarts—You were the Chief Marshal of that occasion? A. Yes, Sir.

Q. How many aids or under marshals had you? A. I believe there were eight assistant aids.

Q. Were any of you mounted? A. No, Sir; no horses.

Q. Had you a definite place in the procession after it commenced its march? A. Yes, Sir; the head of the line.

Q. Did you remain at the head of the line until it reached its terminus at Lincoln monument? A. I did, Sir.

Q. And did you look forward or backward most of the time? A. I looked forward and backward both; I had to do so.

Q. You mainly looked forward? A. Well, perhaps so—mainly, yes.

Q. You glanced around of course? A. I looked around considerable, and walked backwards considerable, and looked backwards.

Q. Actually turned and walked backwards? A. Yes, Sir.

Q. A good way? A. Not a great way; enough to see that the line was straight.

Q. Well, just a few steps, I suppose? A. A few steps.

Q. You didn't march a whole block, I suppose? A. No, Sir, not generally.

Q. You didn't see Mr. Tilton until the finish, as you express it? A. Not until the finish.

Q. Then you didn't see Mr. Swinton until the finish? A. Not until the finish.

Q. And you didn't know him then? A. I didn't know him then; I have seen him since.

Q. But you think, from having recognized him since, that he was the gentleman? A. Yes, Sir.

Q. Now, when that procession was forming, before the line was ready to proceed, did your duties engage you in attending to the formation of the different divisions, and the arranging them? A. Yes, Sir; from Second-st. to Eighth-st. I was—

Q. Well, from what date or what point of time and arrangement did you assume the head and continue at it for the march—after the whole procession was arranged? A. After it was all arranged, at about two or a little after I assumed the head of the march.

Q. Up to that time you had not seen either Mr. Tilton or Mr. Swinton? A. No, Sir.

Q. But you had seen these ladies, Mrs. Woodhull, &c.? A. Yes, Sir.

Q. Now, was this banner a large flag? A. No, Sir; a small banner—a flag, not a banner, a simple red flag, I should suppose, about three feet by about six.

Q. That is, the bunting itself? A. The flag itself.

Q. And how was the flag pole in length and bulk and weight? A. Oh, I should suppose about perhaps seven or eight feet long—a small pole.

Q. How did this lady support this flag? A. Well, she carried it in her two hands in that shape [illustrating.]

Q. Without a belt or socket? A. Just like a man would. [Laughter.]

Q. She had no belt or socket? A. Not any.

Q. Held it in her hands? A. Held it in her hands.

Q. Do you remember whether the day was windy or not? A. No, Sir; it was not very windy, it was a damp sort of a day.

Q. Not very windy, not a gale? A. Not very windy.

Q. Still windy, was it not? A. Not very windy.

Q. Now, Sir, if you were at the head of this procession with those colored troops and a band of music between you and this banner, how do you know that Miss Tennie Claflin carried this banner, walking the whole length of that procession? A. I did not say the whole length of that procession; I said I believed she was relieved. When I seen her she was carrying the flag.

Q. When did you see her? A. When did I see her?

Q. Yes? A. I seen her at the finish, and I seen her at different streets in turning when I looked around; I can not exactly say when.

Q. And at all these times this lady was carrying this flag in her two hands? A. Yes, Sir.

Q. Now, why did you say that she was relieved at times? A. Because I had heard say so, as I told you before.

Q. Who had you heard say so? A. I don't know; I heard say that some parties had relieved her; I don't remember who it was, but I heard that she was relieved.

Q. I only ask you who you heard say so? A. I don't remember who it was.

Q. When did you hear say so? A. Well, it was after the procession, talking about the party and one thing and another, I heard that some other parties had—I don't know exactly.

Q. With whom were you talking? A. Well, I talked with so many people that it is pretty hard for me to remember now.

Q. And did all of them tell you she was relieved? A. No, Sir: not all of them; I could not have heard them by this time if they had.

Q. Now, Sir, how near the finish did you first see Mr. Tilton? A. Well, just as near as you could see a procession approaching and see a tall gentleman—I could not have been mistaken; he marched on and marched past us.

Q. Well, just within a few yards, I suppose? A. Well, I don't know exactly—say 50 feet; I will make that as an estimate.

Q. So the last 50 feet of that procession was the only observation that you made of Mr. Tilton during the procession? A. That is all, Sir?

Q. Now, did you notice whether this entire group of women came out at the end of the procession as they had gone in, or had some of them fainted by the way? A. I don't know; I cannot say but some of them may have fainted; there may have been some ladies that fell into the procession, too, for all I know, after they started.

Q. Well, I don't know anything about it, whether they fell out or whether there were fewer at the end than at the beginning? A. I don't know; I know the procession was twice as large at the finish as at the start; the people were in sympathy with us.

Q. So that if you had kept on longer there never would have been an end to it? [Laughter.] A. I hope so; I hope there never would have been.

Q. Now, about the carriages. You think there were eight or ten carriages? Q. Yes, Sir; as many as that.

Q. No part of the procession was assigned for carriages? A. They were allowed to follow after the procession; they were not allowed in the procession; of course we had no command of the street after the procession.

Q. So there were no carriages in the procession in any other sense than that they followed after the procession? A. That is all, Sir; they were not in the procession properly—did not belong to it.

Q. Do you know who were in any of the other carriages besides Gen. Ryan? A. Yes, Sir; there was a Miss Rose McKinley, and another lady was with her; they rode in a carriage together; there was a Miss Palmer, connected with *The Star*, and another lady connected with *The Star;* Miss Palmer had a flag in front, or was on one of the front seats of the carriage and carried a flag; there were two or three ladies connected with *The Star*—two, I am sure—all Internationals.

Q. Was this a large flag or was it a little hand flag? A. It was a small hand flag; there were 50 of them gotten up for the parade, and she carried one of these little red flags.

Q. Not a very heavy affair? A. Not very heavy.

Q. Now where did this flag that Miss Tennie Claflin carried all the way come from? A. It belonged to the 12th section; that was the section that she belonged to.

Q. One of the banners of the organization? A. Yes, Sir; one of the flags of the organization.

Q. And used in their processions? A. Used in their processions.

Q. You were rescued, as I understand, from the crowd and carried off in a carriage? A. I don't know that I was rescued; I accepted an invitation to ride in a carriage; it was not a great rescue.

Q. Well, it was a friendly act? A. It was—it was better than making a speech.

Q. To get you through the crowd? A. Yes, Sir.

Q. And when you had got fairly through the crowd you went off without making a speech? A. After I got further; I rode to Twentieth-st.; that was at Fourteenth-st., and I rode to Twentieth-st.

Q. Twentieth-st. and Fourth-ave.? A. Yes, Sir.

Q. What did you do then? A. I came back to disperse the people; in case people might say there was any disturbance, I tried to have none.

Q. Well, there was no trouble? A. There was none, because there was no police there. [Laughter.]

Q. That was the reason? A. That is the reason, Sir.

Mr. Evarts—That is all.

REDIRECT EXAMINATION OF MR. BANKS.

Mr. Morris—Will you state, Mr. Banks, about how tall a man Gen. Ryan was? A. Well, I should take him to be five feet 11, or nearly six feet. I was very well acquainted with him, and had been in his company several times. He was at least five feet 11.

Q. What is your hight? A. Six feet one, Sir.

Mr. Evarts—Did you see him standing up during that procession? A. No, Sir; he rode in a carriage.

TESTIMONY OF JAMES W. STILLMAN.

James W. Stillman, called on behalf of the plaintiff, sworn, and examined as follows:

Mr. Morris—You are a member of the legal profession?

A. I am, Sir, my office being at 128 Broadway, New-York City.

Q. How long have you been practicing? A. I was admitted to the bar in 1867.

Q. Have you been in New-York City since that? A. I have been in New-York City since September, 1872.

Q. Are you acquainted with Theodore Tilton—do you know him by sight? A. I am personally acquainted with Mr. Tilton, and have been so for five or six years, I think.

Q. Were you acquainted with Gen. Ryan? A. I was not.

Q. Did you see this procession on the 17th of December, 1871? A. I did, Sir.

Q. At what point did you see it, Mr. Stillman? A. On Fifth-ave., near Twenty-ninth-st.

Q. Did you see the whole procession? A. I did.

Q. It passed you? A. It passed me as I was standing on the sidewalk, or rather on the stoop of a house, in Fifth-ave.

Q. Did you at that time know Miss Claflin and Mrs. Woodhull by sight? A. I did, and was personally acquainted with them.

Q. Did you see them in the procession? A. I did.

Q. In what part of the procession were they? A. I cannot recollect the precise point of the procession; but my impression is that it was near the head.

Q. Can you state their position with reference to the colored troops? A. I don't recollect about the colored troops at all.

Q. Was either of them carrying a flag? A. Miss Tennie C. Claflin was carrying a banner, I believe.

Q. Was any one in company with her and Mrs. Woodhull? A. Mr. Stephen Pearl Andrews, if I remember correctly, was with Miss Claflin.

Q. Who was with Mrs. Woodhull? A. Col. Blood; they were walking arm in arm.

Q. Did you see Mr. Tilton? A. I do not recollect seeing Mr. Tilton, although he might have been there; I might have seen him; but whether I did not, I don't recollect now.

Q. He was not in company with either of the ladies? A. He was not; that I am quite positive of.

Q. Did you see them at any other point of the procession? A. I saw them at that point, and at no other; I simply allowed the procession to pass me, and did not follow or see it afterward.

Q. At Twenty-ninth-st., do you say? A. In the neighborhood of Twenty-ninth-st.; it may have been Twenty-eighth or Twenty-seventh, or it may have been Thirtieth-st.; but it was somewhere in that neighborhood. The procession was passing up Fifth-ave.

Mr. Beach—They were not in a carriage, I take it?

The Witness—No, Sir.

Mr. Morris—You knew Col. Blood at that time? A. I did.

Q. And Mr. Andrews? A. I did, Sir.

Q. You saw carriages there in the procession? A. I don't recollect that I did.

Q. Or at the end of it? A. I don't recollect about the carriages at all.

Q. You did not notice them? A. No, Sir.

Mr. Morris—That is all.

CROSS-EXAMINATION OF MR. STILLMAN.

Mr. Evarts—How do you fix the point of your observation as being where you place it? A. Because I recollect that that was the point. That is all.

Q. Well, do you reside in that neighborhood, or was it only accidental your being there? A. At that time I was not residing in the City of New-York, but was here on a visit, and was walking out on that Sunday afternoon when the procession caught up with me and passed me.

Q. You stopped and let it go by? A. Stopped and let it go by.

Q. Went on a stoop to look at it? A. Yes, Sir.

Q. Now, Sir, how many ladies were there in this group of which Miss Claflin and Mrs. Woodhull formed part? A. I don't recollect seeing any other ladies than Mrs. Woodhull and Miss Claflin. There might have been other ladies there, but I recollect seeing them only.

Q. To the best of your impression were there any other ladies in their immediate group? A. I have no impression about it at all, Sir.

Q. In regard to the gentlemen, you were acquainted with Col. Blood and Mr. Andrews? A. I was.

Q. Personally, or only by sight? A. I was personally acquainted with them.

Q. Can you give me the names of any other gentlemen who were in the immediate neighborhood of Miss Claflin and Mrs. Woodhull in the procession? A. I don't recollect the other gentlemen; I don't know whether I was acquainted with any other gentlemen there or not. I was acquainted slightly with Mr. Banks, who has just testified, but I don't recollect what part of the procession he was in.

Q. Do you remember whether there was a band of music? A. My impression is that there was a band.

Q. In what part of the procession? A. I think it was at the head, or near the head.

Q. Do you feel sure of that? A. No, Sir; I am not sure.

Q. Did you see Mr. Banks there? A. I have just stated my impression that I did see Mr. Banks, although I won't be positive.

Q. You are not sure of that. I thought you said you knew him? A. Yes, Sir; I did know him slightly at that time.

Q. Do you remember what part of the procession he was in? A. No, Sir.

Mr. Evarts—That is all.

MR. BANKS RECALLED.

Theodore H. Banks was then recalled, and further examined.

Mr. Morris [Showing witness the plaster cast of the head of Gen. Ryan.]—You have seen this head? A. Yes, Sir.

Q. Is it a fair representation of Gen. Ryan? A. A very good picture of him, I think.

Q. Did he wear his hair long and flowing in that way? A. Yes, Sir; a good deal like what it is there.

Q. No beard? A. No beard.

Q. And a broad-brimmed hat? A. A broad-brimmed hat, perhaps broader than that.

CROSS-EXAMINATION OF MR. BANKS.

Mr. Evarts—Do you know where this head came from? A. No, Sir; I do not.

Q. I mean have you ever seen the statuette? A. No, Sir; I have never seen it before.

Q. It seems to be taken from a statuette; you have never seen it before? A. No, Sir.

Q. Now, did not Gen. Ryan wear a military hat? A. Well, I think he wore some such hat as that there; I don't know whether it is called a military hat or not; I am not a military man myself; I think it was all black, though; I think he wore a large black cloak thrown over his shoulders, kind of dramatically.

Q. Yes, a dramatic arrangement of his cloak and a military hat. A. I think a hat like this.

Q. With cord and tassel? A. With a cord and tassel.

Mr. Morris [holding up Mr. Tilton's hat]—A hat similar to this? A. Yes, Sir, a hat similar to that.

Judge Neilson—Gen. Ryan is not living, is he? A. No Sir; he was murdered in Santiago de Cuba.

Judge Neilson—Gentlemen, get ready to retire.

The Court then took the usual recess until 2 o'clock.

TESTIMONY OF HENRY P. McMANUS.

The Court met at 2 p. m., pursuant to adjournment.

Henry P. McManus, a witness called and sworn on behalf of the plaintiff, testified as follows:

Mr. Morris—Where do you reside? A. In the Eastern District of Brooklyn.

Q. And what is your business? A. I am a printer by profession.

Q. Are you acquainted with Mr. Theodore Tilton? A. I have known Mr. Tilton by sight for a period of at least ten years.

Q. Were you acquainted with Gen. Ryan in his lifetime? A. I used to see Gen. Ryan frequently in the neighborhood of Printing-House-square; I recognized him as a newspaper man; I knew many of them; an experience of pretty near twenty-five years in that vicinity, I knew most of the men connected with the press.

Q. Did you see the procession on the 17th of December, 1871? A. I did, Sir; I took part in it.

Q. Were you in a carriage or on foot? A. I was on foot, Sir.

Q. What part of the procession? A. I was, I should judge, according to my best recollection, about the center.

Q. Did you see Mr. Tilton in the procession? A. I did, Sir; from the time I joined the procession until the procession was dismissed.

Q. Where did you join it? A. I joined it on the corner of Fourteenth-st. and Fifth-ave., by Delmonico's.

Q. How near to him did you march? A. There never was during the procession an interval of more than three paces.

Q. That is near enough? A. I think at any time by stepping I could have placed my hand on Mr. Tilton's shoulder.

Q. That is near enough; from that point until the procession disbanded you marched in that way? A. I did, Sir.

Q. Who was in company with him? A. Mr. John Swinton.

Q. Was Mr. Tilton in a carriage during any part of that time? A. No, Sir; he walked modestly and unassumingly along.

Q. Just answer the question.

Mr. Beach—He is doing well.

The Witness—Well, I am telling the truth, any way.

Mr. Beach—Tell it in your own way.

Mr. Morris—Did you continue in the procession until it disbanded? A. I did, Sir, until it passed around the Lincoln Statue on Union-square.

Q. Did you see any ladies in the procession? A. No, Sir, I did not.

Q. You were not near the head of the procession? A. I can't tell you, really, what position I was in in the procession, from the manner in which I joined it, but I should imagine that I might be about the center, from the subsequent reading of the divisions, etc.

Q. Did you see Gen. Ryan that day in the procession? A. Yes, Sir, I did.

Q. Was he in a carriage or on foot? A. He was in a carriage.

Q. Do you know who was with him? A. My mind is rather confused as to who was with him. I shall believe—although I am not going to swear--but I shall believe to the day I die that there were two ladies in the carriage with him.

Q. You saw some ladies there in a carriage? A. I did, after the procession broke up.

Mr. Morris—That is all.

Mr. Beach—No, no. When was it you saw Ryan? A. After the procession broke up.

CROSS-EXAMINATION OF MR. McMANUS.

Mr. Evarts—Mr. McManus, did you go over to New-York for the purpose of joining the procession? A. Yes, Sir; I did, indeed; I sympathized with it.

Q. Yes, that might be, and yet you might not intend to join—but you went over for the purpose of joining? A. Yes, Sir.

Q. How happened it that you did not join at the formation of the procession? A. Well, I have to work all night on a morning newspaper, and I was late getting up.

Q. You did not get there as soon as you meant to? A. No, Sir; not as soon as I wished to.

Q. You found the procession in motion? A. It was, Sir.

Q. Now, what route did you take to get to the procession so as to join it? A. Well I took the Grand-st. cars to the Bowery and alighted there and walked up the Bowery to the Cooper Institute, and found the procession had moved.

Q. Was it all out of sight? A. Sir?

Q. The whole of it out of sight? A. Oh! Yes, Sir.

Q. There was not a sign of it? A. Not at that time, no; and I walked up Fourth-ave. to Thirteenth-st., through Broadway to Fourteenth-st., through Fourteenth-st. to Fifth-ave., where I joined the procession.

Q. Did you run? A. No, I did not run; well, I can't say that I was slow in walking; I had an anxiety to join the procession.

Q. Well, you did not run fast? A. No, Sir.

Q. Did you belong to any one of the organizations or divisions so that you waited for that to come on and unite yourself with it? A. No, Sir, I did not at that time.

Q. So you went in as soon as you got to it, you think? A. I went, Sir, about as soon as I saw an opening.

Q. Yes, and it was in this division that Mr. Tilton was in? A. No, Sir.

Q. Well, what division was it that you went in? A. It was in the division known as the "Typographical Section No. 1."

Q. What was the title of the division that Mr. Tilton was in? A. Well, I should think from the congress—or rather the manner in which the section was formed—the division was formed, that it was among the citizens generally; there appeared to be no regular formation.

Q. Among the unaffiliated portion? A. Well, the unaffiliated would not have been there, probably.

Q. Well, you were in a different division from him? A. Yes, Sir.

Q. Then you must have been near one end of your division and he near one end of the other? A. Most assuredly.

Q. Was your division before his or behind it? A. Behind.

Q. Then he was at the very tail of his division? A. He was on the left of the division in which he walked; I was on the right, the first rank of the division in which I walked.

Q. And he in the last rank of that in which he walked? A. He was, Sir; yes, Sir.

Q. Do you know who was with him? A. Mr. Tilton walked on the left, Mr. Swinton in the center, and a young, delicate, pale-looking young man of about 20 years or so; my impression is that he had light hair; I looked at him, and thought it was a pretty rough day for him to be tramping around through the mud.

Q. Well, do you know who he was? A. No; I have not the slightest idea.

Q. Whom did you walk with? A. I walked with some friends of mine in the Typographical division.

Q. Well, gentlemen that were known to you? A. Yes, Sir.

Q. Not casual? A. Well, I can recollect one at least.

Q. Well, that is not material. They were persons that you were acquainted with? A. Persons that I am acquainted with in my business.

Q. Now, what was the route of the procession after you joined it? A. After I joined the procession it went up Fifth-ave. to Thirty-fourth-st., and across into Sixth-ave., down Sixth-ave. through Fourteenth-st. to the Lincoln Statue, where they dismissed.

Q. Where did you see Gen. Ryan after the procession broke up? A. All was confusion of course, after the procession broke up. I took a birdseye view around to see what was going on, and I saw Gen. Ryan in a carriage—in a barouche.

Q. Oh, well; but you did not see him in the procession at all? A. No, Sir; I did not.

Q. After the procession broke up did you see what became of Mr. Tilton? A. No, Sir, everybody was looking out for themselves. It was *sauve qui peut.*

Q. Did you see any ladies carrying a flag either in a carriage or on foot? A. I saw a lady when I was about half way in the block between Thirteenth and Fourteenth-sts.; on looking around, attracted by some noise incident to the occasion, I saw a lady with a miniature red flag, waving it in a carriage.

MR. McMANUS A SELF-MADE WITNESS.

Q. When did you first think of this matter of having seen Mr. Tilton after this procession was formed—how was it brought to your attention? A. Well, through the falsehoods, to say the least, sworn to here by people connected with Mr. Tilton.

Q. Supposing you spoke your mind fully about them, what would you call them? A. Well, if you want to know, I can accommodate you.

Q. Well, you said "falsehoods, to say the least of it?" A. Well, now, Mr. Evarts, I know you by reputation as a great lawyer, and I am afraid to get into your clutches, you know. [Laughter.]

Q. I can assure you I am as harmless as a dove? A. If

you ask what I, as an individual, call that testimony, I can tell you very quick; I call it rank perjury.

Q. Well, that if you spoke your mind freely? A. Yes, Sir, freely.

Q. But to speak within bounds, "falsehoods;" so that you are very positive in your view not only of your own testimony but that of other people? A. As regards Mr. Tilton and Mr. Swinton, I am as positive as that I have got that hand on my body.

Q. And you think that anybody that thought he saw Mr. Tilton, or said he saw Mr. Tilton in any other connection, it is rank perjury? A. No, Sir, I won't say that, Sir; I mean to say that when I saw them flaunting and flaring around about that procession——

Q. That is it? A. Yes, Sir, I will say so.

Q. But a moderate error you would not characterize as such? A. Well, I don't propose to put myself up as a critic on any man's opinion, but I am not infallible.

Q. I will ask you—you answered, I suppose, that the first time that you had your attention called to your memory on this subject was when you saw the statements of what other witnesses had said? A. Well, I will tell you.

Q. And then it occurred to you that you had had some knowledge or observation? A. I never thought to have heard anything more of it; but when I saw in the newspaper these statements made in relation to Mr. Tilton, I remarked to my wife, "This is a lie; I know it to be," and says I, "it is a shame to prosecute this man who is fighting wealth, influence, power and everything else; and they bring all these men swearing to rank perjury that I know." And she said she thought it was my duty to come here and testify. I don't want the notoriety of a witness; it is not pleasant—loss of time, &c.

Q. That was the first? A. Yes, Sir.

Q. That was the first that you thought of it since that day I suppose? A. Well, I had no reason.

Q. What? A. I had no reason to.

Q. Well, I say it was the first time you had thought of it? A. Yes, Sir, it was.

Q. And then this picture of yours—— A. What picture?

Q. Why, of seeing Mr. Tilton, and being near him, came back to your mind? A. Why, certainly it did.

Q. You took no memorandum or anything of that kind? A. Not at all; I had no necessity.

Mr. Evarts—That is all.

After the witness left the stand he was interrogated by Mr. Shearman as follows:

Q. Where do you reside? A. In Brooklyn, the Eastern District.

Q. I know, but what portion? A. No. 64 South Second—near Second.

TESTIMONY OF ALBERT B. MARTIN.

Albert B. Martin, a witness called and sworn for the plaintiff, testified as follows:

Mr. Morris—Where do you live? A. 174 Livingston-st.

Q. What is your business? A. I have been Superintendent of a free reading-room and evening school for street boys.

Q. A little louder. Under the superintendence of any church? A. Under the superintendency of Dr. Storrs's church, or rather conducted by the Young People's Association of Dr. Storrs's church.

Q. Are you attached to any church—member of any church? A. Methodist Church, Sir.

Q. Where situated? A. Methodist Church in Nostrand-ave., the Rev. Dr. Griffith.

CONTRADICTIONS OF GEN. TRACY AND MISS TURNER.

Q. Mr. Martin, are you acquainted with Bessie Turner, or Elizabeth A. Turner? A. I met her, Sir, twice.

Q. You recollect last Summer of seeing her at Mrs. Ovington's? A. Yes, Sir.

Q. Do you recollect what day it was? A. I do not, Sir.

Q. Was it the day that she went before the Investigating Committee? A. Yes, Sir.

Q. What time in the day was it that you saw her at Mrs. Ovington's? A. I should think, Sir, about half-past 2 o'clock in the afternoon.

Q. Did you go there at that time? A. Yes, Sir.

Q. And was she there when you went? A. Yes, Sir.

Q. And who else did you see there? A. I rang the bell, Sir, and was ushered by the servant—went into the parlor, and found that she was in the back parlor with Gen. Tracy.

Q. You don't know how long Gen. Tracy had been there? A. No, Sir.

Q. Was any one else in the back parlor except Miss Turner and Gen. Tracy? A. No. Sir.

Q. Well, where did you go? A. I went upstairs, Sir, into Mrs. Tilton—to see Mrs. Tilton.

Q. And how long did you remain upstairs? A. Well, I should think, Sir, possibly half an hour.

Q. And then where did you go? A. Because of the heat, Sir, we came down stairs and went on the back piazza.

Q. Who do you mean by "we?" A. Mrs. Tilton and myself, Sir.

Q. And how long did Mrs. Tilton and you remain on the back piazza? A. Well, I should think, Sir, for at least two hours; during all the afternoon, I should think.

Q. And during that time where was Miss Turner and Gen. Tracy? A. In the back parlor, Sir, until Gen. Tracy went away.

Q. And what time did he go away? A. Well, I should

think, Sir, as near as I can tell, about 5 o'clock in the afternoon.

Q. Then he was in the back parlor with Miss Turner from half-past 2, when you went there, until about 5? A. I think so, Sir.

Mr. Evarts—How does he know that!

Mr. Morris—He said so. [To the witness.] Well, when you went on the back piazza with Mrs. Tilton did you hear Gen. Tracy and Miss Turner in the back parlor? A. I could hear them, yes, Sir; but could not distinguish the conversation.

Q. Could not distinguish what they said? A. Could hear the sound and the laughing, yes, Sir; that is all.

THE TESTIMONY OBJECTED TO.

Mr. Evarts—If your Honor please, perhaps our learned friend will allow us to inquire in what point of rebuttal this witness is called.

Mr. Morris—Well, in reference to two points; as to the duration of the interview that she had with Gen. Tracy; Gen. Tracy contradicts her upon that, and we propose by this witness to contradict both Gen. Tracy and Miss Turner. Her evidence will be found at page 503, commencing at the point that we propose.

Mr. Beach—How long does she say she was with him?

Mr. Morris—Ten minutes; not to exceed that.

Mr. Evarts—We only asked for information.

Mr. Shearman—She does not say so at all.

Mr. Morris—Oh, yes, she does say so.

Mr Evarts [reading]—"When did you talk with Mr. Tracy?" Is it at that point?

Mr. Morris—Well, I will read; there is a good deal of it.

Judge Neilson—What page do you read from?

Mr. Morris—503. [Reading.]

How long before you actually went—[question put by Mr. Fullerton]—How long before you actually went before the Committee did you know that you were going before the Committee? A. About ten minutes.

Q. Not longer than that? A. No, Sir.

Q. Had you not talked with any one in regard to your evidence before the Committee? A. Not until these ten minutes.

Q. With whom did you talk then? A. With Gen. Tracy. * * *

Q. Now, do I understand you, therefore, that from the time you went into Mrs. Ovington's house until you saw Gen. Tracy in the parlor, just before you went before the Committee, the object of your visit was not spoken of by any one? A. Was not spoken of by any one, as I remember; no, Sir. * * *

Q. And what time did Mr. Tracy call to see you at Mrs. Ovington's? A. He called, perhaps, between 7 and 8 o'clock. However, it was about ten minutes before I went before the Investigating Committee, and when I left I think it was between 7 and 8.

Judge Neilson—Well, go on with the examination, Mr. Morris.

Mr. Morris—Yes; I thought so.

Mr. Evarts—Then the cross-examiner proceeds. [Reading]:

Q. Understand I am speaking of the intervening time? A. Yes, Sir.

Q. I am not talking about the conversation with Gen. Tracy?

Mr. Morris—She says she had conversed.

Mr. Beach—She says that Gen. Tracy called on her about 10 minutes before she went before the Committee.

Mr. Shearman—So he did.

Mr. Morris—And she did not see him before that; she had not talked with any one.

Mr. Shearman—She was not asked about that.

Mr. Morris—Oh, yes, Sir; she was asked about that.

Judge Neilson—Well, go on, Mr. Morris.

Mr. Evarts—Well, how is it legal in the nature of rebuttal? It is confined, as I understand the present proposition, to the length of the interview.

Judge Neilson—That may be a principal ingredient; I do not know.

Mr. Beach—Mr. Tracy's evidence settled that; because he says he was there about an hour conversing with Bessie Turner on the subject of this case.

Mr. Evarts—On the piazza?

Mr. Beach—No, Sir, in the back parlor; there is no misunderstanding about it.

Mr. Morris—Oh, no, this point is very clear.

Mr. Evarts—It is not on the issue, if your Honor please. It is a collateral inquiry of a witness as to the length of an interview.

Mr. Shearman—This is another imputation on Miss Turner which is entirely unfounded upon anything in the examination, because Gen. Tracy was not asked one word about anything which he said at that conversation; he was asked nothing except whether he had an interview with Bessie Turner, and nothing about what occurred. We don't know but what he was talking about groceries; there is nothing to show it at all.

Mr. Beach—That is an entire mistake, Sir.

Mr. Shearman—Well, will you be kind enough to refer me to any passage where there is anything said about what took place?

Mr. Beach—If you will give me the evidence, I will look it over; I have a general recollection.

Mr. Shearman—Why does the gentleman say it is an entire mistake until he looks over the evidence?

Mr. Beach—Looks over, Sir! Because I have some memory and some intelligence, and therein I differ from the gentleman.

Mr. Shearman—Look at it, Sir, and you will find that your imputations have n't a word of foundation for them.

Mr. Beach—We will see.

Mr. Shearman—Yes, Sir; you *will* see.

Judge Neilson—Well, proceed with your witness, Mr Morris; see what it amounts to.

Mr. Shearman—Miss Turner was asked in reference to one specific interview at about 7 o'clock.

Mr. Morris—The Judge has directed me to go on.

Mr. Beach—[Reading].

Q. Did you not have an interview upon that occasion with Bessie Turner, in which you conversed with her in regard to her knowledge of this discussion of over an hour? A. I should say not, Sir, over an hour.

Q. Will you swear——

Judge Neilson—That is not the place.

Mr. Beach—This is Mr. Tracy's evidence, Sir. There is the evidence of the gentleman's intelligence [throwing down the paper].

Mr. Shearman—Yes. "In which you conversed with her in regard to her knowledge"—of what?

Mr. Beach—Of this discussion that we were examining him about.

Mr. Shearman—Ah! "this discussion;" what does "this discussion" mean?

Mr. Beach—[Laughing.] Oh, another specimen, Sir.

Mr. Shearman—Yes, but he is asked simply whether he did not have one of over an hour. He says he did not have one of over an hour. He is never asked the question positively, so as to give him the chance to make an answer whether he had an interview with Miss Turner on this subject; that is the fact, gentlemen.

Mr. Beach—When the gentleman attempts, Sir, to criticise my accuracy in regard to the testimony of a witness whom I examined, I advise him to be a little more careful in his examination before he does it.

Mr. Shearman—I will show the gentleman the paper. Miss Turner testifies to a conversation of ten minutes; Gen. Tracy does not testify to any at all, but he is asked the question whether at any time he did not have an interview that exceeded an hour, and he says, "No, none for over an hour, certainly," and he will swear that it was not over two hours; but after all, he is not called upon to say, and was not given the opportunity to say, as a matter of fact, whether he ever had a conversation with her on this subject at all. Mr. Tracy confined himself to answering precisely the questions that were asked of him. Miss Turner answered the questions that were asked of her. She has mentioned an interview—one of ten minutes—between 7 and 8 o'clock, not at all inconsistent with the fact that she might have had another interview concerning which she was not inquired of, and she had no opportunity to say whether she had another interview, but she said she only talked with him for ten minutes on this subject.

Mr. Beach—Well, let us see one minute.

Mr. Shearman—And Mr. Tracy was going to tell more about it, and he ends in this way. [Reading]:

"I cannot be more positive than to give you my best recollection"—and he was going to say something further when Mr. Beach interrupts him and says, "That answers it, Sir."

That is how it stands.

Mr. Beach—Miss Turner was asked:

Was nothing said about the object of your visit to New-York or Brooklyn while you were at Mrs. Ovington's that afternoon, or that day? A. Not until I saw Gen. Tracy.

Q. And what time did Mr. Tracy call to see you at Mr. Ovington's? A. He called perhaps betwen 7 and 8 o'clock; however, it was about ten minutes before I went before the Investigating Committee, and when I left I think it was between 7 and 8.

Now, we show by Mr. Tracy, Sir, that he had a conversation of about an hour—not over an hour, he says—that afternoon at Mrs. Ovington's upon the subject of this trial. Now, we show by this man that that very interview which Miss Bessie Turner makes 10 minutes before she went before the Committee, and Mr. Tracy about an hour, was over two hours and a half.

A CONTRADICTION OF MISS TURNER.

Mr. Morris—Well, Mr. Martin, you say that you were on the piazza there after you came down stairs about two hours? A. I should think so, Sir.

Q. Gen. Tracy and Miss Turner were in conversation in the back parlor? A. Yes, Sir.

Q. During the whole of that time? A. Yes, Sir.

Q. And could you hear enough to say—to designate any subject about which they were talking? A. No, Sir.

Q. Now, after Mr. Tracy left, at 5 o'clock, where did you go then? A. I remained, Sir, at Mrs. Ovington's for tea; I remained there until about 6 o'clock; we then went to tea.

Q. Had tea about 6 o'clock? A. Yes, Sir.

Q. And where did you go after tea? A. Immediately after tea, Sir, I took Miss Bessie Turner around to Augustus Storrs's house in Monroe-place, to meet the Committee.

Q. And about what time was it that you got to Mr. Storrs's house? A. Well, I should think, Sir, as nearly as I can remember, about 7 o'clock; possibly a little after.

Q. Was there any reason for your taking her around so early? A. I can only give you, Sir, the reason she gave.

Q. Then you went to Mr. Ovington's at about half past 2 o'clock? A. I should think so, Sir, as nearly as I——

Q. She was in conversation with Gen. Tracy, and you took her around to Mr. Storrs's at 7 o'clock?—about 7 o'clock. A. I should think so; yes, Sir.

Q. And did she remain at Mrs. Ovington's all the while? A. During all of the afternoon?

Q. Yes? A. Yes, Sir.

Q. And until you took her to the Committee? A. Until I took her to the Committee, and I left her there.

Q. Now, after Gen. Tracy left was there any conversation between Miss Turner and any one else in reference to this case—the subject of her testimony? A. Before the Committee do you mean?

Mr. Evarts—One moment; where is that?

The Witness—Yes, Sir.

Mr. Shearman—Wait one moment; we object to that.

Judge Neilson—The mere fact that there was a conversation may be given.

Mr. Evarts—Unless it is in rebuttal, I suppose not.

Mr. Morris—Yes, that is. She testified that she did not talk with any one on that subject; that it was not mentioned except with Gen. Tracy during that ten minutes. That is her testimony. [To the witness.] Now, wasn't that the principal topic of conversation, after Gen. Tracy left, with Miss Turner and Mrs. Ovington?

Mr. Shearman [to the witness]—Will you be kind enough to wait before you answer.

Judge Neilson—The witness is not interrogated as to what was said, but as to the simple fact.

Mr. Shearman—No, your Honor; but he was asked whether a conversation was had on that subject, which answers all the purpose of bringing out the subject of a conversation to which Miss Turner's attention was not especially called.

Judge Neilson—Now, Miss Turner says she had no conversation upon that subject except about ten minutes before she went in.

Mr. Shearman—Yes, but if her attention had been called to a particular passage, in accordance with the invariable rules, Miss Turner might have recollected some particular person who had said something about it. Her attention was not called to that, and it shows the necessity of enforcing the uniform rule of cross-examination, by which the witness is entitled to have the name of the person. Here is a person living in Mr. Tilton's house, who had gone there to obtain information from time to time, and who went every day, so that he could pick up information. Why wasn't his name mentioned before, so that Miss Turner might have had warning that a certain person——

Mr. Morris—Why, Miss Turner spoke of Mr. Martin, on the stand, and could not say whether she went around to the Committee with him or some other person.

Mr. Shearman—She never was asked whether she talked with him. We object to the question on the ground that no foundation has been laid.

Judge Neilson—The inquiry is not whether she talked with Mr. Martin; the inquiry is whether she had a conversation with any other person than Gen. Tracy.

Mr. Shearman—I do not object to the fact that she had a conversation; I object to the subject being named unless the person with whom she had the conversation was named to Miss Turner on the stand; we all understand it is perfectly easy to forget conversations that are held with many persons, unless attention is called to the particular person.

Judge Neilson—If this witness were requested to give the conversation, your objection would be conclusive.

Mr. Shearman—I am objecting to the introduction of anything about the conversation further than the fact that there was a conversation.

Judge Neilson—If she had been inquired of whether there was a conversation it seems competent.

Mr. Shearman—It would not be unless the person with whom she had had that conversation was mentioned.

Mr. Beach—It might have been the whole world. She says she had a conversation with nobody upon that subject; that covers the whole of it. We can't name every person, for we might name the whole city.

Judge Neilson—Well, that covers the point.

Mr. Morris—Now, Mr. Martin, will you answer the question?

Mr. Shearman—Your Honor will note our exception to the question as allowed.

Mr. Morris—You have answered the question, I believe, that she did converse upon that subject after Mr. Tracy left? A. Yes, Sir, she did.

Q. Now, my question was whether that did not form the principal topic of conversation until she left to go before the Committee?

Mr. Shearman—We object to that question.

Judge Neilson—We will take that.

Mr. Shearman—Note our exception.

The Witness—I think I can safely say, Sir, that there was no other topic discussed.

Q. Or talked about? A. Or talked about.

Q. During that afternoon? A. During that afternoon after Mr. Tracy left until she went to the Committee.

CROSS-EXAMINATION OF MR. A. B. MARTIN.

Mr. Shearman—Mr. Martin, how frequently did you visit Mrs. Ovington's during July or August, 1874? A. Immediately after Mrs. Tilton left her home, Sir, I visited her once or twice of each day.

Q. For how long a period did you continue that? A. Up until the time that Mrs. Tilton went to the country, Sir.

Q. Where did you live at that time, Mr. Martin? A. I lodged sometimes in Fulton-st., in the Clinton House; after Mrs. Tilton's house broke up, Sir, I had not any home, and I did not take boarding anywhere for that time; I was sometimes at Mr. Tilton's house.

Q. You had lodged for a considerable time in Mr. Tilton's house, had you not? A. Not for a considerable time, Sir; after—two weeks after Mrs. Tilton went away, I went away from the house.

Q. Yes, and how long previous to that had you lodged in Mr. Tilton's house? A. About a year, Sir, or nearly so.

Q. And you are lodging there now, are you not? A. Regularly, since January, Sir, of this year.

Q. When did you communicate this circumstance that you have testified to to Mr. Tilton first? A. I am sure, Sir, I do not remember; I have been very careful of what I said to Mr. Tilton in reference to this case, but I should think, Sir, about the time Bessie Turner made this state-

ment on the stand; possibly before, though I am not sure of that.

Q. You stayed frequently at meals at Mrs. Ovington's, didn't you? A. Frequently; I think I have been there possibly half a dozen times or less.

Q. Didn't you stay occasionally all night? A. I was there two nights, Sir, at Mrs. Tilton's invitation.

Q. Did you not on several occasions stay there very late at night? A. No, Sir; I don't remember any time being very late, except the night in which Mr. Tilton's statement was published, and then I remained there to escort Mrs. Beecher home.

Q. Well, on this afternoon when you sat on the piazza, whereabouts did you sit? A. Well, the piazza is very small, Sir; if you have ever been on it; there is a swing there and a large chair; I think I sat in that chair in about the same position.

Q. Did Mrs. Tilton sit with you on the piazza all the time? A. All the time, Sir.

Q. Well, whereabouts did she sit? A. She sat on the chair on the piazza, near by.

Q. And which end of the piazza did you sit, supposing the piazza were out at *that* window, did you sit at *that* end of the piazza or the further—— A. The door going out from the hall is *here* [illustrating], the piazza running back that way, and I sat back; Mrs. Tilton sat in front of me, with her back to the swing, which is there for the children.

Q. Well, when you first came in you saw Gen. Tracy in the room? A. When I first came in I went into the parlor, and saw Bessie Turner, whom I did not know then.

Q. Then you went up stairs to see Mrs. Tilton? A. Mrs. Tilton called me up stairs, because the parlor was occupied; I presume so at least.

Q. Yes. Well was it very hot up in the room then? A. Very warm, Sir.

Q. Well, did you go down pretty soon? A. I should think we remained there about a half-hour, Sir, as nearly as I can remember.

Q. Well, did you look at the clock when you went into the house, or at your watch? A. No, Sir, I did not pay any especial attention to it; I am simply giving you my best recollection.

Q. Well, was it cooler on the piazza when you went down than up in the room? A. Yes, we went down for that purpose.

Q. Well, was the sun shining? A. Not on the piazza, Sir.

Q. Was the sun shining? was it a bright day? A. Well, I should think it was; I don't remember of it being a cloudy or stormy day; I have n't any recollection about it, only that it was not a stormy day.

Q. It was not stormy, or else you would not have been upon the piazza? A. Not stormy, for I would not have gone down there from the room.

Q. You have been frequently at that house on afternoons, have n't you? A. I think I have.

Q. Well, don't you know that from half-past 2 or 3 o'clock in the afternoon the sun is blazing on that piazza, and it is the hottest place in the house? A. I don't think so, Sir; I don't know——

Q. Don't you know that that piazza is exposed to the sun in the afternoon, and that that is the time the sun is shining on it? A. I think I know it is, but there is a protection there from the sun.

Q. What is the answer? A. I think it is, but there is a protection from the sun.

Q. What is the protection? A. Well, the covering of the piazza.

Q. Just the covering that is always there—the top of the piazza, you mean? A. The top of the piazza; and there is some, I think, from the building, the next house; I think the next house is a protection.

Q. Is that house a protection at half-past 2 or 3 o'clock in the afternoon? A. Well, I should think it was, Sir, because I have been on the piazza, I should think, from 10 o'clock in the morning until evening, and we never went away because of the heat.

Q. Not even on the hottest days? A. Well, it was very hot at that time, Sir.

Q. Yes, no doubt it was; well, do you remember how hot it was? A. Don't remember anything about it, except——

Q. Whether it was a peculiarly hot day? A. Well, I don't remember that it was.

Q. Well, don't you know, as a matter of fact, that that piazza is especially hot about 3 o'clock, and that it is only about 5 o'clock that that piazza is cooler than other parts of the house? A. I don't remember that, Sir.

Q. But you do know that the piazza is exposed to the sun; that it is on the sunny side in the afternoon? A. Well, Sir, I have told you that the house next door is a protection; that is the only——

Q. The house next door? A. Yes, Sir.

Q. How does that serve as a protection when the sun strikes directly square on the piazza? A. It is a three-story brick house, and running back, and the other house does not.

Q. Don't you know that the sun does not shine on the other side—from the other side of that house? A. I don't know——

Q. Don't you know that the sun comes square in that piazza; that that piazza faces the setting sun; can't you recollect that? A. I have told you that I remember being there mornings and afternoons, and I never remember a time when I had to go away from the piazza because of the heat.

Q. You have sat there morning and afternoon? A. I have been there mornings and afternoons.

Q. How did you come to go there so much, and to sit there so long? A. On the piazza, Sir?

Q. Yes; had you nothing else to do? A. No, Sir; if that is satisfactory.

Q. Nothing that you could do, satisfactory—well, don't you know? A. If that answer is satisfactory to you I will leave it.

Q. What is that? A. If that answer, "No, Sir," is satisfactory to you I will leave it.

Q. What I want is the truth, whether it is satisfactory to me or not; I want to know whether you had any occupation than to come to that piazza and sit? A. If you are asking about occupation, I did not have any occupation during that day; that is, the greater part of it; and out of sympathy for Mrs. Tilton, and at her invitation, I went every morning.

Q. Now, Sir, on that day that Miss Turner testified, can you recollect what day of the month it was? A. No, Sir, I don't.

Q. Where did you come from on that day when you went around to that house? A. From my room, Sir, in Court-st.

Q. Well, how are you able to fix the time of day? A. I can only fix it, Sir, by this—that for a number of days, indeed, I may say weeks, I had been in the habit, after lunch, of going around to my rooms and seeing that they were open and properly ventilated, and my man there, and then, after reading the papers, of going around to see Mrs. Tilton.

Q. And that is the only mode by which you can fix the time now? A. Yes, Sir, I have not—I did not pay any attention to the time, except——

Q. Did you look at your watch while you were out on the piazza? A. No, Sir; I don't remember that I did.

Q. Then how do you know that you spent two hours there, Sir? A. I know that I was there all the afternoon, Sir; more than two hours.

Q. After you got there? A. After I got there.

Q. Did you look at your watch when you entered the house? A. No, Sir; but I know that I went directly from my rooms to the house.

Q. Did you look at your watch while you were in the room? A. No, Sir; I don't remember.

Q. How do you know, then? A. Because they have a clock there; I may have looked at that; I do not remember.

Q. You don't recollect whether you looked at the clock or not? A. I don't remember.

Q. Then how do you recollect what time of day it was? A. Well, my own idea of time is the only thing I can go by, Sir.

Q. Well, are you able to do it without a watch or clock? A. Well, I am able to judge of the time between lunch time and tea time.

C. What time did you have tea, Mr. Martin? A. I remember, Sir, that Bessie Turner said to Mrs. Ovington that Gen. Tracy's desire was——

Q. I don't care about that; I want to know what time. A. Well, we had tea early; I think about 6 o'clock.

Q. Well, how do you fix the time that Gen. Tracy left? A. Well, I can fix the time, Sir, from Gen. Tracy's having gone and Bessie—Miss Turner having come back—come out, and we together having had conversation for quite a long time, maybe more than one hour——

Q. Yes, there was quite a long time elapsed after Gen. Tracy left before you had tea? A. Well, I should think about an hour.

Q. Didn't you say more than an hour just now? A. Well, it might possibly have been an hour or less——

Q. But you think it might have been more than an hour? A. My best impression is it was about an hour, Sir.

A Juror—Is Mrs. Ovington's house on the west side of the street?

Mr. Shearman—Yes, Sir, Mrs. Ovington's house is on the west side of Hicks-st. [To the witness.] One moment; a juror asks what time you had your lunch. A. We lunched, Sir, about 12 o'clock always at Mr. Tilton's.

Q. Did you have your lunch there? A. I lunched there that same day.

FRANKLIN WOODRUFF RECALLED.

Franklin Woodruff was recalled by plaintiff.

Mr. Beach—Mr. Woodruff, on your former examination you testified as to a conversation between yourself, Mr. Moulton, Mrs. Tilton and Mr. Tracy, at Mr. Moulton's study? A. I did.

Q. Previous to that I understand that you had an interview or two with Mr. Tracy alone? A. I had; one alone.

Q. One alone? A. One with Mr. Moulton.

Q. In the conversation—in either of those two conversations before the main one at the study, did you give Mr. Tracy any information in regard to the charge or accusation which Mr. Tilton made against Mr. Beecher, and if so, what did you state?

MR. WOODRUFF'S TESTIMONY OBJECTED TO

Mr. Evarts—One moment, Mr. Woodruff. On what point in Mr. Tracy's evidence is this offered?

Mr. Beach—Well, I cannot refer to the page. I examined Mr. Tracy as to that.

Mr. Morris—He said that Mr. Woodruff did not inform him that the charge was adultery.

Mr. Beach—He did not inform him of the money he offered.

Mr. Morris—Oh, the $500?

Mr. Evarts—Well, I am asking him to look for the passage.

Mr. Beach—Well, Sir, I will wait. [Book handed to Mr. Beach, who reads]:

Well, Mr. Tracy, passing that, did you, in the conversation which you had with Mr. Woodruff preceding the one at Mr. Moulton's study, of which you have spoken—

did you discuss with him any of the incidents of this scandal, as it is called? A. Which interview do you refer to Mr. Beach?

Q. Either of them. A. Yes, Sir.

Q. Which one was it—the one immediately preceding, etc. * * *

Q. In those interviews—preceding interviews—of which I speak, did Mr. Woodruff relate to you the circumstances of the confession or statement of Mrs. Tilton, and her retraction and reassertion—those preliminaries? A. No, Sir; not in detail.

Q. Well, did he allude to them—state them? A. I have the impression that at the second interview with Mr. Woodruff he stated to me that Mr. Moulton had——

Q. Oh, I don't want to go into that; I only want to know, Sir, if those things were stated by him, in general terms? A. I have an impression that he referred to the papers which Mr. Moulton had in his possession, and which I would want to see.

Q. Now, Sir, in those interviews did Mr. Woodruff, in substance, tell you that Mr. Tilton charged Beecher with adultery with his (Tilton's) wife? A. No, Sir; he did not, in those words.

Mr. Evarts—No, Sir. [Reading.]

I said in substance, Sir. A. I cannot say that he did in substance.

Q. Will you swear that he did not, in substance, tell you that? A. I think I will.

Q. Well, make up your mind, and let us know whether you will.

Now, the next answer is— [Reading.]

A. Well, I will state how I can state it, and the only way I can state it; he did not say that in substance, in my judgment, according to my recollection; but Mr. Woodruff, by his gestures, and what he omitted to say in answering some of my questions, and his insinuations left an impression upon my mind that he believed Mr. Beecher had been guilty of something that was very wrong in Mr. Tilton's family; what it was he did not state, and he did not leave me to infer.

Q. Then he is asked, "Will you swear positively that in the interviews of which we are now speaking, or one of them, Mr. Woodruff did not in terms tell you that Mr. Tilton's charge against Mr. Beecher was adultery with his (Tilton's) wife? A. I will.

Q. Positively? A. Yes, Sir.

Q. That he did not use the term "adultery?" A. I will.

Q. And that he did not in any more direct form than you have stated convey an implication of that charge? A. Yes; I have intended to state, and think I have stated.

Now, these are the two interviews, as I understand, or one or the other of two interviews that preceded the Sunday interview of which you inquired, Mr. Beach.

Mr. Beach—Yes, Sir.

Mr. Evarts—All this in presence of Mr. Tracy preceded the interview at which Mr. Moulton was introduced.

The Witness—Yes, Sir.

ARGUMENT OF MR. EVARTS.

Mr. Evarts—Now, your Honor will perceive that there is no basis, in the rules of evidence, for this inquiry. If an inquiry had been made, what Mr. Tracy had said to the witness, to wit, Mr. Woodruff, and Mr. Tracy had denied it, then, to prove what Mr. Tracy said, is a contradiction of Mr. Tracy, and would be in the sense of a collateral impeachment, for which a foundation must be laid in that way. But here is an interview between Mr. Tracy and Mr. Woodruff, neither of them parties to the suit, and Mr. Woodruff's statements are never evidence in that sense in any way. Gen. Tracy is asked whether Mr. Woodruff told him so and so; and Gen. Tracy, giving the answer that he has given, says, "He did not tell me so; he threw out intimations, insinuations, or observations, or gestures, leaving a certain implication in my mind." Now, it is not an impeachment of Gen. Tracy, having made extra-judicial statements himself, inconsistent with his testimony under oath; that is, the form of collateral impeachment on extra-judicial statements. Now, the counsel himself calls out from Mr. Tracy on cross-examination to this point of inquiry: whether Franklin Woodruff did not tell beforehand, before this interview of Sunday, so and so, in order that that may have some bearing on something or other. What passed between Mr. Woodruff and Mr. Tracy is not evidence against anybody, at any interview; there is no pretense of that. That does not bind Mr. Beecher, nor does it bind Mr. Tilton. Now, having asked that question of Mr. Tracy, which is not of extra-judicial statements of Mr. Tracy, but of whether he had certain information before he went into an interview, the counsel now calls this witness to contradict Gen. Tracy. As matter of evidence in chief it cannot be introduced, because it is outside of rebuttal. All the interviews between this gentleman and Mr. Tracy were brought in as matter of direct evidence on the part of the plaintiff, and if they omitted to prove any part of the conversation at that time that they had any right to prove, why then it would not be admissible as evidence in chief, for it is not in rebuttal; it is in accumulation if it be anything. Then, if it is not an extra-judicial statement of Gen. Tracy, contrary to something that he has given on the stand, it does not seem to me that it is within any of the rules of impeachment.

Mr. Beach—Your Honor may perhaps—

Mr. Evarts—One moment, Mr. Beach. This "is confined to what witness has himself said or done, and does not allow impeachment by proving that statements have been made in his presence as to a material fact which he has testified he had no knowledge of." [Gandolfo agt. Appleton, Court of Appeals, 40 N. Y., p. 553.]

Judge Neilson—That touches this point, of course, as I understand. I have a general impression, from Mr. Tracy's testimony, that, according to his recollection, it was later than that that he learned the character of this charge as put in the strongest terms; that he up to that time, and subsequently, only knew it in its subordinate form and character, and this evidence would seem to be with the view to show that he had some kind of notice on that subject.

Mr. Evarts—Well, your Honor, the point, as I understand it, was not that nobody ever said anything against

Mr. Beecher, but that Mr. Tilton did not charge it to Gen. Tracy; he never heard from Mr. Tilton any charge of a larger dimension. Whether Mr. Moulton, Mr. Franklin Woodruff, or anybody else in Brooklyn talked around and said what Mr. Tilton thought, or what he said, or insinuated, or winked, or nodded—that is not the point; but this authority to which I advert seems to cover this case?

ARGUMENT OF MR. BEACH.

Mr. Beach—If the gentleman will have the authority in Court here, that will show, of course, very clear; we cannot tell from marginal notes. But your Honor has struck the point, Sir, of what is material in this evidence. I suppose it will be pretty clearly remembered by your Honor, that Mr. Tracy, in his examination-in-chief, substantially declared that he had no knowledge of the charge of adultery being made on behalf of Mr. Tilton until some time in the year 1874—in July, I think, or August, of 1874—and presented that as an excuse for his changing his relations and forfeiting his pledge to Mr. Tilton. Now, we propose to show, Sir, that in the interview with the gentleman upon the stand, subsequently followed by a confidential interview between the same gentleman and Mr. Tilton and Mr. Moulton, Mr. Tracy was then at an early day explicitly informed of the charge made by Mr Tilton against Mr. Beecher, and that after that his negotiations, his conferences, his advice, and his cooperation were given to and united with the exertions of Mr. Tilton and Mr. Moulton in reference to the subsequent events of this scandal, and that thus knowing, from an authentic source, to wit, the witness upon the stand, from a source which afterward received the approbation and adoption of Mr. Tilton, to whom Mr. Tracy made his pledge—that after receiving this information he continued his relations with Mr. Tilton and redeemed the pledge for a long period of time which he had given to Mr. Tilton in regard to his relation to him. Now I cannot go through, Sir, the details of all this evidence, to show your Honor the position which Mr. Tracy took in his examination in regard to the knowledge of the precise charge made against Mr. Beecher. We propose to give this, with other evidence, to show that Mr. Tracy, prior to the Summer of 1874, at which he locates his discovery which released him from his professional obligations, as he supposes, well knew and understood that the charge of Mr. Tilton against Mr. Beecher, when, in the language of Beecher, "you came to the bottom facts" of that charge, when it was not attempted to be concealed for the purposes known to the different parties interested in it—that Tracy well understood what was the extreme and criminal character of the accusation; and this, Sir, as one of the circumstances in the history of his negotiations with Tilton and his friends, we propose to give, in contradiction of Mr. Tracy, to show that at the time of these interviews in the Fall of 1872 he well understood what was the nature of this accusation; and it was the same then as it was in the Summer of 1874, and as it is to-day. We have certainly, so far as inquiry of Mr. Tracy is concerned—we have certainly laid the foundation for this proof, because we have drawn his attention specifically to the conversation, to the subject, and to the language.

THE JUDGE WILLING TO RECEIVE THE TESTIMONY.

Mr. Evarts—Well, if your Honor please, you see the whole situation in this Fall of 1872 was that there had been a publication in a New-York paper in detail, professing to be founded upon Mr. Tilton's evidence—information to the writer of that article, that the charge against Mr. Beecher was of adultery with Mrs. Tilton, and that the whole occasion for this witness being brought into relation with Mr. Tracy was from the exigencies arising on the demands of the friends of the firm of Woodruff & Robinson that that gross charge should not be left uncontradicted in so far as it rested upon the responsibility of Mr. Moulton; and these preliminary conversations with Mr. Tracy on the part of Mr. Franklin Woodruff were to see whether he would come into consultation for friendly advice to Moulton and the firm in respect to the duty of Moulton in the premises, of disclaiming and contradicting; and whatever passed before in the way of Mr. Woodruff or Mrs. Woodhull or anybody else saying that Mr. Tilton charged Mr. Beecher with adultery, had nothing to do with the question of whether Mr. Tilton *did* charge. That is the question, and this solemn interview of Sunday night brought the thing to a point, that he did not charge adultery, and never had. And then Gen. Tracy is put to the mark: "From that time forward did Mr. Tilton ever charge adultery? No, not until 1874." That is the situation. Now, how is that line of Gen. Tracy, or that position, contradicted by showing that this man, having no knowledge of his own, not having as much knowledge or as much intercourse with the party from whom the information is alleged to have come, as Mrs. Woodhull had had, and had published it—how does that bear on the question of whether Mr. Tilton's charge as made to Gen. Tracy was always limited to the less offense, or the imputation, qualified and contradicted, too, at that, and never enlarged itself to this charge until 1874. That is all that could possibly be material.

Judge Neilson—If I receive this it is not because I regard Mr. Tracy is on trial, or feel any present interest in any such question; but it comes in merely as notice through this witness to him. I think sufficient foundation has been laid for it.

Mr. Evarts—Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

Mr. Beach—Mr. Woodruff, will you please state what passed between yourself and Mr. Tracy; what information you gave him in the interview to which I have asked your attention, with reference to the charge made by Mr. Tilton against Mr. Beecher. [To defendant's counsel]—I may as well in the same question ask with reference—[to the witness]—and also in reference to any communication you made to him with regard to money for Mrs. Tilton.

Mr. Evarts—The first question, about what he said to him, must be limited to the words that are put to Mr. Tracy.

Mr. Beach—Not to the words, to the substance.

Mr. Evarts—Well, to the substance of the words.

The Witness—I went to Gen. Tracy's office——

Mr. Evarts—The question, as I understand your Honor to rule—we submitted to it; it is no doubt a proper ruling, as well as the ruling that governs the case—that they are putting to him: "Did you say to Mr. Tracy at that interview that the charge was adultery?"

Mr. Beach—Well, I have put it.

Mr. Evarts—Did you put it to Mr. Tracy?

Mr. Beach—Do you wish me to repeat it, Sir? [To the witness.] Did you in that interview say to Mr. Tracy in words or substance, that Mr. Tilton's charge against Mr. Beecher was of adultery with his, Tilton's, wife, and if so, give the words as near as you can recollect them, or the substance of them?

Mr. Evarts—Oh, no; answer the first question.

Mr. Beach—You will answer my question as I put it, unless it is ruled out.

Mr. Evarts—Not unless the Court allows it.

Mr. Beach—No, certainly not.

Mr. Evarts—That has been negatived; we were not allowed even to ask the witness what he said.

Mr. Beach—I am asking whether he said that in substance, and that was the question that I put to Gen. Tracy.

Judge Neilson—I think he can answer that. A. I told him.

Mr. Evarts—No, no; did you tell him that?

Mr. Beach—Wait, wait; don't pay much attention to that gentleman just now.

THE FIGHT TO EXCLUDE THE TESTIMONY REOPENED.

Mr. Evarts—Well, I must have, if your Honor please, the same ruling on the part of my learned friends that we have been so submissive to making heretofore, and the ruling has been express against us to which we have conformed, that the question should be: "Did you tell him?"

Judge Neilson—Yes.

Mr. Evarts—The same question that was asked of Mr. Tracy, and he is to answer yes or no.

Judge Neilson—Yes.

The Witness—May I tell who I had the evidence from?

Judge Neilson—No.

Mr. Evarts—No.

Mr. Beach—Don't say anything about it. Just say what you said.

Judge Neilson—Cannot you put the question in the terms that it was put to Mr. Tracy?

Mr. Beach—I did, Sir. "Did you tell him that it was adultery, or in substance that." It may not be in that precise language, Sir.

Judge Neilson—Say yes or no, Mr. Woodruff.

The Witness—Do you want to know if I had that from Mr. Tilton.

Mr. Beach—No, no, I don't ask that.

The Witness—That is what the other side said.

Q. I told you not to pay much attention to Mr. Evarts, just now. [Laughter.]

Mr. Evarts—He can't help it you know.

Mr. Beach—I know we can't help it. It is the seductive character of the man; but I want you to try.

Judge Neilson—Stenographer, read that question, please.

The Tribune stenographer read the question as follows: "Did you in that interview say to Mr. Tracy, in words or substance, that Mr. Tilton's charge against Mr. Beecher was of adultery with his, Tilton's, wife, and if so give the words as near as you recollect them. or the substance of them."

The Witness—I did say so to Gen. Tracy in that interview.

Q. Did you say to Gen. Tracy in that interview that Mr. Beecher had advanced the sum of $500 for the use of Mr. Tilton's family, or in substance that?

Mr. Evarts—Don't answer that, because that don't come within any rule excepting of contradicting Gen. Tracy as to whether Mr. Woodruff had told him so and so That don't come on to this question of knowledge of the heinousness of the charge.

Judge Neilson—No.

Mr. Evarts—That ruling that I have called your Honor's attention to would govern this; it is not the extra-judicial statement of Mr. Tracy.

Mr. Beach—Yes, it is.

Mr. Evarts—No, it is not.

Mr. Beach—Well, we will get to it.

Mr. Evarts—When we get to it we will be there.

Mr. Beach—We are getting to it.

Mr. Evarts—Then take your stages if you are going there.

Mr. Beach—Well, we must take stages or we can't get there.

Mr. Evarts—That has been ruled; you can't put any such question.

Mr. Beach—I think we will.

Judge Neilson—What did Mr. Tracy say about that $500?

Mr. Beach—Mr. Tracy denied it, and said that Mr. Woodruff did not make to him that communication, and said that, in referring to that communication, he did not say to Woodruff when they went from the meeting on Sunday night that that was the worst feature in Beecher's case.

Mr. Evarts—Well, but you are not asking him about Sunday evening.

Mr. Beach—But you won't let me; that is just the trouble. I am going to ask him. I have to prove in the first place that there was some communication about money before I can get the reflection which Mr. Tracy made upon it.

Mr. Evarts—No, the question to Gen. Tracy was this—this same interview as I understand it; the preliminary interview, not the Sunday night interview; it was one of these preliminary interviews before Moulton was introduced to Gen. Tracy. The question put to Gen. Tracy was:

Q. Now, didn't he tell you that Beecher had given Moulton, for the support or the benefit of Mrs. Tilton and Tilton's family, $500? A. No, Sir.

Q. Do you swear positively to that? A. I do, most emphatically.

Mr. Beach—The subject is alluded to again.

Mr. Evarts—Well, I understand you are not on the Sunday night interview?

Mr. Beach—That has nothing to do with the suggestion that I make to you that the subject is alluded to again.

Mr. Evarts—Well, you agree that it is not the Sunday night interview that you are inquiring about, don't you?

Mr. Beach—I most certainly do, if that is important to be known.

Mr. Evarts—Yes, it is very important to me.

Mr. Beach—Well, then, I grant it.

Mr. Evarts—Now, where was it alluded to again? Now, the question is this, whether he can ask this witness, "Did you not tell Mr. Tracy, at that interview, that Beecher had given to Moulton, for the support or the benefit of Mrs. Tilton and Tilton's family, $500?" Now, what this witness said to Gen. Tracy, as evidence in chief, is of no importance.

Judge Neilson—No.

Mr. Evarts—What Gen. Tracy said to the witness in contradiction of anything that he has said—that is, what Gen. Tracy said on the stand, can be made the subject of collateral impeachment by producing extra-judicial statements of Gen. Tracy, if the foundation has been laid. But this is not any extra-judicial statement of Gen. Tracy; it is correcting or contradicting Gen. Tracy as to a statement supposed to have been made by this witness and denied by Gen. Tracy, of this fact to Gen. Tracy. Now, it is not material, it is not in issue and it is not a collateral impeachment. Here is the authority in court now.

Judge Neilson—What statement did Gen. Tracy make in respect to that money, Mr. Beach?

Mr. Beach—Mr. Tracy made this statement, that Mr. Woodruff made to him no communication of that kind about $500, and denied that he—this communication having been made a day or two preceding the Sunday—that when he and Mr. Woodruff left the place of the interview that Sunday he did not in relation to that thing say that that was the worst feature of Mr. Beecher's case. Now Mr. Tracy comes to this interview on Sunday and against the testimony of Moulton and of Woodruff and of Tilton, swears that the only revelation made to him at that interview of iniquity upon the part of Mr. Beecher was improper solicitations. In the face of the direct oath of these three men, he denies that he was then informed that the charge was sexual intercourse between Beecher and Mrs. Tilton. Now, as a circumstance altogether independent of the question of contradiction, we offer to prove that at the preliminary interview, when he was solicited to this main and most important consultation, he was then told that the charge was adultery; he was then told of circumstances which led his mind to the conclusion—of acts on the part of Mr. Beecher—which led his mind to the conclusion that there was something more serious in this matter than he testified as to what occurred on Sunday of the main interview. Now, Sir, the surroundings of this interview, the intercourse as between Mr. Tracy and these persons who then were in consultation with him, are all-important and admissible to determine the question of veracity as between Tracy on the one hand and Woodruff and Moulton and Tilton on the other. If before Mr. Tracy went to that interview—if almost on the way to that interview, he was told by one of the parties to it that the charge of Tilton was adultery as against Beecher, is it not a circumstance, Sir, to be considered by the jury whether, when they get together, his story as to the nature of the charge made by Tilton is true or not?

Judge Neilson—Well, with that view I allowed him to answer, so as to show, whether Gen. Tracy remembers it or not, he gave him notice of the character of the charge.

MR. TRACY INFORMED OF THE MONEY CONTRIBUTIONS.

Mr. Beach—Yes, Sir, and can we not prove the other circumstance that he gave him notice that this man, Beecher, without any obligation or debt to induce him to do it, was making contributions of $500 for the purpose of supporting Mrs. Tilton and her family without the knowledge of the husband, and that when Tracy heard that he pronounced it as the most damaging circumstance in the whole history of the transaction?

Judge Neilson—Well, now, as to the money. First, we have that proved in various ways.

Mr. Beach—Not in regard to the $500.

Judge Neilson—Not the $500—the other money.

Mr. Beach—I am not talking about the other money, Sir.

Mr. Evarts—It is a part of it.

Mr. Beach—It is no part of it.

Mr. Evarts—Why, yes, it is.

Mr. Beach—You can say it is. I say it ain't. It is a part of the $2,000, but not of the $5,000.

Judge Neilson—We have a large amount of evidence as to money advanced by Mr. Beecher, some of which, it appears, went to the benefit of Mrs. Tilton herself, and some of it went to other uses, including Bessie Turner's schooling, so that that is very clearly before us, and has a certain amount of indorsement by Mr. Beecher himself.

Mr. Beach—Yes; but there is nothing before us to show that Mr. Tracy received knowledge—had knowledge of the contributions of money at the time of the interview on Sunday, Nov. 10.

Judge Neilson—I do not see how it is material that he knew it or did not know it; and the other branch of your inquiry is simply calling for Mr. Tracy's opinion, to wit, that it was the worst feature. Well, now, we do not want his opinion—mere opinion. He said it was the worst feature of the case. Suppose he said so.

Mr. Beach—He said, if your Honor please, that all he knew or suspected then was improper solicitations; that he never heard of anything else. That is what he says.

Judge Neilson—Well, we have taken the answer on the vital point.

Mr. Beach—I know we have upon that. It is a very vital and material question, too, whether a stranger to the household of Mr. Tilton shall make these contributions of $500, and when they are communicated to his counsel, Mr. Tracy, and he pronounces it as the most damaging circumstance, does it not reflect, Sir, upon the question of the integrity of Tracy when he swears that he had no suspicion or knowledge of any other charge than improper solicitations?

Judge Neilson—I do not see that his opinion about its being an unfavorable circumstance, or not, is at all material—a mere opinion.

Mr. Beach—It is just his opinion, Sir, if your Honor please, that we are after; it is the very thing we are seeking for. On Nov. 10 what was the opinion of Tracy as to the guilt of Beecher, and as to the charge which Tilton made against Beecher? So far as Mr. Tracy is concerned, and his credibility is concerned with the jury, that is the essential and main inquiry.

Judge Neilson—You may ask him whether or not he gave notice to Mr. Tracy—turn to your question to him—of the advance of $500 by Mr. Beecher for the benefit of Mrs. Tilton or family, but not go beyond that, not take Tracy's opinion that that was the worst feature of the case, because it is a mere opinion.

Mr. Beach [to the witness]—Well, Sir, did you give that information to him? A. I did.

Mr. Evarts—Well, it is understood to be in those terms. I do not object to the question in those terms—that is to say, the direct question: "Did you tell Mr. Tracy on that occasion?" [To Mr. Shearman.] Where is this evidence?

Judge Neilson—That Mr. Beecher advanced $500.

Mr. Evarts—That Mr. Beecher had given to Moulton, for the support or the benefit of Mrs. Tilton and Mrs. Tilton's family, $500.

Mr. Beach—Or substantially that.

The Witness—I told him that.

Judge Neilson—You told him that? A. Yes, Sir.

Judge Neilson—Very well, that covers that. Now then, this remaining question, which I think not at all material, is as to Mr. Tracy's opinion saying it was the worst feature.

MR. TILTON'S CHARACTERIZATION OF HIS WIFE'S OFFENSE.

Mr. Beach—Very well, Sir, I will not press it, if your Honor is disinclined. [To the witness]—In that conversation on Sunday, did Mr. Tilton say to Mr. Tracy that he did not make the charge of adultery against Mr. Beecher?

Mr. Evarts—Well, now, this, I suppose, is some question put to Mr. Tracy.

Judge Neilson—The learned counsel puts his question from general recollection, it seems, of Mr. Tracy's evidence.

Mr. Beach—Certainly I do, Sir.

Judge Neilson—I have not a good recollection. Have you got the question?

Mr. Evarts—No; I have not.

Mr. Beach—Well, I suppose we all remember that Mr. Tracy testified in that conversation that Tilton expressly told him that his charge was not adultery.

Mr. Evarts—Well, where do you get a right to put a leading question to your witness except on the ground of a direct contradiction?

Judge Neilson—Yes, of course.

Mr. Evarts—If you want to prove what was said in this interview, then we will see whether you can bring it in in rebuttal—whether you have not exhausted the interview with this witness on your direct examination.

Mr. Beach—Well, when I offer to bring it in as affirmative evidence it will be time enough to reason the question then.

Mr. Evarts—Then I shall reason the question.

Mr. Beach—No, you won't, for I shan't do it.

Mr. Evarts—Very well, then, you are out of the way. Now you are here to contradict.

Judge Neilson—Do you find the direct question that was put to Mr. Tracy?

Mr. Beach—No, I cannot refer to the direct question. Here we have got a version of this interview by three witnesses, and Mr. Tracy comes and adds to it—makes an additional declaration. Cannot I contradict it by the same witness?

Mr. Evarts—In the terms of his statement, yes.

Mr. Beach—I am not bound to take the terms of his statement.

Judge Neilson—In substance.

Mr. Beach—Yes, in substance. When he swears to an additional fact as occurring at an interview in which we say it did not occur, may we not contradict it by our witness?

Mr. Evarts—There my friend is right back where he said he would never be.

Mr. Beach—No, I ain't right back. You are quite mistaken. You won't get me back.

Judge Neilson—He has a right to contradict the witness.

Mr. Evarts—He has a right to rebut provided he is within the rules of rebuttal, but he said he would never do it.

Mr. Beach—No, I did not.

Mr. Evarts—You offer it as contradicting Mr. Tracy?

Mr. Beach—We offer it as rebuttal and contradictory evidence.

Mr. Evarts—Very well; now we will take it on rebuttal. This interview was given in evidence by the plaintiff as a part of their original case and the whole of it; and this witness was examined on it and gave his evidence, and we have contradicted those witnesses as to that interview. Now, they cannot recall those witnesses to reinstate and rebut their former statements.

Judge Neilson—No; I think the learned counsel would not do it, because it would be a waste of time.

Mr. Evarts—Well, but the laws of evidence, besides that, would not permit it to be done—a graver reason than the general waste of time.

Judge Neilson—I am not so sure.

Mr. Evarts—They tell their story; they are obliged to exhaust their story, and we contradict them. Now, when we introduce substantially new matter, not any point of the interview concerning which they tell their story, but new facts of Mr. Beecher going to Peekskill, or this, that, or the other thing, then rebuttal comes in.

Judge Neilson—Well, that I understand it to be.

Mr. Evarts—Not at all; it is the same conversation, the same interview, and they have given their story about it, and there was talk about adultery, and this, that, and the other. Mr. Tracy has come forward and given his story as to what occurred there, and that there was a disclaimer of adultery. Now, this witness was examined before; if he had not been that would not make any difference, and it is nothing but a reinstatement of his case.

Judge Neilson—No; he is only called to speak to any new matter on this point that Mr. Tracy may have introduced.

Mr. Beach—That is all, Sir.

Judge Neilson—Frame your question with that view.

Mr. Evarts—Let us see if he was not asked this very question before.

Judge Neilson—If he was, then he need not be asked it now.

Mr. Evarts—The rule is thus laid down in Rex *vs.* Hilditch et al. [English Common Law Reports, page 575.]

Whatever is a confirmation of the original case cannot be given as evidence in reply; and the only evidence which can be given as evidence in reply, is that which goes to cut down the case on the part of the defense, without being any confirmation of the case on the part of the prosecution.

Now, Mr. Woodruff is asked, as a part of their direct case before that goes in evidence [consulting with Mr. Abbott]—well, it was in his evidence on the opening case.

Mr. Beach—That was on your cross-examination.

Mr. Evarts [reading]:

You say he charged Mr. Beecher with being an adulterer that day in my presence? A. He said he had been guilty of adultery.

Q. Didn't I—[Gen. Tracy was conducting the examination]—"Didn't I turn to him then and say, 'Do you mean with your wife?' and was not his reply to me, 'No, Sir; with another woman?'"

The answer is:

No, Sir; I don't recollect that you said that.

Q. You don't remember that? A. No, Sir.

Q. Do you remember any allusion to any other woman that day in that conversation? A. I don't recollect any allusion to any woman, only that Mr. Beecher had been guilty of adultery, he didn't say with whom.

Now, that is the whole point of the inquiry? Gen. Tracy says that Mr. Tilton got excited and said that Mr. Beecher had been guilty of adultery. "Then I asked him: 'Well, was it with your wife?' 'No; not with my wife, but with another woman.'" Well, however heinous that may be, it is not a part of the issue here; so that this whole thing has been gone through, this witness has been examined and cross-examined, and now we have given Mr. Tracy's statement concerning it.

Mr. Beach—If the gentleman had looked a little further back in the testimony of Mr. Woodruff, he would have found that in his direct examination he swore even more than the counsel has read. He testified that Mr. Moulton, at the commencement of the interview, related to Mr. Tracy the circumstances ——

Mr. Shearman—Not in the presence of Mr. Tilton.

Mr. Beach—That don't make any odds, whether it was in the presence of Mr. Tilton or not, Sir. He then told Mr. Tracy that Beecher had been guilty of sexual intercourse with Mrs. Tilton.

Mr. Evarts—Mr. Woodruff swore to it; we asked Mr. Tracy about it and contradicted him; he says he did not.

Mr. Beach—I know that. When the gentleman will give me an opportunity to drop in a word here once in a while, perhaps we will find where I stand, at any rate what my point is. Now I admit, Sir, that Mr. Moulton and Mr. Woodruff, upon their former testimony, related that interview with Mr. Tracy, and gave their version of it—that they communicated to Mr. Tracy the fact of sexual intercourse, or adultery, or what not, whatever you may call it.

Judge Neilson—Which you do not propose now to rebut.

Mr. Beach—Nothing at all, Sir; nothing to do with it. Mr. Tracy comes upon the stand and denies that. He says no such communication was made to him; and then he goes further and says that

On the contrary from that, Mr. Tilton, in express terms, said to me that he made no accusation of adultery against Mr. Beecher with his wife; that his wife was as white as snow.

Mr. Evarts—Oh, no.

Mr. Beach—Yes, he does.

Judge Neilson—That is according to your present inquiry.

Mr. Tracy—That she was a pure woman.

Mr. Beach—Pure as snow.

Mr. Tracy—Snow is not in my evidence.

Mr. Beach—So much the better for the snow. [Laughter.] That is pure now, at least. Now, all we want is to contradict the declarations.

Mr. Evarts—Well, now, what is the question?

Mr. Beach—Well, it is so far back I shall have to repeat it, I guess. [To the witness.] In that interview on Sunday, which has been spoken of, in the Autumn of 1872, did Mr. Tilton, in words or substance, say to Mr. Tracy in your hearing that his wife had not been guilty of adultery with Mr. Beecher; that she was a pure woman?

Mr. Evarts—No; that is not the form of the statement. The question was put to Mr. Tilton: "Do you mean with your wife?" Mr. Tracy's statement is, that in excitement Mr. Tilton said that Mr. Beecher was an adulterer, or something of that kind. After he had got through disclaiming it from his wife, that is, after he had given a lesser statement, then Mr. Tracy says to him: "Do you mean with your wife?" and he answers, "No; not with my wife; my wife is as pure as—is a pure woman.

Judge Neilson—Well, now, that is a point about which the witness did not speak on the former examination, and about which he can speak now.

Mr. Evarts—Then let it be limited to that question: "Did he say," &c.

Mr. Beach—Well, if the gentleman will be good enough to frame my questions for me I will be very much obliged; if I do not get them right he can correct me.

Mr. Evarts—It is as much labor as I can bear to keep you from asking wrong ones.

Mr. Beach—I understood you to make a suggestion as to the form of my question; and if you will repeat it I will consider it.

Mr. Evarts—I repeat that you must frame your question as the law requires.

Mr. Beach—Now, I ask him whether, in words or substance, upon that occasion Mr. Tilton——

Mr. Evarts [referring to the record]—Ah, this is the statement of Mr. Tracy:

After he had finished the reading of the paper, I said to him in substance (I don't remember the phraseology): "Your statement, Mr. Tilton, settles one thing—that you did not charge Mr. Beecher with adultery." He said, "No, my wife is a pure woman." I remember that phrase and that sentence occurring.

Then there was a subsequent outbreak, where, having passed over the actual circumstances of the charge against Mr. Beecher in respect of his wife, he got into an excitement and said that Mr. Beecher was an adulterer, anyhow. Then came the question:

"Do you mean with your wife?" "No——"

There is the place. [Indicating to Mr. Beach.]

Mr. Beach—Is that on the direct examination? It must be, I think.

Mr. Evarts—Oh, yes; it is part of his narrative of the interview.

Judge Neilson—Suppose you take Mr. Evarts's book, Mr. Beach; that will be the best way.

Mr. Beach—I will find it in a minute.

Judge Neilson—There seems to be ground for two questions, if you confine it to the terms of the question to Mr. Tracy.

Mr. Beach—Well, Sir, Mr. Tracy says he does not remember the phraseology, and if he does not, I cannot.

Judge Neilson—Still, you want the exact substance.

Mr. Beach—Yes, Sir; I want the exact substance.

Mr. Evarts [to Mr. Beach]—Don't you find that passage?

Mr. Beach—No.

Mr. Evarts—Well, use my book. Here it is. [Indicating in the book.]

Mr. Beach—That is not the whole of it; there is more than that.

Mr. Evarts—No, that is subsequent.

Mr. Beach [to the witness]—Well, Sir, did this occur —— [To the Court]—Well, I cannot ask this question without committing the witness to a statement which has been denied. This was a question put by the other side, and they say: "After he had finished the reading of this paper"—that is, what they call the "True Statement." Now, our witnesses have denied that any such paper was read upon that occasion, and I cannot put it in the precise language of this declaration.

Judge Neilson—Well, say, "After any reading that was had on that occasion."

Mr. Beach—Surely I can put it at any time during that conversation.

Mr. Evarts—Oh, I think so.

Mr. Beach—Very well. [To the witness.] During that conversation, at any time, did this occur, in words or substance: Mr. Tracy saying to Mr. Tilton, "Your statement, Mr. Tilton, settles one thing, that you did not charge Mr. Beecher with adultery;" and Mr. Tilton saying, "No; my wife is a pure woman?" A. I do not think it occurred.

Q. You have no recollection of any such thing? A. No, Sir. [A pause.]

JOKES BY THE JUDGE, COUNSEL, AND JURY.

Mr. Beach—I cannot put my eye upon the rest of it, Sir.

Judge Neilson—We have taken so much evidence that I am not surprised that you cannot find it.

Mr. Beach—Yes, Sir; I can remember it better than I can find it.

Mr. Evarts—The difficulty is to remember it correctly.

Mr. Beach—That is a difficulty that has not yet occurred, Sir.

The Witness [in an undertone, to the Court]—Judge, I hope you will let them get through with me to-day.

Mr. Beach—Did anything like this, in language or substance, occur in your hearing: Mr. Tilton saying that Mr. Beecher was an adulterer, and he could prove it; and Mr. Tracy asking, "With your wife?" and Mr. Tilton replying, "No, but with another woman," or "women," or "other women;" did anything like that occur? A. Nothing that I recollect, stated as that is. Some part of it might have occurred.

Mr. Beach—Well, I guess that covers the two branches. [After consulting with the other counsel.] Our recollections differ, Sir, in regard to the fact whether or not Mr. Woodruff, upon his former evidence, spoke in regard to the "True Story"—that statement. *I* am certain that he did.

The Witness—I did.

Mr. Beach—Then that is all we care to ask, Mr. Woodruff.

Mr. Evarts—He spoke about it.

Mr. Shearman—We will cross-examine in the morning.

Judge Neilson—Better do it to-night; we were late in coming in at recess.

Mr. Shearman—If your Honor will give us about an hour and a half.

Judge Neilson—We were late in coming in, and I think it will save time to finish this examination to-night.

Mr. Shearman—The jury have already been suggesting adjournment.

Mr. Evarts—It is a question for the jury; we can go on.

Judge Neilson—The jury are content. They are pleasant looking men.

The Foreman of the Jury—The jury would like to adjourn as usual, Sir.

Judge Neilson [to the jury]—Are you willing to remain, gentlemen?

The Foreman—We are willing to go. [Laughter.]

Judge Neilson—No doubt. We are all willing to go. We lost some time at the intermission, and I think we had better close the examination and relieve this witness.

Mr. Evarts—The jury say that they did not lose that time.

Judge Neilson—Oh, *they* did not lose any time.

Mr. Evarts—We expect a considerable cross-examination. If it were a question of ten or fifteen minutes, we would not care.

Mr. Beach—Well, I suggest that we compromise this matter by your Honor ordering Mr. Evarts to "shut up" for half an hour, the time that he kept us waiting here. [Laughter.]

Judge Neilson—I never make an order that won't be carried out. [Laughter.] [To the witness.] If you cannot come in the morning, then we will fix another time.

The Witness—Oh, I can come.

The court then adjourned until Tuesday at 11 o'clock.

SEVENTY-EIGHTH DAY'S PROCEEDINGS.

MRS. TILTON DENIED A HEARING.

JUDGE NEILSON'S ANSWER TO MRS. TILTON'S APPEAL—THE LANGUAGE OF HER PROTEST AND DECLARATION OF INNOCENCE — THE JUDGE POINTS OUT THE DIFFERENCE BETWEEN MR. AND MRS. TILTON AS WITNESSES—FURTHER REBUTTAL TESTIMONY FOR THE PLAINTIFF—MR. WOODRUFF'S CROSS-EXAMINATION — TESTIMONY OF MRS. ANNA M. MIDDLEBROOK, JOSEPH H. RICHARDS, AND JOHN BREMER.

TUESDAY, May 4, 1875.

Mrs. Tilton's letter, which she desired Judge Neilson to read aloud in court on Monday, was as follows:

May 3, 1875.

JUDGE NEILSON: I ask the privilege from you for a few words in my own behalf. I feel very deeply the injustice of my position in the law and before the court now sitting; and while I have understood and respected from the beginning Mr. Evarts's principle in the matter, yet since your last session I have been so sensible of the power of my enemies, that my soul cries out before you, and the gentlemen of the jury, that they beware how, by a divided verdict, they consign to my children a false and irrevocable stain upon their mother! For five years past I have been the victim of circumstances, most cruel and unfortunate; struggling from time to time only for a place to live honorably and truthfully. Released for some months from the *will* by whose power unconsciously I criminated myself again and again, I declare solemnly before you, without fear of man and by faith in God, that I am innocent of the crimes charged against me. I would like to tell my *whole* sad story *truthfully*—to acknowledge the frequent falsehoods wrung from me by compulsion — though at the same time unwilling to reveal the secrets of my married life, which only the vital importance of my position makes necessary. I assume the entire responsibility of this request, unknown to friend or counsel of either side, and await your Honor's honorable decision. With great respect,

ELIZABETH R. TILTON.

The appended reply of Judge Neilson sent to Mrs. Tilton was written by the clerk of the court:

CHAMBERS OF THE CITY COURT OF BROOKLYN, N. Y. }
BROOKLYN, May 4, 1875. }

MRS. TILTON: I am directed by Chief-Justice Neilson to return your letter, as it cannot be read in court. Also to state that in civil cases counsel have the right to refrain from calling any particular witness, however competent, and that neither the Court nor the client can interfere with the exercise of that right.

The Judge also instructs me to say that the question whether you could be a witness stands on quite other ground from that considered when your husband was called and sworn. He was a competent witness to testify in his own behalf against a third person, defendant, and while the policy of the law was to some extent involved, there was no express statute in the way. But the statute of May 10, 1867, expressly declares the wife to be incompetent as a witness for or against the husband. Yours respectfully,

GEO. W. KNAEBEL, Clerk City Court, &c.

Neither the counsel for the defendant, nor the counsel for the plaintiff were at all communicative on the subject of Mrs. Tilton's request to be heard. Mr. Beach said that he knew nothing about it, and had not seen Judge Neilson's reply. The matter was entirely beyond the province of the counsel for the plaintiff, and they had not been consulted in reference to it. Mr. Evarts repeated what he had said on Monday to the effect that it was entirely a matter between Mrs. Tilton and Judge Neilson, which did not call for any action or opinion on the part of counsel.

The cross-examination of Franklin Woodruff by Mr. Shearman was long and uninteresting. Gen. Tracy sat near Mr. Shearman, and prompted him frequently while he was questioning the witness. The inquiries were directed principally to the interviews which had taken place in 1872 between the witness and Gen. Tracy, in which the money paid for Bessie Turner's schooling, and other pecuniary transactions connected with the scandal were spoken of. Little that was new, and nothing that the audience manifested much interest in, was developed. Even the jurymen exhibited unmistakable signs of weariness as the dull repetition of questions and answers dragged slowly on through most of the morning session. On several points the witness, with a cautious manner, and in a qualifying way, contradicted the evidence produced by the defendants.

On the re-direct examination of Mr. Woodruff Mr. Beach produced the Bowen check for $7,000, and the yellow slip of paper which was alleged to have accompanied it. The witness said that he remembered the check, but did not think the paper accompanied it.

At the opening of the afternoon session Mr. Morris said that Dr. Skiles had been subpenaed as a witness, but his statement had been heard by Mr. Evarts and himself on the only point which they wished to determine by him, which was that he had made his last professional call on Mrs. Tilton on Dec. 30, 1870.

Mrs. Anna M. Middlebrook of Trumbull County, Conn., was the first new witness called for the plaintiff. Her examination was conducted by Mr. Fullerton. She was a lady of middle age, very intelligent in appearance, and she gave her testimony in a clear strong voice, and an unembarrassed manner. The principal points of her evidence were in reference to a conversation at Mrs. Woodhull's house in 1871, in which Mrs. Woodhull, Mr. Tilton, Charles Cowley, and some other persons had taken part, and in reference to a speech of Mrs. Woodhull's in Boston in 1872. The witness denied that in the conversation at Mrs. Woodhull's the subject of the scandal had been discussed, as Mr. Cowley had asserted in his evidence.

There was a stir of interest in the court-room when the plaintiff's counsel recalled Joseph H. Richards, Mrs. Tilton's brother. He was examined by Mr. Morris about his appearance before the Investigating Committee. Mr. Evarts strenuously objected to his replying to the questions put, on the ground that no foundation had been laid for them. The point was argued at length by Mr. Evarts and Mr. Beach. Finally Judge Neilson put an end to the dispute by saying, "Now, Mr. Richards, you'll be so good as to state what occurred."

On hearing these words Mr. Beach shut the book from which he had been reading, and triumphantly repeated them in a manner that caused the audience and counsel to laugh. Mr. Richards's account of what occurred between himself and Mr. Tracy, when he went before the Committee, was eagerly listened to. The witness said that he told Gen. Tracy—who represented himself as Mr. Beecher's counsel—that for years past it had been his custom to say nothing on the subject of the scandal. Gen. Tracy told him that that was what he must say to the Committee when he went before them, and that was what he did say.

Mr. Richards was asked if Bessie Turner had told him, in December, 1870—as she had testified that she did—that she and Mrs. Tilton had suffered ill-

usage at the hands of Mr. Tilton. The witness did not remember that Miss Turner said this, and thought that he could not have forgotten it if she had. Mr. Richards's manner on the stand was very calm, but his face was somewhat flushed, and he appeared to be glad when he was finally told that he could step down.

John Bremer, a German, and keeper of a United States store in New York, was brought forward on behalf of the plaintiff, to give evidence as to the position of Mr. Tilton in the Rossel procession. His stumbling pronunciation of English, and the general confusion of his ideas when he fell into Mr. Evarts's hands on the cross-examination, caused much merriment among the spectators.

Just before the close of the afternoon session Stephen Pearl Andrews was called and sworn for the plaintiff. He was examined by Mr. Fullerton, and gave an account of his peculiar career as an author, a philanthropist, and a speculative thinker. His examination concerning the scandal itself had not been reached when the hour for adjournment arrived.

THE PROCEEDINGS—VERBATIM.

FRANKLIN WOODRUFF'S EXAMINATION CONTINUED.

The Court met at 11 a. m., pursuant to adjournment.

Counsel for both plaintiff and defendant were somewhat late.

Judge Neilson [to Mr. Fullerton]—Was it the ice, or was it the fog?

Mr. Fullerton [smiling]—Neither, Sir.

Mr. Beach—Shall I proceed, your Honor?

Judge Neilson—Yes.

Franklin Woodruff was then recalled, and his direct examination continued.

Mr. Beach—I have to state, Sir, on behalf of Mr. Woodruff, that at 10:35 this morning we received a subpena from the other side to produce the books of Woodruff & Robinson for some two years, 1872 and 1873.

Mr. Tracy—1871 and 1872.

Mr. Beach—1871 and 1872. It was while he was here, Sir, in attendance in court, and it was utterly impossible that he could get them here by 11 o'clock. He will procure them, I suppose, when he can get an opportunity. [To the witness.] Mr. Woodruff, in the interview to which your attention has been directed, at Mr. Moulton's study, at the time Mr. Tracy, Moulton and Tilton were present, did Mr. Tilton in words or substance—I beg pardon, Sir; I am now speaking of the Schultz interview. At the interview with Mr. Schultz, at his house, where the starting of a paper was spoken of, did Mr. Tilton, in words or substance, say to Mr. Schultz that he could not accept any aid for Mr. Beecher?

Mr. Evarts—Mr. Beach, have you got that open before you?

Mr. Beach—Yes; No. VIII., page 344.

Judge Neilson—*From* Mr. Beecher.

Mr. Beach—Did Mr. Tilton, in words or substance, say to Mr. Schultz that he could not accept any aid from Mr. Beecher in connection with the subject of starting a paper, or did he put it in the form, in words or substance, that he could not put himself under any obligations to Mr. Beecher?

Mr. Evarts—One moment, Mr. Woodruff. Mr. Beach, will you tell me what column it is on?

Mr. Beach—It is there, Sir [pointing to the column].

Mr. Evarts [after examining the testimony]—Well, I shall not oppose that.

Mr. Beach—Answer, please. A. He put it in the form that he could not accept aid from Mr. Beecher that would place him under obligations to Mr. Beecher.

Q. That was in connection with the subject of starting a paper? A. It was.

Q. *The Golden Age*, I believe? A. *The Golden Age.*

Q. Mr. Schultz states, I believe, that you came to that interview in company of Mr. Tilton, and that you did not remain over ten, twelve, or fifteen minutes; will you please state? A. I went with Mr. Tilton to Mr. Schultz's house, and remained there from half an hour to three-quarters of an hour, in conversation with Mr. Schultz and Mr. Tilton, and we went away together down town.

Q. Mr. Schultz is mistaken, then, in his statement that you did not remain over 10 or 15 minutes? A. I think he is mistaken.

Q. You were there present during the whole time of the conversation? A. The whole interview.

Q. Between Tilton and Schultz? A. I was.

Q. Mr. Tracy states, Sir, that in the conversation on the Sunday at Moulton's study, as to which both you and he have testified, that on the presentation of a paper which is known as the Letter of Apology or Letter of Contrition, Mr. Tilton said in connection with its presentation, "It is a memorandum or notes of a conversation I had with Mr. Beecher." Was any such expression, in form or substance, used by Mr. Tilton at that conversation? A. Not in my hearing.

Q. Well, you was there during the whole conversation? A. I was there; there was no such thing; the Letter of Apology was treated as a genuine——

Mr. Evarts—Oh, well, no matter how it was treated; the question is, what was said. I ask that that be struck out.

The Witness—I was only going to state how Mr. Moulton presented it.

Mr. Evarts—No matter.

Mr. Beach [to the witness]—What was it you said?

Mr. Evarts—No! At least, allow me.

Mr. Beach—Of course you have a right to say "No." I want to know what he was going to say.

Mr. Evarts—I ask to have what the witness just stated, after answering the question, struck out.

Mr. Beach—He only got so far, "It was treated;" that may be struck out, as of no consequence.

Mr. Evarts—Well, no further than that. Now, if any other question is asked him, he has answered that question, that nothing of that kind was said in his hearing.

Mr. Beach—Well, Sir, that is all I care about; that is all.

Judge Neilson—Mr. Shearman, do you wish to cross-examine?

CROSS-EXAMINATION OF MR. WOODRUFF.

Q. How long have you been acquainted with Gen. Tracy? A. Five or six years, I think.

Q. And on what terms of acquaintance have you been with him? A. Well, I have known him and seen him quite often, and met him pretty often during those years.

Q. On friendly terms? A. Friendly terms.

Q. Associated together in politics somewhat? A. Well, I have been a little in politics; not very much.

Q. Any other association with Mr. Tracy? What has been the nature of your intercourse with Gen. Tracy during that period; has it been intimate, or to what extent? A. Not very intimate.

Q. You say you saw him frequently; did you call at his office often? A. I have been to his office a good many times.

Q. Did you meet him often in the street? A. I have met him a good many times in the street. He has been counsel for me.

Q. Talked with him often? A. Talked with him; I don't know what you mean by often.

Q. I mean literally, often; have you often, during that five or six years, talked with him socially, felt free to speak to him at any time when you saw him? A. Yes, Sir; and in the course of our acquaintance I have very likely spoken with him once a day, or once a week, and then again I think there have been times in our acquaintance when I have not seen him for three months.

Q. Up to what time did that relation last between you and Gen. Tracy? A. I don't know that it ever ceased.

Q. Did you see him frequently during the Summer of 1874 on the street or at his office? A. No, not very frequently in 1874.

Q. About how often did you see him? A. I don't think I saw him very often; I recollect one interview I had with him.

Q. When was that? A. That was in the Summer of 1874, July or August; I went to see him at his house.

Q. You talked with Mr. Tracy on a variety of subjects, I suppose? A. Yes, Sir.

Q. The relations were not merely business relations? A. No.

Q. He was not the regular counsel of your firm? A. He has been counsel for our firm some, and others have been counsel.

Q. He was counsel for your firm in two cases, I think you mentioned, or some one mentioned? A. Two or three cases, I think; I don't know.

Q. On what we call special retainers? He was retained for those special cases? A. I presume that is so.

Q. During all this period your relation continued friendly, so far as you know, down to this time? A. So far as I know; on my part they have.

MR. WOODRUFF TALKS WITH HIS FRIENDS ABOUT THE CASE.

Now, Mr. Woodruff, will you be kind enough to name a few gentlemen in Brooklyn, or New-York, whom you consider your most intimate friends, those to whom you talk most freely, outside of your firm? A. Talk most freely?

Q. Yes, those with whom you are most intimate, outside of your firm?

Mr. Beach—Well, what is the importance, Sir, of that inquiry?

Judge Neilson—It must be preliminary to something else.

Mr. Shearman—It is preliminary, and important.

Judge Neilson—We will take the answer.

The Witness—Well, I know a good many.

Q. Will you name four or five? A. Yes, Sir. I am pretty intimate with Mr. Nichols—George L. Nichols, and Mr. McClean.

Q. Which McLean? A. Samuel McLean.

Q. Any others? A. Well, I know most everybody around here on the Heights; I don't know that I am especially intimate.

Q. Those that you are intimate with, those that you are in the habit of talking to more or less confidentially? A. Very few; I very seldom talk confidentially with anybody.

Q. We want those few; those are the very ones we want. A. I don't know that there are any.

Q. But you talked to Mr. Nichols sometimes confidentially. A. I have about some things.

Q. Don't you talk to Mr. Southwick sometimes confidentially? A. I used to; I have not in a year or two.

Q. You used to? A. Yes, Sir.

Q. You did in 1872 and 1873, did you not? A. About some matters I did.

Q. And in 1871 about some things? A. Very likely in 1871.

Q. Now, can you name two or three more of your friends who stand on about the same footing with Mr. Southwick, Mr. McLean, and Mr. Nichols? A. Well, I don't know that I can.

Q. Well, Sir, then I may assume that those are your most confidential friends, outside of your firm, may I

not? A. I don't know that they are specially my confidential friends—they are friends that I talk with, and there are others, I believe, that I talked with, but I don't recollect exactly.

Q. Those are all that you recall? A. I can't give you the condition of my social relations to everybody.

Q. Well, did you ever talk with those gentlemen, Mr. Southwick, Mr. McLean, and Mr. Nichols, about this scandal? A. I have, unquestionably.

Q. And have you talked with them about some matters that were not made matter of public notoriety at the time? A. Well, I don't know; I have talked with them about the case.

Q. Well, have you not talked with them, Sir, or some of them, about things which you knew about the scandal, and which the public did not at the time? A. Very likely; I may have; I could not swear that I have or have not; I don't know how much the public knew.

Q. Did you talk with any of those gentlemen about counsel before you consulted with Gen. Tracy in regard to this matter? A. I think very likely I may have.

Q. Well, Sir, which of these gentlemen? A. I think I spoke with Mr. McLean once about counsel.

Q. Yes? A. I think I spoke with Mr. McLean, and said that I thought that ——

Mr. Beach—Wait a moment.

Mr. Shearman—No matter; that was before you consulted Gen. Tracy, I understand.

The Witness—I think it was.

Q. Yes, Sir; did you talk to any of these gentlemen about the subject of your consultation afterward? A. I don't recollect; I may have done so.

Q. Don't you think you did? A. Well, I would not swear; I do not recollect.

Q. Isn't it your best recollection that you did talk to one of them or more? A. I have no recollection that I talked with them about the engagement of Mr. Tracy, or of what occurred between Mr. Tracy and me; I may have done so, but I don't recollect that I did.

Q. Now, down to this day, do you mean to say, or not, that you don't recollect talking to any one of these gentlemen about what occurred between you and Gen. Tracy? A. Well, I have within the last year—you say down to this day—within the last year I have.

Q. Well, Sir, to which of these gentlemen have you talked about that matter? A. I think likely I have talked to all.

Q. How recently have you talked to any of them about it? A. Well, I think within two or three days.

Q. To which of them have you talked to within that short period? A. I think I have stated in the presence of Mr. McLean and Mr. Nichols, both, what transpired—my relations to Gen. Tracy, and how I came to——

Q. I only want to know generally that you talked with Mr. McLean and Mr. Nichols on that subject; where did you hold that conversation? A. I think at Mr. McLean's house the other night.

Q. Anybody present besides Mr. McLean and Mr. Nichols? A. I think Mr. Buckingham was.

Q. In the year 1874, Mr. Woodruff, were you in the habit of reading *The Brooklyn Union* more or less? A. I don't think I read *The Union* much in 1874; I think I had stopped it.

Q. Do you remember whether you read any part of *The Brooklyn Union* of June 26, 1874? A. I do not remember.

Q. You can't identify it that way, perhaps? A. No, Sir.

GEN. TRACY'S INTERVIEW IN "THE UNION."

Q. Can you recollect reading an interview reported in *The Brooklyn Union* on June 26, 1874, between a reporter and Gen. Tracy? A. No, I don't recollect.

Q. Have you not made the subject of that interview a subject of conversation between some of your friends and yourself? A. I don't recollect; I may have done so.

Q. Did you never hear the substance of that interview as reported? A. I think I have heard, or at least very likely at the time I saw some interview reported of a reporter with Gen. Tracy; I may have seen it at that time and I may have talked about it; I presume I did; I do not recollect.

Q. Didn't you see it in any other papers? A. I may have done so, but I do not recollect. [*Union* of June 26 shown, and interview pointed out to witness.] I think likely I have seen that interview.

Q. And at about the time it appeared? A. I have no doubt I saw it; yes, Sir, I think I did.

Q. Did you have any conversation with Mr. Southwick concerning that reported interview? A. I don't think I ever did; I have no recollection of it.

Q. Did you ever have any conversation with Mr. Nichols upon the subject of that interview? A. I don't recollect any.

Q. Did you have any with Buckingham on the subject of that interview? A. Don't think I ever did.

Q. Did you ever have any conversation with Mr. Samuel McLean? A. Possibly I may have.

Q. Well, Sir, don't you know that you did? A. No, Sir; I would not swear that; I think I did; I think I talked with him about that; I think very likely I did.

Q. Well, was that about the time it was published, or later? A. I think likely about the time.

Q. About the time? A. If I had any.

Q. Well, Sir, did Mr. McLean call your attention to that interview? A. I don't recollect; he may have done so.

Q. Didn't he call your attention to its statements here? A. I say I don't recollect; he may have done so.

Q. Didn't he call your attention to this statement, Sir, which is part of this interview?

Mr. Beach—I object to that question, Sir.

Mr. Shearman—Well, if your Honor please, this is my question: Didn't Mr. McLean call your attention to this part of that reported interview? [Reading.]

Reporter—Do you mean to say that Mr. Tilton never charged Mr. Beecher with criminality with Mrs. Tilton?

Gen. Tracy—Most certainly I do; no such charge was ever made or believed by Mr. Tilton. The publication to which I refer negatives such a charge in the most conclusive form; and it is well known by all who know anything of the facts that Mr. Tilton never believed it and never alleged it.

Reporter—If there is no criminality alleged or pretended, what then is the charge?

Gen. Tracy—Some four years ago Mr. Tilton claims to have received information which led him to charge Mr. Beecher with having made a dishonorable suggestion to his wife; this is the extent of the charge, and the only charge Mr. Tilton has ever made against Mr. Beecher.

Reporter——

Mr. Fullerton—I object to the reading of that.

Judge Neilson—I think you have read sufficient; that indicates what your topic is.

Mr. Shearman—I have only one short paragraph—a little more to read to make sense of it.

Mr. Fullerton—Well, I object to that one short paragraph.

Mr. Shearman—We want to bring out all that we suppose Mr. McLean may have called this gentleman's attention to

Mr. Fullerton—There is not any difficulty in ascertaining what the gentleman wants: he need not announce that; that is very evident. But, Sir, I say that he has no right to read as he has read from the interview between a reporter and Mr. Tracy, for the purpose of laying the foundation for a question, because the witness has already answered the question in regard to it, which ought to be satisfactory.

Judge Neilson—He does not remember to have—

Mr. Fullerton—He thinks he did call his attention to it; he thinks his attention was called to it.

The Witness—I think likely he did; I do not recollect, though; I think likely I talked with him about it.

Mr. Evarts—What is the objection to our question?

Judge Neilson—Well, it is reading a discussion which perhaps ought not to be read to the jury; that is the idea. Mr. Shearman, put the remaining paragraph in the form of a question, and ask him.

Mr. Evarts—That is what he was doing.

Judge Neilson—No; ask him more expressly.

Mr. Beach—I expressly object to this question, upon the ground that it asserts that what the counsel reads is a part of an interview between a reporter and Mr. Tracy. There is no evidence of that, Sir; there is no proof of it, and it is surreptitiously getting before the jury an asserted declaration of Mr. Tracy, of which there is not the slightest proof in this case.

Judge Neilson—The point stands precisely as if the counsel had asked the witness whether in his conversation with Mr. McLean certain expressions were not referred to, or repeated, or made.

Mr. Beach—That would be correct.

Judge Neilson—And I meant to suggest to Mr. Shearman to put this last paragraph that he refers to in the form of a question.

Mr. Evarts—But is not my learned friend wrong in saying there is no evidence on this subject? Mr. Tracy has testified that he published this interview in this paper, and it has been introduced and marked for identification—that is, by its date; it was not necessary to mark its volume; your Honor remembers that. And we offered to read it in evidence, and your Honor excluded it. But the paper is identified.

Mr. Beach—Then, Sir, it is true—the remark I made—that there is not a particle of proof, legitimate proof, of that interview or that——

Judge Neilson—It had been excluded.

Mr. Beach [continuing]—Or of what Mr. Shearman reads being any part of the interview.

Mr. Shearman—The fact of the interview was proved, and Gen. Tracy proved that he said all that he is reported here to have said. That was to lay the basis for subsequent action, and now we take the subsequent action by showing that the witness's attention was called to what Gen. Tracy——

Mr. Beach—Gen. Tracy proved no such thing, Sir, that he said what was in that interview; and it is, I repeat, Sir, a surreptitious attempt to get before the jury an alleged declaration that Mr. Tracy made to a reporter.

Mr. Evarts—How can a public attempt, in the face of the Court and the jury, be called a surreptitious one?

Mr. Beach—Well, I think it may properly and justly.

Judge Neilson—Well, this is very clear upon principle, that if a witness testified yesterday to a certain state of facts, you cannot in any form show that the month before he made the same statement, by way of fortifying what he says yesterday.

Mr. Shearman—As a general rule that is so.

Judge Neilson—As a general rule; and if that is the object of this, of course it is improper. But I think now you may put that remaining paragraph in the form of a question, and see whether those words, or the substance of those words, passed between this witness and this gentleman referred to; and then you have it all.

Mr. Shearman—Did Mr. McLean at that interview refer to the fact that a question was reported to be addressed to Gen. Tracy in this language by the reporter: "Do you mean to say that this is all the foundation there is for the Tilton-Beecher scandal?" and that Gen. Tracy was reported to have answered, "That is all; it has not even that much to rest on; it is well known to members of Mr. Beecher's church and others, that Mrs. Tilton has repeatedly and emphatically denied it?" A. No, I do not recollect that.

Q. Or any part of it, Sir, being referred to? A. Not

that you have read there now; I have no doubt that I had a general talk about that interview; very likely we did; but if we did, I have forgotten it.

Q. Well, Sir, when was this? A. I do not know——

Mr. Beach—He says he has forgotten any such talk. The witness does not say he had a talk.

Mr. Shearman—He says he had a talk.

Mr. Beach—He does not say that.

Mr. Shearman—He said that long ago.

Mr. Beach—He has not ever said it; he said it was quite likely he had a talk, but he had no recollection of it—said so from the beginning.

Mr. Shearman—He said "it was quite likely" he had; and then to a further question he said "no doubt he had."

The Witness—I said I presumed I had; I have no doubt of it; but I do not recollect it if I did.

Judge Neilson—Well, that covers that.

The Witness—I have talked so many times with him and others that I do not know; I cannot fix it.

Mr. Shearman—Did n't Mr. McLean at that interview say to you in substance or effect that that interview—that reported interview—showed what Gen. Tracy's understanding of the case was? A. He may have said so; I do not recollect that he did.

Q. Have you had any conversation since with any of those three gentlemen named, Mr. Southwick, Mr. McLean, or Mr. Nichols, on that same subject—since that time—any more recent conversation? A. I had: I think I was at Mr. McLean's last night.

Q. Did you talk with him on that subject then? A. I talked with him last night; I stated to him just what transpired——

Q, No, no; did you talk with him on the subject of this interview last night? A. Did I suggest that subject—I say no.

Q. I mean this reported interview. A. If you want to know what I said last night I will tell you. it you want me to.

Mr. Evarts—Well, we don't; when we do, we will ask you.

The Witness—Well, I am glad you don't.

Mr. Beach—All they want is to get in what Mr. Tracy said, or what they assume he said.

Mr. Shearman—Did you ever have a conversation with Gen. Tracy on the subject of that reported interview? A. I don't think I did; I have no recollection of it.

Q. Did you see Gen. Tracy shortly after the publication of that interview? A. How long after that was his statement to the public made? Then I can fix it.

Q. Gen. Tracy's statement? A. Gen. Tracy made a statement that was published in the papers last Summer.

Mr. Shearman—This is the very one.

The Witness—That is an interview by a reporter.

Mr. Shearman—That is the one that is commonly called the statement—June 26; that is the only statement Gen. Tracy made. Oh, there was one in September.

The Witness—Well, it is one of the statements——

Mr. Beach—Mr. Tracy is prolific in statements.

Mr. Shearman—Well, that is not the Summer; that is in the Autumn, in September.

The Witness—I thought it was in August.

Mr. Shearman—No, Sir; in September.

The Witness—Gen. Tracy made a statement in which he said——

Mr. Beach—No, no; wait.

The Witness—Well, I saw Gen. Tracy right after he made a statement to the public.

Mr. Shearman—Well, did you not see Gen. Tracy frequently between the 26th of June and the time when he made that second statement? A. I don't think I saw him frequently.

Q. How often do you think you did see him? A. I haven't any recollection.

Q. You saw him occasionally, did you not? A. Yes, I think I saw him occasionally.

Q. And talked with him? A. I recollect no talk but the special talk that I had at his house, that I went to see him about.

ALLEGED MISREPRESENTATION IN THE PUBLISHED INTERVIEW.

Q. Then you did have conversation with him? A. Why, certainly I did; I met him at Mr. Moulton's, met him in the street; had some conversations with him.

A. Did you not know that Gen. Tracy was in conference with Mr. Moulton on this subject—I mean the subject of the general scandal—during that period after June 26, 1874? A. I understood he was.

Q. You saw Gen. Tracy at Mr. Moulton's several times, did you not? A. I did.

Q. During that period? A. Yes, or some time during last Summer—several—I don't know, three or four—perhaps half a dozen.

Q. And you also saw him in the street sometimes, did you not? A. I think so; yes, Sir.

Q. Did you ever, on any of those occasions when you met Gen. Tracy after the publication of this reported interview, call his attention to the fact that he had stated Mr. Tilton's charge to consist of improper advances and nothing more? A. I don't recollect that I did.

Q. Did you ever complain to Gen. Tracy, down to the time that you appeared on this witness stand, that he had misrepresented the facts in that case? A. I did.

Q. In that published interview? A. I did.

Q. You did, when? A. At his house.

Q. When? A. Last Summer.

Q. Do you mean with regard to the statement as in this published interview of June 26? A. That I don't know; in regard to one of the published statements.

Q. Well, that was the one published in September, was n't it? A. Well, it may have been, or it may have

been earlier; I will tell you just what I complained to Gen. Tracy about, if you will allow me to.

Q. Well, state exactly what you did complain about. A. Very well; I saw in the statement of Gen. Tracy to the public that he had said I had spoken to Mr. Moulton about a money transaction, and that he had told Mr. Moulton who had told him, whereupon Mr. Moulton fell to damning the person that told him about that money transaction; I supposed that Gen. Tracy—I supposed that meant me, and I went to Gen. Tracy's house and I asked Gen. Tracy if that meant me, and he said it did; I recalled to him the circumstances under which I told him that transaction and the sacred promise he made me never to repeat it, and that I thought he had betrayed my confidence and had done wrong in telling that; Gen. Tracy says, "What money transaction did you tell me about?" I told him, about the transaction at the first interview, when I engaged him to act as counsel for Mr. Moulton; Gen. Tracy said, "That was not the money transaction at all; the money transaction you told me about was the $5,000 one—some time after;" I told Gen. Tracy that that could not be so, that I never knew who that $5,000 came from; that Mr. Moulton declined, positive declined, always to tell me, and that I never knew whom it came from until this last Summer, when the statements were made, and I told him that——

Mr. Shearman—That is all.

Mr. Beach—Wait, wait!

The Witness—And I told him that the money transaction that I had told him about was the one that Mr. Moulton told me just a few days previous to my engaging him for counsel, and when, after these interviews, Mr. Moulton had not told him of that circumstance, I again cautioned Gen. Tracy never to allude to it, or never to speak of it, and he promised me he would not. Gen. Tracy said at that interview—he admitted that—he said he had done wrong; that he ought not to have told Mr. Moulton who it was, and was sorry he had. I said further: "Gen. Tracy, I understood that you were Mr. Moulton's counsel; I don't see how you are on this other side." Gen. Tracy replied that they had not taken his advice, and he had not consulted with them for two years; they did not take his advice two years ago. That is about—that is the purport—that is the substance of that interview.

Q. Now, Sir, did you make that visit to Gen. Tracy in consequence of any published statement; or did you not make it in consequence of Mr. Moulton having paid you a visit, or having spoken to you on the subject and complained of your having told Gen. Tracy? A. Will you please state that question again?

Mr. Fullerton—He can't.

Mr. Shearman—Did not this interview between you and Gen. Tracy arise in consequence of Mr. Moulton having personally complained to you of your telling Gen. Tracy about that money? A. Well, partly; I went to see Gen.——

Q. Now, did it not arise from that?

Mr. Beach—Let him answer the question.

The Witness—There were—I went to see Gen. Tracy about two things; one was the card that was published by some George Beecher, reflecting on the firm, and about the money transaction in which he had told Mr. Moulton, or I supposed he had told Mr. Moulton, and he admitted he had, that I told him.

Q. Did not Mr. Moulton complain to you that you had told Gen. Tracy himself? A. I don't think he did; I have no recollection that he did.

Q. Never spoke to you on that subject—Mr. Moulton never spoke to you? A. What? this last Summer? I think not.

Q. Never at any time during last Summer? A. I think not; he may have done so.

Q. Nor during the Fall? A. I think not; I think I may have repeated to——

Q. Do you mean to swear that Mr. Moulton never did make any complaint to you about your having told Gen. Tracy of this money matter? A. I don't mean to swear that he did not; I don't recollect that he made any complaint; I have very likely talked to Mr. Moulton about it, and explained how I came to tell Mr. Tracy.

Q. You talked with Mr. Moulton; don't you recollect that Mr. Moulton spoke in the first instance to you? A. I would not swear that he did; no, I would not.

Q. What did you mean by saying a moment or two ago that you were led to go to Gen. Tracy partly on account of what Mr. Moulton had said to you about it? A I don't think I said that; I don't think I said that.

Q. We so understood you? A. Well, I did not mean to say so.

Q. You said partly on account of the interview and partly—— A. I gave the two reasons that I went to see Gen. Tracy that morning about.

Mr. Beach—You were interrupted in your answer, and you were not permitted to conclude it.

Mr. Evarts—We will have it read. [To the Tribune stenographer.] Can you go back to that answer beginning "partly?"

The Tribune stenographer read as follows:

Q. Did not this interview between you and Gen. Tracy arise in consequence of Mr. Moulton having personally complained to you of your telling Gen. Tracy about that money? A. Well, partly; I went to see Gen.——

Q. Now, did it not arise from that?

Mr. Beach—Let him answer the question.

The Witness—There were—I went to see Gen. Tracy about two things; one was the card that was published by some George Beecher, reflecting on the firm, and about the money transaction in which he had told Mr. Moulton, or I supposed he had told Mr. Moulton, and he admitted he had, that I told him.

Mr. Beach—You have got far enough—far enough to show that the witness was right, and the counsel was wrong.

THE $5,000 LONG A MYSTERY TO MR. WOODRUFF.

Mr. Shearman—At this interview with Gen. Tracy, did you tell him that you did not know where that $5,000 came from? A. I did—well, I told him that I did not know at the time; I may have known this last Summer; at the time of that interview whether—at the time the money was put to the credit of Mr. Moulton in the firm-books of Woodruff & Robinson I did not know where it came from, nor I didn't know for a long time after.

Q. And you so told Gen. Tracy? A. I did, last Summer.

Q. And didn't you tell him that you supposed it came from Mr. Beecher? A. Oh, I very likely said I inferred that it came from Mr. Beecher.

Q. And didn't you tell him at the time? A. At what time?

Q. You so inferred at the time it was paid in? A. Well, I inferred that it did; but I didn't know anything that it did.

Q. Didn't you tell Gen. Tracy the reasons why you believed that it came from Mr. Beecher? A. Not that I recollect of.

Q. Didn't you tell him that you knew Frank Moulton had no means outside of the firm; and that when he deposited so large an amount in bills you thought it must come from Mr. Beecher? A. I don't think I did.

Q. Nothing of that kind? A. I think Mr. Moulton had some means outside of the business.

Q. The question is only what you said to Gen. Tracy? A. Well, I don't recollect saying that to him, and I think Mr. Moulton had means outside, and that is the reason.

Mr. Evarts—I move to strike that out, your Honor.

Judge Neilson—Yes.

Mr. Shearman—Did not Mr. Tracy, in that interview, tell you that you were entirely mistaken as to the time at which you told him about this money? A. He did; he told me that I was thinking about the $500; and he told me it was about the $5,000 that I told him.

Q. And he insisted at that time that it was about the $5,000? A. Why, yes, Sir; he insisted that I was mistaken; and I said I knew he was—and I knew so, too.

Q. And he told you that it was not at the time that you called on him first to speak with him in this case? A. Certainly he did.

Q. Did he tell you what time it was? A. No; he told me that it was about the $5,000; that was in May, '73, that I told him.

Q. And he referred to that time—he knew that time? A. That is the money transaction that he said I told him about.

Q. Did not Gen. Tracy say to you at that interview, in substance, that you had told him when you first spoke about that money matter that Mr. Beecher had been to the bank and drawn the money that very day, and paid it over to Mr. Moulton? A. I don't think I did

Q. No, no; didn't Gen. Tracy tell you in this interview what I have said? A. That I said so?

Q. What is that? A. I don't think he did.

Q. Nothing of that kind? A. I don't recollect that he did.

Q. Don't you recollect that Gen. Tracy told you, at this interview, that you had mentioned the fact of the money to him—the money payment—on the very day that it occurred? A. No, I don't; I recollect positively that Gen. Tracy said the money transaction I told him about was the $5,000 one; that I knew nothing about.

Q. Did n't he tell you that no amount of money was specified by you, and that he did not know whether it was $5,000 or not, and only recollected about the time and circumstances? A. I do n't think he did; he told me the $5,000 transaction was mentioned.

Q. Did not Gen. Tracy, in that interview, tell you that he knew it was the time of the $5,000; did n't he tell you that he knew it was long after the time of that Sunday interview which you and Mr. Moulton, and Mr. Tilton, and Mr. Tracy had? A. Yes; he said it was long after; he said it was the $5,000 transaction.

Q. Did n't he tell you that he knew it was long after that time? A. Certainly.

Q. Because that very night on which you told him before he went to sleep he went to a friend whom he named and told him about it? A. No, he did n't say any thing about sleeping.

Q. Well, did he say the rest of that? A. No, I do not recollect that he did; I recollect he said it was a long time after.

Q. Did n't he say that he knew it was a long time afterward, because on the very day on which you told him he went to a friend and told him about it? A. I don't recollect about the friend; he said it was a long time after.

Q. Will you swear that Gen. Tracy did not say so? A. I won't—no, Sir; I will swear that I do not recollect that he said so.

Q. Did n't he name Judge Charles L. Benedict as that friend? A. Not to my recollection.

Q. Don't recollect the mention of Judge Benedict's name? A. I do not.

Q. Not in that whole conversation? A. I do not.

Q. Will you swear that Judge Benedict's name was not mentioned? A. I will swear most positively that I do not recollect it.

Q. Will you look over that reported interview as published June 26, 1874, and inform us whether there is one word on that subject of money in the whole of that reported interview? [Showing newspaper to witness.]

The Witness—Which is the one?

Mr. Fullerton—That is out of order, Sir.

Mr. Shearman—Oh, no, Sir; this is for the purpose of fixing the time.

Mr. Beach—Fixing the time?

Mr. Evarts—For the purpose of showing that this is not the publication from which he drew his information.

Mr. Shearman—And not the one concerning which he complained to Gen. Tracy.

Mr. Evarts—He has stated in substance that in some published statement of Gen. Tracy's he saw something about money.

The Witness—What do you want me to look at?

Mr. Shearman—There is nothing now; I simply want to know your opinion whether there is a word about money payments in that interview? A. No, I don't think there is.

Mr. Evarts—He has stated that he saw a publication, coming from Mr. Tracy, in which mention was made of the money. Thereupon he went to Mr. Tracy and complained. Now, this publication says not a word about money.

The Witness—No, I do not see anything there about money.

Mr. Shearman—Then that was not the publication concerning which you complained to Gen. Tracy, was it? A. No, I don't think it was.

Q. Then you have no recollection of ever complaining to Mr. Tracy of untruthfulness in regard to his statements in that reported interview? A. No.

Mr. Fullerton—How are you going to identify that reported interview?

Mr. Shearman—That reported interview of June 26, 1874; that is the one.

Mr. Fullerton—By the date?

Mr. Evarts—Well, the date is on the record.

Mr. Fullerton—No; you tried to get it in, and did not.

Mr. Evarts—I got in the date of the paper as a sufficient identification of it, instead of having the book marked.

MR. BEECHER'S GIFT OF $500 TO MR. TILTON'S FAMILY.

Mr. Shearman — Well, what was this amount, Mr. Woodruff, concerning which you say you did speak to Gen. Tracy? A. Well, I said that Mr. Moulton had told me that Mr. Beecher had given him $500; I do not remember whether it was given all at one time or at various times; I know that Moulton had told me that Beecher had given him $500 to help Mr. Tilton's family; I told Gen. Tracy that.

Q. You do not know whether you told him it was paid in one sum? A. No, I do not.

Q. Do you think you did tell him it was paid in one sum? A. I think I told him in just that way.

Q. Now, Sir, have you never said since that time, to any other person, that that was paid in one sum, and that you so told Gen. Tracy?

Mr. Beach—That question is too general. Wait one moment

Mr. Shearman—We have a right to ask it, though we have not a right to contradict it.

The Witness—My understanding was that it was in one sum, or at least I supposed so.

Q. Well, have you not told some of your friends—some one or more of your friends—that you told Gen. Tracy it was paid in one sum? A. I don't think I have in those words; I have told——

Q. State what you have told on that point? A. I have told that I have told Gen. Tracy that Mr. Moulton had told me that Mr. Beecher had given him (Moulton) $500 for the benefit of Tilton's family.

Q. Who did you tell this to? A. Well, I think I have stated it three or four times since Gen. Tracy denied the other day, on the stand, that I told him any such thing.

Q. Who did you state it to? A. Well, I think I have stated it to Mr. McLean, to Mr. Nichols, and, I don't know, perhaps two or three others.

THE $500 TRANSACTION DESCRIBED TO MR. SOUTHWICK.

Q. Well, did you mention the fact of the payment of that money, $500, to any one else besides Gen. Tracy? A. When, at that time?

Q. Oh, well, anywhere along about that time? A. Well, I might have done so; I don't know whether I did or not.

Q. Did you not speak to Mr. Southwick about the payment of that money? A. No, Sir; not the $500 money; I never did; not that I recollect.

Q. Did you speak to him about the payment of any money? A. I did.

Q. Which money was that? A. It was the $5,000 money.

Q. When did you speak to Mr. Southwick on that subject? A. Some time after—very shortly after it was deposited to Moulton's credit.

Q. Didn't you tell him about it the very day it was deposited? A. No, I don't think it was the very day that it was deposited; it might have been, but I don't think it was.

Q. Didn't you tell him the evening of the very day it was deposited? A. I cannot swear that it was that day or not, but it was very soon; whether it was that evening or the next evening or a week after I don't know.

Q. Where were you when you told this to Mr. Southwick? A. I think I was at his house.

Q. What did you tell Mr. Southwick about it? A. Well, I told him that Moulton had placed to his credit there, shortly before, $5,300, and that I had seen payments thereafter paid—charged to Moulton as paid to "T. T."

Q. You told him you had seen payments made thereafter? A. I think I did.

Q. Charged to "T. T.?" A. I think I did; I presume I did; I don't know.

Q. Did you not tell him that Moulton had deposited that money that very day, and that he said it was to be drawn out, or the $5,000 was to be drawn out for Theodore Tilton? A. No, Sir; I never told him that in that way.

Q. Will you swear to that? A. Yes, Sir; I swear that I never told him that in that way. I didn't.

Q. Didn't you tell him that, or anything to that effect? A. I told him that that amount of money was placed to Moulton's credit on the cash book, and I thought it had come from Mr. Beecher; and he thought his uncle, H. B. Claflin, might have paid it.

Q. Did you ask Mr. Southwick on that occasion whether he didn't think it was his uncle who had paid it? A. Very likely I did; I think we had a general talk about it, and he said, "I wouldn't be surprised; it would be just like Uncle Horace."

Q. Didn't he say—on the contrary, didn't he laugh at the idea of Mr. Claflin paying it, and say, "You know that Mr. Claflin would not pay anything for *The Golden Age*, and he would not pay anything for that?" A. No; I knew he wouldn't pay anything for *The Golden Age*.

Q. That is not the point. Did not Mr. Southwick say that, Mr. Woodruff? A. I don't think he did.

Q. Didn't he say that or anything of that kind—that in substance? A. I don't recollect that he said anything of the kind in substance.

Q. Will you swear positively that he did not? A. I will swear according to the best of my recollection that he did not.

Q. That is as positively as you care to swear? A. Yes, Sir.

Q. Do I understand, then, that you never told Mr. Tracy of the $5,000? A. I have no recollection of telling him about it.

Q. Nor about the money transaction which occurred at the time the $5,000 was received? A. I have no recollection about it.

Q. You don't recollect mentioning it—whether you mentioned the sum or not? You don't recollect mentioning the circumstance? A. I have no recollection of telling Gen. Tracy, on or about that time, anything about money matters in the business.

Q. Did you communicate to Gen. Tracy at any time the fact of any moneys being paid after that interview on Sunday in the Fall of 1872? A. After when—after the interview of 1872?

Q. After the interview in the Fall of 1872, to which you have referred already? A. I have no recollection that I did.

Q. You knew the money was paid at the time, didn't you, to Moulton? A. I knew *this* from Moulton——

Q. Well, did you know that Moulton was receiving money, or were you informed by Moulton that he was receiving money? A. Well, he told me two or three times that he had received money to pay Bessie Turner's schooling. That is all.

Q. You knew about Bessie Turner's bills then? A. I knew that Moulton said that he received money from Mr. Beecher to pay Bessie Turner's school bills; that is all.

Q. How early did you know that? A. What?

Q. How early did you know that; when did you first learn that? A. Well, I should think Moulton—I think it was along at the time he was receiving it—doing it.

Q. When was that, what year? A. I don't know; 1872 or 1873, I guess, or 1871 or 1872, perhaps.

Q. Was it not in the year 1871? A. It might have been; I don't recollect the year.

Q. When did you first learn about Bessie Turner being sent away? A. I don't know when I first learned it.

Q. Did you learn it about the time the first payments were made? A. I don't know whether they were the first, or where they were. I only know from Moulton—what Moulton told me about Bessie Turner. If you want to know it I will tell you.

WHAT THE $500 WAS FOR.

Q. Have you stated all that you told Gen. Tracy about money, at the time of the interview in the Fall of 1872? A. Stated what?

Q. Have you stated all that you told Gen. Tracy about money in the Fall of 1872? A. No, Sir, I have not.

Q. At that interview, I mean that particular interview? A. At that first interview, I think I have—all that I recollect.

Q. Yes, at the first interview; now, when were you informed that this $500 was paid? A. Well, I think it was a few days before I engaged Gen. Tracy.

Q. At what time were you then informed that it had been paid? A. I was not informed as to the time.

Q. No time specified? A. No time specified.

Q. Well, were you informed that it was for Mr. Tilton's family? A. I understood from Mr. Moulton that it was for Mr. Tilton's family.

Q. Did he say anything about its being for the benefit also of Bessie Turner? A. No.

Q. Not in whole nor in part? A. No, not that.

Q. He had previously mentioned to you about the payments for Bessie Turner? A. I don't know whether it was previous or after; I can tell you all I know.

Q. What is your best recollection on that point? A. I have not got any recollection of dates in regard to Bessie Turner. I have in my mind very clearly what has been said to me about Bessie Turner, and I can tell it to you in a very few words.

Q. No; I want to know what information you had when you were informed that money was paid for Bessie Turner? A. I cannot tell you.

Q. You cannot tell whether it was before or after this interview? A. No.

Q. Nor whether it was before or after November or December, 1872? A. I am under the impression that it was before; I am under the impression that Moulton told me at two or three different times, and the times may have been a year apart, or it may have been over a year, or longer.

Q. Then didn't you know that more money had been paid than $500? A. No, I did not; Moulton may have said to me before that he had money for Bessie Turner's schooling, or something like that.

Q. Did you understand that this $500 was for Bessie Turner's schooling? A. No; for the benefit of Tilton's family.

Q. Then you did understand that more money had been paid than this $500? A. Certainly; during these two or three years, I understood, in addition, that money was paid for Bessie Turner's schooling.

Q. And at the time of the interview you understood that? A. I would not swear whether it was before or after.

Q. Will you say whether you understood, or not, that more money had been paid than $500? A. No, I won't. I will tell you just what I know, or what was told me; I have told it to you and I will tell it again if you want it.

Q. Did you know or not, at that time; that is the point? A. I say I cannot fix the date of Bessie Turner's schooling.

HOW MUCH MR. WOODRUFF INTENDED TO TELL GEN. TRACY.

Q. Did you tell Mr. Tracy about all the money of which you knew at that time? A. I don't know whether I did or not.

Q. Did you intend to tell him all that you knew? A. I intended to tell him about that one transaction—what Moulton told me.

Q. That $500? A. Yes, Sir; that is what I intended to tell him.

Q. Do you know whether you meant to tell Gen. Tracy all about the money transactions or not? A. I know that I meant to tell him about that, and I don't recollect whether I knew about any other time or not.

Q. I ask you what was your purpose. Did you mean to disclose to Gen. Tracy all the facts about the money matters or not? A. I meant to disclose to him about that.

Q. And not about the rest? A. I don't know as there was any "rest" whatever.

Q. Did you intend to disclose all you knew, or only part? A. I intended to disclose just what I did disclose.

Q. Did you intend to disclose all that you knew, or did you intend to conceal a part? A. I did not intend to conceal; I didn't intend to tell him anything but the truth, as I had it from Moulton.

Q. Did you mean to tell him all the truth about the money matters? A. So far as I went I did, of course.

Q. I don't care how far you went; I want to know whether you intended to tell him all the truth about the money or not at that time? A. I meant to tell him about the case.

Q. Be kind enough to answer my question, yes or no. Did you mean to tell him all you knew of the money matters, or did you not? A. Well, I don't recollect that I had any intention about it, only to tell him about that one money transaction.

Q. Did you intend to tell the truth to Gen. Tracy about the money? A. I didn't intend to tell him anything else. [Laughter.]

Q. Did you intend to conceal part of the truth about the matter? A. I don't recollect that I did. I don't recollect what my intention was.

Q. Then, did you not tell him all that you knew at that time about it, if you didn't intend to conceal anything? A. I may have told him all. If I knew about the money transaction before then I did not tell him all. If I didn't know about that then I think I did tell him all.

Q. But you are certain that you did not tell him anything about the Bessie Turner matter. A. I am very certain of it.

THE CHECKS FOR BESSIE TURNER'S SCHOOL BILLS.

Q. Now, were you in the habit of looking over the firm checks previous to that time? A. How?

Q. When they were returned from the bank? A. No, Sir; not very often; sometimes I did.

Q. Did you know anything about those checks that had been paid for Bessie Turner's schooling? A. No—well, I don't know but I did.

Q. Well, don't you know that the checks that were paid for Bessie Turner's school bills were firm checks of Woodruff & Robinson? A. I think one or two were.

Q. You don't know of any that were not? A. No; I don't know that I ever saw any of them.

Q. Did Moulton keep any private bank account? A. Not that I know of; I don't think he did.

Q. Didn't he draw checks for his own personal affairs through the firm? A. Yes.

Q. These checks are in evidence, and they are all the firm checks. Did you not know anything about these checks? A. Well, I have a vague impression that there were checks of Woodruff & Robinson, charged to Moulton, to send to somebody West. That is my impression.

Q. Did Moulton give you to understand that he had received this $500 shortly before you saw Gen. Tracy. A. Well, I think it was shortly before. It was shortly before that he told me.

Q. Did you understand that that money was received in check or in currency? A. Well, I am under the impression that I understood that he got it in bills; I don't know.

Q. Did he say anything about it? A. I think he said that Mr. Beecher gave him $500 in bills; I think so.

Q. Did you tell Gen. Tracy that? A. I may have done so.

Q. You don't know whether you did or not? A. I would not swear positively.

Q. That is your best recollection? A. Yes.

Q. What is your best recollection on that point? A. On what point?

Q. Whether you told Gen. Tracy that that money was paid in bills? A. My best impression is that I did tell him it was paid in bills; I presume I did.

Q. Didn't you tell him that Mr. Beecher went to the bank himself, and drew it out and gave it to Mr. Moulton? A. I don't know whether I told him that or not; I don't think I did.

Q. You don't think you did? A. I don't think I did; I may have done so.

Q. Did you know, or were you informed, what was done with that $500? A. No, I didn't know anything about it.

Q. Did you know whether it was deposited with your firm or not? A. I don't know; I don't think it was; I don't know, though.

Mr. Shearman—He says he does not know. We move to strike out the other part of the answer, "I don't think it was."

Judge Neilson—Yes. "I don't know" is his answer.

Q. Now, did you ever learn of any check of $500 being paid by Mr. Beecher to Mr. Moulton? A. I have no recollection of any.

A MORTGAGE ON MR. TILTON'S HOUSE.

Q. Do you recollect, in November, 1872, collecting interest on a certain bond and mortgage held by you on Mr. Tilton's house?

Mr. Fullerton—If the Court please——

Mr. Shearman—Oh, this is to identify the time; to fix the date. A. Well, I think I collected the interest.

Q. Yes, interest on the bond and mortgage. Now, was not that shortly before you saw Gen. Tracy on this subject? A. I don't know.

Q. Was it not the 8th of November, 1872? A. That I collected the interest?

Q. Yes. A. It might have been, or it might not have been, the 10th.

Q. Well, didn't the interest fall due the first of May and the first of November? A. Yes.

Q. And didn't you collect, early in November, 1872, the interest due on that bond and mortgage? A. I think so.

Q. Can't you recollect whether or not it was on the same day that you collected that interest that Moulton told you of this $500 from Mr. Beecher? A. No, I don't think it was.

Q. Was it not just about that time? A. I don't recollect that it was just about that time. No; it might have been about that time, or it might have been a little earlier. I recollect the way that I collected the interest—at least I think I recollect.

Q. Was not that shortly before you had the interview with Gen. Tracy, that you collected that interest? A. It might have been.

Q. What is your recollection about it? A. Well, the two things have no connection whatever, and I don't know as I have any recollection.

Q. Well, you appear to have collected that interest on the 8th of November, by the accounts of your firm that are in evidence. A. Well?

Q. Now, I want to know whether that date was not shortly before this interview? A. I don't know whether it was before or after.

Mr. Fullerton—That is the fourth time that question has been put and answered.

Judge Neilson—It is answered now.

Mr. Fullerton—It was answered before, Sir.

Q. Can you recollect whether it was a very short time before you had this interview with Gen. Tracy that Moulton told you about this money? A. No, Sir; I cannot.

Mr. Fullerton—*That* has been asked half a dozen times, and answered.

Mr. Shearman—I want to get these dates together.

Mr. Fullerton—Well, Sir, I think the subject is sufficiently confused for all the purposes of the other side; it is time that this should stop.

THE ACCOUNTS WITH WOODRUFF & ROBINSON.

Q. I will call your attention to an account of your firm, and ask you if you can explain it. Look at that account [handing book to witness], and tell me whether, on the 8th of November, 1872, Mr. Tilton is not charged by your firm with the sum of $500?

Mr. Beach—What page do you refer to?

Mr. Shearman—Page 167. A. Tilton—there is no charge here to Tilton.

Q. That Mr. Tilton's account. Is not Mr. Tilton debited on the 8th of November, 1872, with $500? A. The 8th of November—where is the debit of $500?

Q. There. [Indicating in the book.] A. Yes.

Q. Now, will you look at the credit account and tell me whether he is charged at any time in 1872 with a sum of $500? A. I don't see any.

Q. There is none?

Mr. Beach—No; he says he does not see any.

Q. What is that? [Indicating an item.] A. That is 1871. I don't see any in 1872.

Q. Is there any there in 1872? A. No, there is not.

Mr. Fullerton—Not *there*.

Mr. Shearman—Well, this is the account of Theodore Tilton with Woodruff & Robinson, put in evidence marked "Exhibit D, 109." I will show you the original if you care for it. [To the witness.] Have you any ex-

planation to offer of this fact, that Mr. Tilton is debited at about the time at which you now say this money was received for his benefit from Mr. Beecher, with the sum of $500, and is not credited with any such sum received?

Mr. Fullerton—I object to that.

Q. Have you any explanation to offer? A. No; I have not any.

Judge Neilson—He says he has none.

Mr. Fullerton—Well, Sir, I move to strike that out, because the question is predicated on a fact not in the case—as something not in the case. The question is based upon the assertion, or the idea, that that money, $500, was received about that time.

Judge Neilson—At the time or before?

Mr. Fullerton—Yes. Well, the witness does not pretend to know when it was received.

Judge Neilson—I think we will let the answer stand.

Mr. Beach—On that Nov. 5 he is credited by a balance of interest in his favor.

Mr. Shearman—$71.

Mr. Beach—$71. He had a balance on deposit with the firm at that time.

Mr. Shearman—Yes. [To the Witness.] Look at this account, and say whether at any time, on the credit side of that account of Mr. Tilton, the sum of $500 is put to his credit, and, if so, when? A. In 1872?

Q. No; at any time.

Mr. Beach—In 1871.

The Witness—He is so credited Nov. 13, 1871; there is cash at one time in 1871, $4,000——

Q. Never mind that. A. [reading] "Nov. 13, by cash, $400."

Q. That is November 13, 1871, is it not? A. Yes; then there is cash, January, 1872, $1,000; April, $7,000; May, $100——

Q. Well, that in April was Bowen's money, was it not? A. I don't know; I presume it was; $7,000 and odd.

Q. Well, as there seems to be some question as to how near this was to the interview with Gen. Tracy, state now what is your opinion as to the time when that interview with Gen. Tracy about this money matter did occur? A. Well, the interview occurred with Gen. Tracy shortly after the Woodhull publication.

Q. That publication was on the 28th of October, 1872, was it not? A. Very well, I think it was very shortly after that. Perhaps it might have been a week or ten days; I think about a week after.

Q. About a week afterward? A. I think so.

Q. Was Mr. Tilton in town when it occurred? A. When what occurred?

Q. The interview with Gen. Tracy about the money matter. A. I don't know whether he was or not.

Q. Didn't you see him next day? A. I don't think I did No, I did not see him.

Q. What day of the week did this interview occur? A. No, I didn't see Mr. Tilton, I am very positive, from the time of my first interview with Mr. Tracy until he came to Moulton's house on Sunday night when we were there.

Q. Was not that the next Sunday night? A. Yes, I think it was.

Q. Then it was the Sunday night following the week in which you had this interview with Gen. Tracy? A. Sunday night of the same week.

Q. Not the same week. Sunday begins the week. A. The following week.

Q. Now, don't you know that Tilton was not at home until the 5th of November, 1872? A. I don't know.

Q. Now, Sir, don't you know that Mr. Tilton was not at home until the 5th of November, 1872? A. I don't know.

Q. What day of the week did you have this interview with Gen. Tracy, when you spoke about the money? A. I don't know.

Q. Where was it? A. At his office in Montague-st.

Q. What time of day? A. About half-past four o'clock.

Q. Any one else there? A. No, Sir, not while we were having the interview. It was started between he and I.

Q. The clerks were in the outer office, I suppose? A. They might have been.

Q. You passed through persons in the outer office? A. I don't know whether we went in the outer office or in the back way.

Q. How long was it after that interview that the other interview between Mr. Moulton, Mr. Tilton, Gen. Tracy, and yourself occurred at Mr. Moulton's house? A. It was on Sunday night, either the first or second Sunday night thereafter, I don't know which.

Q. You don't know whether it was the first or second? I think you stated just now that it was, as you thought, Sunday night? A. I stated I thought it was.

Q. Was it the very next morning after this half-past-four-o'clock interview in which you brought in Mr. Moulton? A. Certainly; I went to Gen. Tracy's at 4:30 o'clock in the afternoon, and I stayed there until after dark—over an hour—and I talked with him about this case, and stated what I wanted; then I went the next morning, and Mr. Moulton with me—or Mr. Moulton afterward; I went ahead of Mr. Moulton.

Q. You went ahead of Mr. Moulton? A. Yes, Sir.

Q. How long were you there before Mr. Moulton came? A. I guess I was there five or ten minutes; ten minutes, perhaps.

Q. What time of day did you go to Gen. Tracy's office next morning? A. A little after 8 o'clock, I think; perhaps it may have been half-past 8.

Q. Do you recollect whether in that first examination you stated the fact that you went alone to Gen. Tracy's office? A. I don't know whether I did or not.

Q. Don't you remember you stated you took Mr. Moulton into the office? A. Well, I recollect I introduced Mr. Moulton.

Mr. Morris—What page do you refer to?

Mr. Beach—He ain't referring to any page.

Mr. Morris—That is what I think.

Mr. Shearman—Page 344. [To the witness.] Did you not in your direct examination for the plaintiff, previous to this examination, as part of the plaintiff's opening case, use this language: "I called at Mr. Tracy's office with Mr. Moulton; I think it was about half past 8 o'clock in the morning?" A. I may have said so.

Q. "For the purpose of Mr. Moulton relating to Mr. Tracy the history of this scandal case." Did you so testify? A. I may have said so.

Q. Why do you say now that you called 10 minutes in advance? A. I said I think so.

THE INQUIRY DECLARED UNPROFITABLE.

Mr. Fullerton—I think this is an unprofitable inquiry.

Mr. Shearman—I don't know about that.

Mr. Fullerton—I don't suppose you do. That is your misfortune and not mine; at least it will not be if the Court rules it out.

Judge Neilson—I think the counsel is nearly through with it.

Mr. Fullerton—I think he was through some time ago, but he did'nt know it. How far will your Honor permit them to go into the examination of matters to which the attention of the witness was not called by us? I suppose they have a right to cross-examine only in regard to the matters to which we directed the attention of the witness.

Judge Neilson—That is the general rule.

Mr. Fullerton—That is the general rule, and it is the particular rule, unless your Honor permits them to depart from it. If this whole case is to be retried in this way it will consume a great deal of time. It rests entirely with your Honor. I don't wish to circumscribe the other side, or to limit them in their inquiries at all, if they are going to develop any facts that may throw light upon this case; but to spend time here in re-examining a witness in regard to a matter that he has already been examined about on his cross-examination when called by us, would seem to be an unnecessary waste of time. Now, our inquiries we directed to a very few topics, and with regard to these topics they have a right to cross-examine. I think they cannot give, unless your Honor throws open the door for an examination of any length, and in regard to any subject to which they may see fit to call the attention of the witness.

Mr. Evarts—I think my learned friend is right in his general proposition, but I don't think he is accurate in his memory in regard to the previous examination of this witness. All that was said about these previous interviews on the first examination of Mr. Franklin Woodruff was as introduction to get at the interview at the house, and they did not go into, nor did we; we didn't think there was any right on their part to give an interview between Mr. Franklin Woodruff and Gen. Tracy.

Mr. Beach—Do you mean on the first examination?

Mr. Evarts—On the first examination.

Mr. Beach—Undoubtedly we did go into it.

Mr. Evarts—Let me go on, and you will find that I am right. But, after this, then the question was to get Mr. Beecher in some way affected by what occurred in that principal interview, and then a conversation between Mr. Moulton and Mr. Beecher was introduced in which Mr. Moulton said: "This consultation we are having is at the instance of so and so, and it may be necessary to tell the truth about your affairs and to ask you about them," and he assented. Now, thereupon, the introduction of what occurred between Mr. Moulton, Mr. Tilton Gen. Tracy, and Mr. Woodruff being present (I don't know that he took much part in it) on the Sunday night, was introduced upon the proposition that Mr. Tracy was there to represent Mr. Beecher, and thus authorize the conversation, but there had not been any pretense that there had been any such authorization of Gen. Tracy to represent Mr. Beecher at these preliminary talks with him, concerning which evidences of introductory import was given. But Mr. Tracy was examined and cross-examined as to these preliminary interviews, and therefore they called this witness with the view of contradicting Mr. Tracy, so that all our inquiries concerning those preliminary interviews, as we understand it, are introduced by their rebutting evidence of this witness on their right to contradict Gen. Tracy.

Mr. Beach—I refer you to page 344, in relation to your statement that this first interview between this witness and Gen. Tracy was not given when Mr. Moulton was there.

Mr. Evarts—It was stated as a fact.

Mr. Beach—The whole relation of the interview was given in terms by Mr. Woodruff and repeated; I mean the interview between Mr. Moulton and yourself and Mr. Woodruff at your office.

Mr. Shearman—But the ten minutes' interview before Mr. Moulton came was never brought out until this new examination.

Mr. Beach—And that is brought out on your re-cross examination. It was not anything we examined about. We didn't refer to that interview.

Mr. Shearman—It goes to this interview.

Mr. Fullerton—They called it out; we did not. It was a man of straw, set up by Mr. Shearman to fight, and it seems the man of straw has got the best of it.

Mr. Shearman—Do you refer to yourself?

Mr. Fullerton—No, I was referring to another matter. I think it is a very great waste of time.

Mr. Shearman—Make these bricks without straw if you can.

Mr. Fullerton—You have got neither brick nor straw as

the result of your examination, because I take it makes no difference at all whether Mr. Moulton went in the office with Mr. Woodruff, or whether he succeeded him by ten minutes. Now, it is an inquiry that should not be permitted. I think, technically speaking, the witness is right in saying that he went there with Mr. Moulton, or that he took Mr. Moulton there, if Mr. Moulton went in pursuance of an arrangement made with him, although ten minutes intervened between their respective arrivals. He met him there by appointment.

Judge Neilson—And the witness introduced him.

Mr. Fullerton—And the witness introduced him, yes, Sir. That is all there was of the interview.

Judge Neilson—Are you through, Mr. Shearman?

Mr. Shearman—No, Sir. [To the witness.] Did you have any more than one interview with Gen. Tracy in which the subject of this scandal was in any way discussed, prior to the time when Mr. Moulton came into the office? A. I think likely I met him on the street, and perhaps casually talked with him about it a little, as I had with others I had met. I am under the impression I had.

Q. When do you think you met him in the street? A. I think I met him perhaps a day or two after this thing was out.

Q. A day or two after the publication? A. I think I may have met him.

Q. In this interview between Mr. Moulton and Gen. Tracy nothing was said about the money, was there? A. No, Sir.

Q. Nothing was said about Bessie Turner? A. No, Sir; you mean the morning interview?

Q. I mean the morning interview? A. No, Sir.

Q. Was anything said in any subsequent interview at which you were present between Mr. Moulton and Mr. Tracy about money? A. I think not.

Q. Nor about Bessie Turner? A. I think not.

Q. Did you on your re-examination testify in this manner: "Mr. Moulton proceeded to tell Mr. Tracy all about the case?" A. I said that Mr. Moulton told him.

Q. Will you state whether you so testified or not. I will show you the passage if you desire. A. I think I may have testified so.

Mr. Beach—Then follows the question: "What did he tell him; just repeat it now," and he goes on and repeats it.

Mr. Shearman—It shows he didn't.

Mr. Beach—It just shows what he did tell him.

By Mr. Shearman—Did you speak to Gen. Tracy about this money as any evidence of guilt on Mr. Beecher's part?

Mr. Beach—That is objected to.

Judge Neilson—I think we won't take that, Mr. Shearman.

Mr. Shearman—You say you knew about the $5,000 which was then paid? A. I say I knew of $5,300 that was placed to F. D. Moulton's credit on the cash book of Woodruff & Robinson. I say I knew it from the fact of seeing it on the cash book.

Q. And you remember to have said it was money derived from Mr. Beecher? A. I presumed it was.

Mr. Fullerton—Is there any necessity for going over that ground again?

Mr. Shearman—Yes, there is.

Mr. Fullerton—Well, I was asking the Court.

Mr. Shearman—The point I wish to get at is that you knew of three classes of payments. You knew of the payment on account of Bessie Turner; you knew of the payment of $500, and you knew of the payment of this $5,000. A. I knew of the credit to F. D. Moulton of $5,300.

Q. Did you ever object to any of this transaction? A. No, Sir.

Q. Did you ever complain to Mr. Moulton of his having made use of the firm as a channel for such payments? A. Not that I recollect of.

MR. WOODRUFF DENIES A CONVERSATION WITH MR. SOUTHWICK.

Q. Do you recollect an interview between yourself and John C. Southwick, shortly after the publication of the so-called Woodhull scandal, in November, 1872? Do you recollect an interview with him in which there was a conversation between you and Mr. Beecher on the subject of the scandal, at Mr. Southwick's house? A. I had some talk with Mr. Southwick about the scandal.

Q. I simply want to know if you recollect the occasion. A. Yes, Sir.

Q. Do you recollect on that occasion saying to Mr. Southwick, "Is it best for us to drive Mr. Beecher out of Brooklyn, or not?"

Mr. Fullerton—I object to it.

Mr. Shearman—Shall I give the whole conversation? I think the objection would be entirely obviated by the whole conversation.

Judge Neilson—I think we will take the answer, if you [Mr. Shearman] will be content with the answer.

The Witness—I don't recollect saying so.

Q. Nor anything of that sort? A. I don't recollect it.

Q. Will you swear you did not? A. I will swear I don't recollect I did.

Q. But not anything more positive than that? A. No, Sir.

Q. Did not Mr. Southwick, in answer to that, say to you that you had a head of sufficient level to drive the salt and fish business, but that when you undertook to drive Henry Ward Beecher out of Brooklyn he thought you had taken a contract you could not carry through. A. No, I don't think I said that.

Judge Neilson—The question is whether Mr. Southwick said it. A. No, Sir.

Mr. Shearman—Nor anything like that? A. I do not.

Q. Anything in substance like that? A. I don't recollect of saying anything like it.

Q. Will you swear positively you didn't say it? A. I swear I don't recollect that I did.

Mr. Fullerton—I won't interrupt with any other objection. If it is to be understood they are to retry their case, I will submit to it.

Judge Neilson—No, that is not to be understood at all, and the rule will be strictly applied hereafter. In this instance we drifted into this long minute examination before you called attention to the rule, and I was hoping it would be—

Mr. Fullerton—I make the objection now before we drift entirely out to sea and get lost.

Mr. Shearman—If your Honor please—

Mr. Fullerton—No, one moment.

Mr. Sherman—Allow me.

Mr. Fullerton—No, you will allow *me*, please. If they want to introduce Mr. Southwick to contradict the witness on the stand in regard to this matter, your Honor will perceive it is a little out of the proper order of the case, because this inquiry now ought to have been put when the witness was on the stand before. It don't make any difference whether the subject was referred to on my former examination, or whether they omitted to refer to it; the rule is precisely the same. They ought now to be limited in their inquiries to a cross-examination in regard to matters to which we directed the attention of the witness.

Mr. Evarts—That we agree to.

Judge Neilson—We have not applied the rule in this examination, and we will get through without the rule.

Mr. Evarts—Perhaps counsel will differ with each other, if your Honor please, and the Court may not accord with the views of counsel, and we will assume your Honor is right in this view. But this is the point we are now at. It is always permissible at any time that an adverse witness, that is, a witness of an adverse party, is on the stand, in reference to any testimony that he has given to indicate his bias——

Judge Neilson—Therefore I allowed the last answers to stand.

Mr. Evarts—That is our present inquiry, and we want to pursue it a little further. That is the only ground. It does not follow we must exhaust our testimony as to bias on the original examination, because it may not become at all important until after the rebutting examination.

Mr. Shearman—Did not you then say to Mr. Southwick, "I will show you a letter which, if published, or shown generally, would drive him out of Brooklyn?"

The Witness—What date is this?

Mr. Shearman—About the time of the Woodhull publication.

The Witness—I don't think I did; I never had any such letter in my possession. I could not show him any such letter.

Q. Are you positive you did not say so? A. I don't think—no, I don't recollect saying so. I may have said so; that I had seen an apology, or something of that kind, that was very damaging to Mr. Beecher.

Q. And "which, if shown generally, would drive him out of Brooklyn?" A. Very possibly I may have said so; but I don't recollect that I did.

Q. Didn't Mr. Southwick then ask you if the charge against Mr. Beecher was adultery, and didn't you say no? A. No; I don't recollect ever anything of that kind.

Q. Nothing of that sort? A. No, Sir.

Q. Nothing in substance to that effect? A. No, Sir.

Q. Will you swear that you did not? A. I will swear to the best of my recollection that I do not think I did.

Q. That is as positive as you will be? A. I have no idea I said so.

Q. Will you swear positively, or will you not, that you did not say that to Mr. Southwick? A. I will swear to the best of my recollection I never said any such thing, and I cannot believe I did.

Q. Did Mr. Southwick in that conversation ask you if you believed that Mr. Beecher had committed adultery, and didn't you answer "No?" A. No, Sir; I don't think that any such question was asked, and if there was, I don't believe I said "No."

Q. You think nothing of that kind occurred? A. I don't recollect that anything of that kind occured.

Q. Are you positive nothing of that kind occurred? A. I am sure I didn't say "No" to any such question as that.

Q. Did nothing of this kind occur at any conversation between you and Mr. Southwick? A. I don't think there did in that positive form.

Q. In that positive form. But did it, in substance? A. I don't think anything ever occurred in which Mr. Southwick asked me if I believed Mr. Beecher guilty of adultery, and I said "No." I have no recollection of anything of the kind ever occurring.

Q. Did he ever ask you if you, or any one else, charged him with adultery, and did you say "No?" A. I don't know whether he asked me, or not.

Q. And you don't know whether you answered so or not? A. No, I don't think I ever answered so.

Q. Did you never to Mr. Southwick charge Mr. Beecher with adultery? A. I never charged him with adultery.

Q. Did you ever tell Mr. Southwick that Mr. Beecher had committed adultery with Mrs. Tilton? A. No, I don't think I ever did.

Q. Did you ever tell Mr. Southwick that Mr. Tilton charged adultery? A. I may have within the past year.

Q. But not before this past year? A. I don't think I ever did before.

MR. SOUTHWICK CENSURED FOR GIVING GEN. TRACY POINTS.

Q. How often did you talk with Mr. Southwick about this subject of the scandal? A. I don't know.

Q. Didn't you begin to talk with him from a very early day—from 1871? A. I think about the first I talked was after the Woodhull scandal was published; I think along there.

Q. From that time on, haven't you talked with him frequently? A. Oh, I talked with him from time to time; yes, Sir.

Q. Haven't you talked about what the charge was against Mr. Beecher with Mr. Southwick? A. I don't think I have, except it may have been within the past year—after it came out.

Q. I don't mean the past year; I don't mean since Mr. Tilton made the public charge of adultery. Before that didn't you often talk with him on the subject? A. I have talked with him; yes, Sir.

Q. Have you not since you were on the stand before complained to Mr. Southwick of his having given Mr. Tracy points in this case? A. I did; no, I don't know about points: I had a talk with Southwick the other day.

Q. Well, didn't you complain of his conduct in telling Gen. Tracy anything? A. I complained of his—yes, I did; no, I complained of this: he swore about something that I had told him in confidence, and I thought it was rather stating things that he ought not to.

Judge Neilson—That was about *The Golden Age*? A. I think so; no, something about Mr. Tilton.

Mr. Shearman—That was about the accusation made by Mr. Tilton.

Mr. Fullerton—One moment. Let him tell his own story.

Judge Neilson—What was it about? A. Something about the accusation, something that Mr. Tilton said. I told him that I thought he had told Gen. Tracy, for I didn't see how he could have known anything about it without.

Q. Haven't you told that to other persons besides Mr. Southwick? A. Very likely.

Q. Are you still a member of the firm of Woodruff & Robinson? A. No, Sir.

Q. When did you leave the firm? A. The firm dissolved on the 1st of March; partially on the 1st of January, and fully on the 1st of March.

Q. Was not the dissolution resolved on before the 1st of January, Sir? A. Yes, Sir.

Q. Did you have an interview with Mr. Southwick a few weeks ago at your office, where this subject of the scandal was discussed to some extent? A. Very likely.

Q. Did you on that occasion tell Mr. Southwick that he had known all about the case from you? A. No, Sir; I don't recollect telling him any such thing.

Q. Didn't you tell him anything of that kind in substance? A. No, Sir; I don't think he had ever known about this case from me.

Q. Did you not tell him in substance that you had told him all you knew about the case? A. No, Sir; I did not.

Q. Did you not tell him that you had told him all that you knew about the case in confidence? A. No; I did not tell him any such thing.

Q. And didn't you tell him that if he told what you had told him you would never have any more confidence in human nature? A. I don't think I did.

Q. Nothing of that sort? A. I don't think I did.

Q. And didn't you assign as a reason for it that you had told him all that you knew about it, and expected him to keep it in confidence? A. No; I told him that he ought not to tell of it, matters confidential; I think he threatened to tell some things that I told him in confidence, and I said that would be——

Q. That is all.

Mr. Beach—No, finish it.

Mr. Shearman—No.

Mr. Beach—Certainly, you will finish it.

Mr. Shearman—Well, Sir, you may finish it.

The Witness—I think I met Southwick, or he was down at our office, and he got talking about this thing, and I merely cautioned him about matters that I had talked with him in confidence, and he spoke about telling some of them. I told him those I had given him in confidence and should not be repeated under any circumstances, something of that conversation.

Judge Neilson—Well, is that all with this witness?

Mr. Shearman—That is all.

Judge Neilson [to Mr. Beach]—Do you wish to ask him?

The Witness—About these books that they wanted—they are out of my possession.

Mr. Evarts—Don't talk any more, Mr. Witness.

Judge Neilson—He is speaking to me about the books.

Mr. Evarts—Oh, I beg pardon, I apologize to Mr. Woodruff; I thought he was proceeding.

Mr. Shearman—Are they here?

Mr. Beach—No.

Judge Neilson—Now, I ask you, Mr. Evarts, why do we want the books? We have the accounts here.

Mr. Beach—They are not in his possession or under his control.

Judge Neilson—Every check has been read.

Mr. Evarts—We have used the account in the book; that answers our purpose, I am told.

The Witness—You don't want the books, then?

RE-DIRECT EXAMINATION OF MR. WOODRUFF.

Mr. Beach—I don't know whether that check, Sir, for $7,000, of Bowen's has ever been shown you. [Handing witness check.] Do you recollect of that being deposited with your firm? A. Well, I have a recollection that it was; it must have been deposited there.

Q. Well, there is the indorsement of your firm upon it,

that shows it. A. That is George C. Robinson's handwriting.

Q. Did you ever see that yellow paper? A. I have no recollection of ever seeing it until I saw it here the other day.

Mr. Evarts—We don't hear, Mr. Beach.

Mr. Beach—He has no recollection of ever having seen it until he saw it here the other day.

Mr. Evarts—The yellow paper?

The Witness—The yellow paper.

Mr. Beach—Well, this yellow paper—it is marked as "Exhibit D, 134."

Mr. Shearman—What was said about the check, Mr. Beach? We could not hear.

Mr. Beach—He says simply that he recollects the check and the indorsement of his firm upon it, and it passed through his firm.

Mr. Evarts—It is not his own indorsement.

Mr. Beach—Made by George C. Robinson. [To the witness.] Have you any recollection of passing that check to Mr. Partridge, the cashier at that time of your firm? A. I think I did; I won't swear positively, but I think I gave the check to Mr. Partridge.

Q. Do you recollect from whom you received the check? A. Well, I think I received it from Mr. Tilton.

Q. Was that yellow paper in connection with the check handed to you? A. I have no recollection of ever seeing that paper until to-day.

Mr. Beach—That is all.

Mr. Evarts [to Mr. Beach]—Will you allow me to examine him about this?

Mr. Beach—Certainly.

RE-CROSS EXAMINATION OF MR. WOODRUFF.

By Mr. Evarts—Now, Mr. Woodruff, what recollection have you in regard to this check having gone through your hands [handing check to witness]? A. Well, I say I think it came to me, and that I handed it in to the cashier. I think Mr. Tilton gave it to me; I don't swear positively; I think that was so; that is all I know about it.

Q. Well, can you say anything more than that you imagine that it must have been so? A. I say I think it must have been so; I don't imagine it; I say I think it is so; whether it was or was not, I don't know; I think it was so.

Q. Now do you remember whether these two papers came inside of an envelope together? A. No; I don't remember that at all; no, Sir.

Q. Do you remember whether these two papers were pinned together, or not? A. I don't recollect anything of the kind; I have no recollection of ever seeing that paper until I saw it here the other day.

Q. That I understand you to say. Have you any recollection as to whether this paper came—these two papers came in an envelope, or not? A. No. I have not.

Q. Not the slightest? A. No, Sir.

Q. Have you any recollection of reading the check at the time that it came? A. I think I saw the check.

Q. And that is all you can say about it? A. Yes; it was placed to Mr. Tilton's credit.

Q. Now, you say that Mr. Tilton handed you the check? A. I have that impression; I could not swear to it positively, but I am under that impression.

Q. Well, do you know where you were when he handed you the check, if he did hand it to you? A. Well, I don't know whether he handed it to me at Moulton's house or at the office.

Q. It was either one or the other? A. It must have been—I think so.

Q. Then you don't recollect probably what day he handed it to you? A. No, I do not.

Q. And the amount of it is, that you don't recollect anything about the yellow paper, and you don't recollect anything about the check except that you think you saw it as it passed through your firm for deposit? A. Yes, Sir.

Mr. Beach—You stated, Mr. Woodruff, that you have no recollection of having seen this yellow paper. I ask your attention to the terms of the writing upon it?

Mr. Evarts—The what?

Mr. Beach—The writing upon it, and ask you whether you have any recollection of reading any such sentiment or writing in connection with any check: "Spoils from new friends for the enrichment of old?" A. I haven't any recollection of ever seeing it.

Mr. Davis (a juror) here spoke to Mr. Beach in regard to the handwriting on the yellow paper.

Mr. Beach—This is Mr. Tilton's handwriting.

Mr. Evarts—It is Mr. Tilton's handwriting; that is conceded.

Mr. Beach—That is all.

The Witness—Now, you don't want me to bring the books?

Mr. Evarts—No.

Judge Neilson—Gentlemen, get ready to retire.

The Court then took a recess until 2 o'clock.

TESTIMONY INTRODUCED BY PROXY.

The Court met at 2 p. m., pursuant to adjournment.

Judge Neilson—Call your next witness.

Mr. Morris—If your Honor please, Dr. Skiles has been subpenaed as a witness, and Mr. Evarts and myself have heard his statement, and we have agreed upon the single point to which we desired to call him, and that is, that he made his last professional visit upon Mrs. Tilton on the 30th of December, 1870.

Judge Neilson—That will be taken down.

Mr. Evarts—That will be put in the record with the same effect as if Dr. Skiles had sworn to it.

Mr. Beach—And that he left her convalescent?

Mr. Evarts—That he made a professional visit on Friday, the 30th, and that that was his last visit.

Mr. Beach—We don't accept that.

Mr. Morris—We want to prove that fact by him, that she was convalescent.

Mr. Evarts—That she did get well.

Mr. Beach—That she was then convalescent, and that she needed no more medical treatment.

Mr. Evarts—I agree to that; that is implied by the fact that he made no other visit.

Judge Neilson—That is, if they called no other physician.

Mr. Fullerton—The gentleman don't mean to say that she got well because the doctor did not call on her any more. [Laughter.]

Mr. Evarts—The fact is, no doubt, as my friend states, that a competent physician attending on a patient made a professional call that day, and that was his last.

Mr. Beach—Dr. Skiles was her attendant physician, and that day was the last call he made; he then considered her convalescent, and not needing medical attention. That is what we want.

Judge Neilson—If that is the fact, then that is taken down.

TESTIMONY OF HANNAH M. MIDDLEBROOK.

Hannah M. Middlebrook, a witness called and sworn on behalf of the plaintiff, testified as follows:

Mr. Fullerton—Mrs. Middlebrook, where do you reside? A. In the town of Trumbull, State of Connecticut.

Q. How long have you resided there? A. For 16 years.

Q. You are a married lady? A. Yes, Sir.

Q. Your husband engaged in business there? A. Yes, Sir.

Q. Are you acquainted with Theodore Tilton? A. I have met him—well, a few times, before the present.

Q. When did you meet him the first time? A. I think the first time I met him in the office of Mrs. Woodhull on Broad-st.

Q. When was that? A. Well, it must have been in the year 1871, I think; only a moment—a few moments—was introduced to him there.

Q. Do you recollect the season of the year? A. I think it was in the Summer of——

Q. Of 1871? A. Yes, Sir.

Q. How often did you meet him after that? A. I only met him once more in the office. I met him again in the Autumn of that year, in Mrs. Woodhull's house.

Q. And where did she reside then? A. At I think it was No. 15 East Thirty-eighth-st.

Q. Then you were acquainted also with Mrs. Woodhull, I take it? A. Yes, Sir.

Q. And when did you make her acquaintance? A. At a convention held—I don't recollect whether it was Apollo Hall or Steinway Hall; I think it was Apollo Hall.

Q. What was the character of the convention? A. It was a Woman's Suffrage Convention.

Q. You have spoken of the Autumn of 1871; did you visit Mrs. Woodhull's house in that Autumn? A. Yes, Sir.

Q. Did you visit that house more than once? A. No, Sir.

Q. Only once? A. Only once; or rather—excuse me; I was there more than once, but I passed but one evening there; I called there two or three times on matters of business.

Q. And at what time in the day did you call? A. Well, I called once in the morning; I was about to take the train to my home, and I think Mrs. Woodhull went up with me to Hartford, where she was going to lecture.

Q. These were calls that you speak of? A. These were mere calls.

Q. And you went there, you say, upon business matters? A. Yes, Sir.

Q. If there is no objection, please state what the business matters were. A. Well, I was connected with the American Association of Spiritualists, one of the Trustees and one of the Executive Board, and she was President of the Spiritualists' Association; then, further, I was a correspondent sometimes of her paper; I wrote several articles that were published in her paper, and I called on those matters.

Q. Now, do you recollect what time in the Autumn of 1871 it was that you called at her house? A. Well, if you will allow me to refer to a diary I can tell you the day.

Q. You can refresh your recollection by it? A. [Referring to diary.] It was October 25, 1871, as I then noted down.

That is an entry that you made at the time? A. At the time; yes, Sir.

A GATHERING OF SPIRITUALISTS AT MRS. WOODHULL'S.

Q. Mr. Charles Cowley, who has been introduced as a witness in this case, mentioned the fact that he met you at Mrs. Woodhull's in the Autumn of 1871; do you recollect him? A. Well, I recollect being introduced to two strange gentlemen, one of them from Lowell. I should not have remembered the name but as it was recalled to me.

Q. One of them was from Lowell? A. Yes, Sir; I remember that.

Q. You remember it now that it is recalled? A. Well, I would not have remembered the name, for I think it was very indistinct when it was given to me, and I did not remember it.

Q. That was the only occasion in which you met a gentleman from Lowell? A. Yes, Sir, that was the only evening that I spent at Mrs. Woodhull's.

Q. And the only evening that you spent at that house? A. Yes, Sir.

Q. Whom else did you meet there that evening, if you recollect, Mrs. Middlebrook? A. Well, there was a gentleman with this Mr. Cowley, this gentleman from Lowell, whose name I don't remember; I met Mr. Tilton, Mr. George Bacon of Boston, Mr. A. E. Wheelock, of what place I could not say now, and Mr. Edward Wheeler, besides Mrs. Woodhull, Miss Claflin, and Col. Blood and Mr. Andrews—Stephen Pearl Andrews.

Q. And Mr. Tilton? A. I named Mr. Tilton.

Q. Ah! I beg pardon. Now, Mrs. Middlebrook, I want to ask you this question, whether during that interview, at any time, the so-called Beecher scandal was the subject of conversation? A. No, Sir; not to my recollection.

Q. Well, how positive are you able to speak upon that subject? A. Well, I know that no conversation could have taken place that evening that I did not hear, and I am positive that that was not spoken of at all that evening.

THE WITNESS COWLEY CONTRADICTED.

Q. Mr. Cowley, in his testimony, in speaking of the subjects which were there discussed, says this:

Mr. Evarts—What page?

Mr. Fullerton—267 of Volume 7. [Reading.] "One"—subject, that is]—"I recall is, that there was some doubt whether Mr. Beecher or Mr. Tilton was the father of one of the children." Was there anything of that kind discussed or mentioned there that evening? A. No, Sir; there was not.

Q. Was there anything said or discussed upon the subject of Mrs. Tilton's regret as to the deception which she had practiced upon her husband, or that she had written a letter stating what her relations with Mr. Beecher had been? A. No, Sir; I am positive no such thing occurred.

Mr. Evarts—What page is that?

Mr. Fullerton—The same page (267), a little more than half the way down, on the extreme right-hand column. [To the witness.] Anything to the effect that Mr. Beecher had got hold of that letter, and that a friend of Mr. Tilton's had made him give it up—had extorted it at the point of a pistol? A. No, Sir.

Q. Anything to this effect, that if she, Mrs. Tilton, had written one confession she could write another? A. No, Sir.

Q. Well, I understand you, Mrs. Middlebrook, that the subject of that scandal was not introduced there that evening at all. A. No, Sir, it was not.

Q. How long a time did you spend there that evening? A. Well, it was after dark when I arrived there. I could not say just the hour now in that season of the year that it was dark; it was dark when I left Mrs. Woodhull's office; I went from her office up there, and I remained there until between 10 and 11; I think it must have been near 11.

Q. And where did you spend the time? A. In Mrs. Woodhull's parlor.

Q. And did the rest of the company spend their time there also? A. Not all of them. I think Col. Blood went out and in; I think Miss Claflin only came in a short time at the early part of the evening, and then excused herself and left; and, if I am not mistaken, Mr. Andrews, I think, went out and in, occasionally leaving for a short time, and coming in again.

Q. How about Mrs. Woodhull? A. Mrs. Woodhull—well, she might have passed out of the room once or twice, but she was there most of the evening.

Q. Do you recollect of her going out of the room at all? A. I don't recollect of her going out of the room at all.

Q. Now, as to this stranger from Lowell; did he go out of the room, or did he remain there? A. I don't think he went out of the room; I cannot swear positively, but I think he remained there the whole evening, or as long—until he left.

Q. Which parlor were they in? A. It was one long parlor.

Q. Extending—— A. Extending from the front back to a small room that adjoined it. We were in the long parlor.

Q. It was not a house, then, with double parlors, but of only one? A. No, as I recollect—I don't recollect any folding doors; if there were folding doors they were wide open, making one room. I don't recollect that there was any folding doors.

MRS. WOODHULL PUBLICLY DISCUSSES THE SCANDAL IN BOSTON.

Q. Do you recollect of being present in Boston when Mrs. Woodhull addressed an audience there in the Fall of 1872? A. Yes, Sir.

Q. Do you recollect what month that was in? A. It was in September, the 11th; well, the Convention was held the 10th, 11th, and 12th, I think, of September.

Q. And what was the character of the Convention? A. It was the annual meeting of the American Association of Spiritualists.

Q. Do you recollect whether the scandal was the subject of talk there?

Mr. Evarts—Well, is that in reference to any of our testimony?

Mr. Fullerton—Yes, Sir; it is.

Mr. Evarts—Whom do you contradict?

Mr. Fullerton—I don't contradict anybody by proving that, but I will lay a foundation.

The Witness—Mrs. Woodhull spoke of the scandal at that time.

Mr. Evarts—Wait!

Mr. Fullerton—Wait a moment. [To the Court.] I shall connect it properly, Sir.

Judge Neilson—I think I see what you refer to; it was an interview on the cars.

Mr. Fullerton—Yes, Sir; that is it exactly.

Judge Neilson—A gentleman saw Mr. Tilton, and had a conversation.

Mr. Fullerton—Yes, Sir; I want to show that the scandal was developed publicly prior to that time.

Judge Neilson—And the inference is that that might have been the subject to which Mr. Tilton referred.

Mr. Fullerton—Yes, Sir. [To the witness.] Now you may answer the question, Mrs. Middlebrook. A. Mrs. Woodhull referred to the subject of the scandal.

Q. And with what degree of particularity? A. Well, she had been sorely pressed by her opposers—those that were opposed to her re-election—and seemingly quite indignant she rushed upon the platform and spoke of a number of persons that were living in criminal intercourse, and among others she spoke of Mr. Beecher and his relations with Mrs. Tilton, and with the women of his church.

Q. What was the size or extent of the audience present at that time? A. Well, I should judge they might have numbered 400 persons.

Q. And in the evening or in the day time? A. I think it was in the day time; I think in the afternoon.

Q. It was a meeting with open doors? A. Yes, Sir.

Q. The public attended if they pleased? A. Yes, Sir.

Q. Now, if you will state the month, Mrs. Middlebrook? A. September, 1872.

Q. How long did it precede the publication of the scandal by Mrs. Woodhull in her paper, if you recollect? A. The issue of her paper, I think, was Nov. 2.

Q. That corresponds with your recollection, does it? A. Yes, Sir.

Mr. Fullerton—You may cross-examine, gentlemen.

CROSS-EXAMINATION OF MRS. MIDDLEBROOK.

Mr. Evarts — Mrs. Middlebrook, were you at this meeting at which this public speech was made? A. In Boston?

Q. Yes. A. Yes, Sir.

Q. How large a number of delegates to this Convention were present? A. Well, I cannot say how large a number; I should judge, however, probably 75.

Q. Seventy-five? A. Yes, Sir.

Q. The object of the Convention? A. It was the annual meeting of the American Association of Spiritualists.

Q. A Spiritualist Convention? A. Yes, Sir.

Q. Well, was this topic within the range of the subjects for which that Convention was held? A. No, Sir.

Q. And this was an episode, wasn't it? A. Yes, Sir.

Q. And an unexpected one? A. Yes, Sir; quite so.

Q. Rather a sudden and rash accusing? A. Yes, Sir.

Q. And so regarded? A. It was so regarded.

Q. Was it ever published, that you know? A. Well, I think brief notices were given of it in the Spiritualist papers, and I do not think it was noticed at large at all in the secular papers.

Q. Was n't it passed over? A. It was.

Q. Entirely, in secular papers? A. I have a recollection, I think, of one or two of the Boston papers naming it, and only naming it.

Q. Won't you be so good as to give us the names of those papers? A. I don't know that I can; I think *The Boston Globe* mentioned it, but I am not certain; I don't know that I can name the papers.

Q. You cannot name any papers? A. I don't know that I can.

Q. And you have not any serious opinion, have you, that any of the ordinary public papers in Boston did mention this episode? A. No, Sir; I don't think it was mentioned, excepting brief notices.

Q. Aren't you quite sure that no Boston paper mentioned Mrs. Tilton's name? A. I am not quite sure; no, Sir.

Q. What is your best impression? A. Well, I think, as I said, that there was only one or two papers that mentioned the affair that took place in the Convention—nothing more.

Q. And the names were not given? A. I don't know, I could not say.

Q. Now, what Spiritualist papers contained an account of this effusion? A. Well, *The Religio-Philosophical Journal* named it particularly; that is published in Chicago; and I cannot tell whether *The Banner of Light* mentioned it or not. It reported the Convention.

Q. Are they understood to be organs of that—— A. They are; yes, Sir.

Q. [Continuing]—of that opinion—Spiritualist; and the principal organs? A. Yes, Sir; I think so.

Q. Where is *The Banner of Light* published? A. In Boston.

Q. And how soon after this demonstration before the Convention did you see or know of any publication in any substantial expression of what occurred? A. Well, publication?

Q. Yes, how soon? A. This was in September, the 11th I think, and the publication, the first that I knew of, was the issue of *The Woodhull & Claflin's Weekly*, containing the published account of the scandal, Nov. 2—dated Nov. 2.

Q. Then you did not see in any newspaper before that time any publication of this Boston affair? A. I think not, excepting as I have mentioned, *The Religio-Philosophical Journal* noticed it.

Q. Well, that is what I want; how soon had you seen it in *The Religio-Philosophical Journal*? A. Well, I think either the next week or the week following; I cannot say.

Q. Still, that is rather a matter of impression than of definite recollection as to the time? A. No, that is not a matter of impression; I recollect it particularly owing to one circumstance.

Q. Well, we don't care what the circumstance is? A. Very well, then.

Q. It is enough if it impressed itself upon you. A. Yes, Sir.

Q. Now, about this acquaintance of yours with Mrs. Woodhull—when did it begin? A. I think in the Spring of 1871; I am not quite certain, however.

Q. It might have been earlier? A. It might have been the year preceding; I am not able to fix the date. It was at a Convention, and I attended a Convention in New-York both of those years, or for two or three years, and I am not able now— I find by referring to my diary that I speak of a Convention, but not of my introduction to her.

Q. Now, for aught you know, then, you may have become acquainted with her in the Spring of 1870? A. It is possible; I don't want to be positive about it.

Q. Well, at any rate, did you, after your introduction to her, form the habit of visiting her at her office? A. I often went into her office when I was in New-York. I live away.

Q. And was it a part of your life to be in New-York occasionally? A. Occasionally, Yes, Sir.

Q. Through the year? A. Yes, Sir.

Q. As might happen; and when here, you rather made it a point, I take it, to go to her office? A. I did; yes, Sir.

Q. So that if your acquaintance was from the Spring of 1870, that habit of yours of visiting her office went through that year? A. It did, if I was acquainted with her; I am not certain.

Q. And you searched in your diary in vain, I understand you, to fix the question whether it was in 1870 or 1871? A. I find the date of the Convention that I attended, but not thinking of it, and referring to other diaries, I could not say now. I could tell by referring to other diaries at home, but I only have this one.

Q. Perhaps you have, then, only the diary of 1871? A. That is all I have here.

Q. And there you find no entry of the date of your introduction to her? A. No, Sir.

Q. Did you meet Mr. Tilton—you met him first in the office of Mrs. Woodhull? A. Yes, Sir.

Q. And in what way were you brought into introduction with him, or did you know him before? A. No, Sir; I did not know him before.

Q. Who introduced you to him? A. Mrs. Woodhull, I think.

Q. In her office? A. Yes, Sir.

Q. How soon was that after you first made the acquaintance of Mrs. Woodhull? A. I could not tell you.

Q. Well, was n't it within a few weeks? A. I cannot tell you, Sir.

Q. It might have been? A. It might have been.

Q. So far as you have any knowledge it is as likely to have been within a few weeks after your first acquaintance with Mrs. Woodhull as at any other time? A. It is possible.

Q. Now, you apparently were a somewhat active or interested advocate of this Spiritualist movement? A. Yes, Sir.

Q. And made the Claflin & Woodhull newspaper to some extent, at least, the organ of your publication? A. Well, I published very little; I wrote a few letters to the paper.

Q. Well, but you did write for that? A. Yes, Sir.

Q. Did you write for any other paper? A. Yes, Sir.

Q. And to the same extent about as for this? A. About the same; yes, Sir.

Q. When you visited Mrs. Woodhull's house in the evening was it for a public gathering of any kind? A. Well, it was a mere accident that took me there; I attended a meeting of the Executive Board of the Association of which I was a member.

Q. Of the Spiritualists? A. Yes, Sir; at the office of Mrs. Woodhull.

Q. On that day? A. On that day, toward evening, expecting after I left to come over to Brooklyn and meet a sister of mine at the house of our friends. It was dark, raining, and Mrs. Woodhull proposed that I go home with her, and Col. Blood would take me over the ferry to the house that I was expecting to go to. That is why I came to be at Mrs. Woodhull's house.

Q. That is to say that, as it was a rainy night, instead of going over early in the evening to Brooklyn, you would go over late? A. No, Sir; not at all; I was alone, without an umbrella, or means of conveyance, and it was raining; there were no cars or omnibuses running from Mrs. Woodhull's office, and she was going to ride to her house in a carriage, and told me that Col. Blood—it was already dark, it would be no worse later—she told me that Col. Blood should be my company to Brooklyn.

Q. Well, didn't you understand that there was to be some sort of a gathering there that night? A. I didn't know it until I got to her house.

Q. Until you got there? A. No, Sir.

Q. And when you got there did you find, or did you find while you were there, that there was a considerable collection of people? A. I think when I arrived there that Mr. Wheelock, Mr. Bacon, and Mr. Wheeler were there, and Mr. Tilton was there, and Mr. Andrews, and others, and I found immediately that I could not take Col. Blood away from the company; that is why I spent the evening there.

Q. Now, were there other ladies there? A. Mrs. Woodhull was there, and Miss Claflin, early in the evening.

Q. Well, of course, Mrs. Woodhull and Miss Claflin I assume. A. Yes.

Q. Were there other ladies there? A. I don't recollect any other ladies there at all.

THE MEDIUMISTIC SPEECH.

Q. Now, do you remember an occurrence of a mediumistic or spiritualistic speech? A. Yes, Sir.

Q. Who was the author of that? A. I think Mr. Wheeler—Edward Wheeler.

Q. Mr. Edward Wheeler? A. Yes, Sir.

Q. And do you remember Mr. Tilton's reporting it? A. I don't remember his reporting it; no, Sir.

Q. You don't remember that? A. No, Sir.

Q. Do you remember any discussion about that speech after it was made, in which Mr. Cowley took part? A. I don't understand you.

Q. Do you remember any discussion arising about that spiritualistic speech, after it was made, in which Mr. Cowley took part? A. Well, I don't know that I can repeat the exact conversation; I remember——

Q. Well, do you remember there was such? A. Yes, Sir.

Q. And who took part in that conversation? A. Well, the company generally, I think.

Q. Including Mr. Tilton? A. Yes, Sir.

Q. And Mrs. Woodhull? A. Yes, Sir.

Q. And perhaps yourself? A. Yes; yes, Sir; I think I joined in the conversation.

Q. Do you remember a conversation arising that evening about Lowell operatives, and the restriction of female freedom that had been undertaken? A. I do remember a conversation of that kind.

Q. You think that occurred? A. I think that occurred in the latter part of the evening.

Q. Well, have you any doubt about it? A. No, Sir.

Q. And who took part in that? A. Well, Mr. Cowley and Mrs. Woodhull, mostly. I think I made a few remarks myself, and I think Mr. Tilton said something about it.

Q. Now, you got through about 7 o'clock or so? A. I cannot tell the hour; it was after dark.

Q. And when did you leave? A. I left between 10 and 11; I think near 11, perhaps 15 minutes before 11.

Q. Did Col. Blood accompany you to Brooklyn? A. No, Sir.

Q. Did you come over to Brooklyn, or did you—— A. I did; yes, Sir.

Q. Or did you spend the night in New-York? Now, Mrs. Middlebrook, what led you to think that, if Mr. Cowley and Mr. Tilton had conversation there about Mrs. Tilton and Mr. Beecher, that you would have known of it? A. There was no conversation of a private nature that took place there that evening, unless it was as a person might turn to another and make a comment or remark or something, not with any intention of making it private; there was nothing more than that that passed there that evening.

Q. Do you mean to say that every subject that was talked about by anybody was participated in by everybody there? A. Yes, Sir; generally.

Q. Well, the whole matter was not in the shape of formal speeches and addresses made by one to another, was it? A. No, Sir; they were comments.

Q. Do you think that everything that was said that evening was said as of a matter to be participated in by everybody? A. Unless it was, as I say, some slight remark that might have been made by a person sitting near another.

Q. Well, but you were there some three or four hours? A. Yes, Sir.

Q. And people were coming and going? A. No, Sir; not very much.

Q. Well, passing in and out? A. Yes, Sir.

Q. Were not there some coming and going? A. I don't think that we were interrupted by any new-comers that evening.

Q. Now, your acquaintance, as I understand, continued with Mrs. Woodhull; and perhaps does now? A. Yes Sir.

Q. And you were at her house several times, and this same house, I suppose? A. I was there two or three times; I cannot say just how many.

Q. All of them after this? A. No, Sir; I do not know whether they were all after or before.

Q. When was your last communication to this newspaper of Miss Claflin's? A. Well, I think it must be two or three years ago.

Q. Was it since the publication of the Woodhull scandal? A. Yes, I think it has been.

Q. Had it any relation to that subject? A. No, Sir.

Q. Mrs. Middlebrook, have your opinions on Spiritualism carried you so far as to make you a disbeliever in the Christian faith, entirely? A. Well, Sir, the Christian faith has a great many points; I disbelieve some points of the Christian faith, and some points I believe in.

Q. Do you believe in the existence of God? A. Yes, Sir.

Q. And in a system of future rewards and punishments? A. Yes, Sir.

Mr. Evarts (in an undertone)—That is pretty substantial.

Q. What was the subject of this Spiritualistic speech at Mrs. Woodhull's? A. It was not a Spiritualistic speech, Sir.

Q. Well, describe it. I understood that it was a mediumistic effusion? A. It was simply a sort of vituperative speech that she made.

Q. I am not talking of Mrs. Woodhull; I am talking of this Mr. Wheeler? A. Oh, that was a sort of an improvisation, in the form of poetry, on spiritual matters—matters connected with the communication between disembodied spirits and our world.

Q. Can you give us more precisely the drift of it? A. No, Sir; I cannot.

Q. Or the information that it communicated on those subjects? A. No, Sir; I cannot.

RE-DIRECT EXAMINATION OF MRS. MIDDLEBROOK.

Mr. Fullertion—Do you recollect whether Mr. Tilton criticised that speech, or whatever it was—that production? A. Yes, Sir, I remember his criticism.

Q. What was his criticism? A. Well, I know he asked the question whether—why it was that, if literary persons came back here and communicated with the inhabitants of this earth—why they were not equal to their former selves in their utterances?

Q. Yes; why they had lost their education? [Laughter.] A. Yes, Sir.

[A pause.]

Mr. Evarts [to Mr. Fullerton]—You are not going to leave it there without telling us why? [Laughter.]

Mr. Fullerton—Oh, I don't suppose they can get it all back again from the other world by anything I can do.

Mr. Evarts—Ask her why.

Mr. Fullerton—I will ask Mrs. Palmer that when you produce her again. [Laughter.]

Q. You have been asked if you did not spend some portion of your time in New-York. I will ask you in connection with what object you have spent that time in New-York? A. At the time I visited Mrs. Woodhull's office I was passing through here to other places, in the capacity of a public speaker. Within the last two years I have been in New-York as a medical student in the New-York Free Medical College for Women.

Q. And in connection with any other institution? A. No, Sir.

Q. Have you had any connection with the Strangers' Hospital? A. Well, by the kindness of Mr. John H. Keyser of New-York I occupy rooms in a building that was formerly known as the Strangers' Hospital.

Q. What connection has Mr. Keyser with it? A. He owns the building, and he very kindly gave me the rent of rooms in it. It is a vacated hospital.

RE-CROSS EXAMINATION OF MRS. MIDDLEBROOK.

Mr. Evarts—What was the answer to Mr. Tilton's question why the spirits did not equal their former efforts when in the flesh? A. Well, there were various answers, I think, and various opinions upon the subject. Some maintained, I think, that they were fully equal to the past, and some that they were not.

Q. It passed off in a doubt as to the fact rather than by any accounting for it? A. Well, I thought that Mr. Tilton rather doubted the fact.

Mr. Fullerton—Wondered why none of them had improved by absence? [Laughter.]

Mr. Evarts—But the debate did not end in the giving of any reason why that happened, but rather in a doubt whether it was so or not? A. Yes, Sir.

Q. Do you remember who the literary character that this Mr. Wheeler translated was? A. No Sir, I do not; I don't think there was any name given.

Q. Was there any trouble in Mr. Wheeler's literature—in his language or grammar, that raised this question? A. Well, as far as my opinion is concerned, Sir, I thought it was a poor effort and was not equal to many I had heard; I know it was pronounced by some to be a mere jingle—I think Mr. Tilton so pronounced it.

Q. Which did you think in fault—Mr. Wheeler or the spirit? [Laughter.] A. I cannot say, Sir; I do not know.

JOSEPH H. RICHARDS RECALLED.

Joseph H. Richards was then recalled on the part of the plaintiff, and further examined:

Mr. Morris—Mr. Richards, you recollect going before the Investigating Committee last Summer, at Dr. Storrs's house? A. Not at Dr. Storrs's.

Q I mean at Augustus Storrs's? A. Yes, Sir.

Q. Did you see Gen. Tracy there? A. Yes, Sir.

Q. Was Mr. Tracy there when you arrived, or did he come after you? A. He was not there when I arrived, Sir.

Q. Had you any conversation with any of the members of the Committee before his arrival? A. Yes.

Q. Were you introduced to Mr. Tracy after he arrived? A. Yes.

Q. What time in the evening was that? A. I should think a little after eight; I am not sure.

Q. And what occurred after you were introduced to Mr. Tracy?

Mr. Shearman—That won't do. We must have the precise questions put that were put to Mr. Tracy.

Mr. Morris—Oh, this is preliminary.

Mr. Beach—That rule cannot be applied, Sir, in this instance, because when Mr. Tracy denied the particular question, or answered the particular question which was presented to him, he then went on, somewhat against my protest, to give a narrative of what did pass between himself and Mr. Richards——

Mr. Morris—And detailed the conversation.

Mr. Beach—And detailed the conversation; and we must, therefore, I suppose, get the conversation from this witness.

Mr. Shearman—That did not occur on cross-examination, and I don't see that it occurs anywhere.

Mr. Morris—I had it here a minute ago.

Mr. Evarts—Well, if your Honor please, this is not evidence in chief, and what took place there is of no consequence.

Mr. Beach—It is a contradiction of Mr. Tracy.

Mr. Evarts—A contradiction?

Judge Neilson—The counsel's view seems to be that a detailed conversation can be corrected if any specific question could have been; so that I think the examination ought to be predicated on what Mr. Tracy said.

Mr. Evarts—It is merely a matter of impeachment of Mr. Tracy.

Mr. Fullerton—Well, isn't that important?

Judge Neilson—The question is, did you have a conversation, &c. Go on Mr. Morris.

Mr. Morris—State what occurred after you were introduced to Mr. Tracy.

Mr. Evarts—Well ——

Mr. Morris [to the witness]—As between you and Tracy.

Mr. Evarts—You are to ask further what Mr. Tracy said occurred.

Judge Neilson—No; this question is, did you have a conversation with Mr. Tracy?

The Witness—Yes, Sir.

Mr. Morris—State where that was; whether in the presence of the Committee or not? A. I was seated with the Committee, talking with them, and Mr. Tracy came in, and I was introduced to him; he then beckoned me to come into the front parlor; I went with him into the front parlor, and he made some remark about my appearing before the Committee?

Q. Go on and give what occurred between you and Mr. Tracy?

A CONTEST TO EXCLUDE THE TESTIMONY.

Mr. Shearman—That is just what we object to.

Mr. Morris—But I understand the Court permits it.

Judge Neilson—No. [To Mr. Morris.] Can you turn, Judge, to Mr. Tracy's statement on this subject?

Mr. Beach—Yes, Sir; this was his examination [reading]:

Q. Did you see Mr. Richards when he was before the Committee? A. I did.

Q. Did you have a conversation with him at the place where the Committee met, before he presented himself to the Committee? A. I did.

Q. Did you ask him any questions in regard to what he knew? A. I did.

Q. Did you ask him whether his sister had ever confessed to him to adultery with Mr. Beecher? A. I did; I did in substance, I think.

Q. In substance? A. No, I did not; that is not the form of the question.

Q. Well, in substance that? A. No; I asked him if his sister had ever——

Q. One moment. A. Excuse me.

Q. I do not ask what you asked him. Did you not, in substance, inquire of him whether his sister, Mrs. Tilton, had ever admitted to him adultery with Mr. Beecher? A. I don't think I did, Sir.

Q. Did not, in answer to your question, Mr. Richards say to you that he declined to answer it, or in substance that? A. Mr. Richards declined to answer——

Q. Oh, I don't ask what it was—I ask you if he did not say that, in substance? A. Well, I say I don't remember putting such a question to Mr. Richards.

Q. Then you do not remember his declining to answer? A. Oh, yes, Sir; I remember his declining to hold any conversation with me, or communicating to me anything of what he knew in regard to this case.

Q. What? A. I know that Mr. Richards said that he would communicate nothing to me of what he knew or did not know in regard to that matter; that it was a family matter, into which he had refused to be drawn, and would not be drawn.

Q Well, I did not ask you about that, Sir; my question has altogether a different significance. Did you not in that interview put a question to Mr. Richards calling upon him to state whether or not his sister, Mrs. Tilton, had confessed or admitted to him (Mr. Richards) or to Mrs. Richards, his wife, the fact of illicit connection, or adultery, or sexual intercourse, with Mr. Beecher? A. No, Sir—not as specifically as you put it, nor in substance that.

Q. I asked you whether you, in substance, put any inquiry of that character? A. I answered you, not in substance.

Q. Very well. Now, did not, in answer to such an inquiry upon your part, Mr. Richards decline to answer any such interrogatory? A. Mr. Richards declined to answer any interrogatory, and gave me notice that he would not answer any interrogatory concerning his family relations.

Q. Well, we have got that before? A. Well.

Q. Now, was not such an inquiry, in substance, put him, and did not Mr. Richards then decline to answer it: and did you not, in substance, reply: "That won't do; that in substance affirms the truth of it?" A. No; I can tell you what did transpire, Mr. Beach, if you wish to know exactly.

Q. Well, you have very often addressed that to me, &c.

Now, whether Mr. Tracy mentioned that topic again I don't recollect.

Judge Neilson—He afterward said he explained to Mr. Richards why it would be safe for him to attend before the Committee and have the question put and decline to answer, because there would be an implication against his sister by his declining. I think the counsel might interrogate him on each feature of that as he passes over it.

Mr. Evarts—If your Honor please, as evidence in chief, the subject is not admissible.

Judge Neilson—No, of course. It is merely to explain or contradict Mr. Tracy's statement, or to show bias, or whatever it may be.

Mr. Evarts—Not to show bias—to contradict him.

Judge Neilson—Well, whatever it is. I don't like to use the word "contradict" myself when I can avoid it.

Mr. Evarts—Now, the general rule is that when a purely collateral topic is introduced, and the first witness, with a view to disparage his character, &c., is interrogated, the interrogator must take the answer, and there is the

end of it. If he seeks to make the witness disparage himself, he must take the answer by which the witness maintains his character.

Mr. Beach—If you will permit me to interrupt you, Mr. Evarts, it turns out, Sir, that upon the redirect examination by Mr. Tracy, they called out the whole of this interview with Mr. Richards; and it therefore gives us the right to give the conversation.

Mr. Evarts—Well ——

Mr. Beach—We asked him specific questions; but they called out the whole interview.

Mr. Evarts—Now, then, when you come to a form of impeachment of this somewhat complex character (though very familiar and easily understood) of seeking to discredit a witness by producing from other witnesses statements of the first, made out of court, the law requires absolutely, as a condition of that method of discrediting, that the first witness should have had his attention called, with all requisite particularity, to the very topic and to what was said; and it is the first witness's extra-judicial statements that disparage him. Now, this witness might be called, if you please, to reproduce Mr. Tracy's extra-judicial statements concerning the subject-matter about which he has made a judicial statement here, and to show a contradiction, if the attention of Mr. Tracy had been properly drawn to that topic; but that is not what is sought here. It is not any extra-judicial statement of Mr. Tracy that is invoked in this case to contradict his testimony under oath. It is a contradiction by this witness of a series of facts testified to by Mr. Tracy, which series of facts are wholly outside of the issue of this cause, and are entirely collateral, and contain no extra-judicial statements to the contrary concerning the topic of his present views. Now, they say that we drew it out on a cross-examination.

Mr. Beach—No; not on cross-examination.

Mr. Evarts—Well, on a redirect examination, after your cross—on a redirect examination on the details or substance concerning which you had made special inquiries; and you say that that gives you a right to contradict Mr. Tracy. Why? If it had been a matter that was within the issue here, of course you could contradict him without any leave or preparation; but on this matter which you went into, and which is collateral, and which contains no extra-judicial statements to be corrected or contradicted within those rules, you have no right, by any other witness, to put another view on those subjects in evidence. We had no right to bring in this matter as a matter of substantive evidence on our part at all, and when we brought it in on the redirect it was only by the right that you had given us on your cross-examination to have the matter stated as it was, and you made no objection, I think. No objection was made, and that is the statement that must stand until the end of this cause of that occurrence. That is our view of the situation as now presented.

Mr. Abbott here called Mr. Evarts's attention to an authority.

Mr. Evarts—[reading]:

A witness cannot be cross-examined to a distinct collateral fact for the purpose of afterward impeaching him by contradicting his testimony. His answer to such questions are conclusive upon the party cross-examining him.

Mr. Beach—Well, Sir, that is a very valuable contribution to the law of this case.

Judge Neilson—At the same time it has been held that a statement made by one witness, drawn out on the direct or the cross-examination, may be contradicted by another witness, whether it is material or not. I think you must confine this within that rule. Any statement Mr. Tracy made may be contradicted by this witness.

Mr. Evarts—I agree, if your Honor uses "material or not" in the sense of *important or not;* but not if you distinguish between *material* and *collateral.*

Mr. Beach—They call out upon their direct examination Mr. Tracy's version of this interview with Mr. Richards. We propose now to contradict him.

Judge Neilson—Well, take that in detail.

Mr. Beach—Your Honor certainly does not want us to take a quarter of a page of this book.

Judge Neilson—No; I would skip some of it if I were you. [Laughter.]

Mr. Beach—Why, when Mr. Tracy attempts to give a relation of the interview with Mr. Richards, may not we take Mr. Richards's statement of that interview?

Judge Neilson—Yes; calling his attention to it, clause by clause, and asking him if that was so.

Mr. Beach—I beg your Honor's pardon; it is not necessary to take it clause by clause. It is evidence which they have given, which we have not introduced, and which nothing that we did authorized them to introduce. We, in the first place asked Mr. Tracy certain specific questions in regard to declarations made by him to Mr. Richards and statements made by Mr. Richards to him; and then on re-direct examination they called out the whole conversation, not confining themselves to the subject to which we drew the attention of Mr. Tracy. They made it substantive and affirmative evidence upon their part; and, no matter whether we objected to it or not, it is evidence given by them, received by your Honer, evidence in the case; and I insist that I have a right to give that interview, in regard to which they examined Mr. Tracy on their behalf, and the whole of that interview, as between Mr. Tracy and Mr. Richards.

Judge Neilson—What if the whole interview as given by this witness should cover more time and space and be more comprehensive than the interview as stated by Mr. Richards?

Mr. Beach—Very well, Sir, suppose it does.

Judge Neilson—Suppose he only gave part of the interview?

Mr. Beach—If he only gave part of it, we can give the whole of it, Sir.

Judge Neilson—Provided he says that was all.

Mr. Beach—Yes, Sir, if he does say it was all. Now it would be a most astonishing doctrine that they could examine Mr. Tracy in regard to declarations between him and Mr. Richards, and we could not call Mr. Richards, the opposite party.

Mr. Evarts—I agree to that——

Mr. Beach—If the gentleman agrees to that then he agrees to my whole proposition.

Judge Neilson—The only question is about the form of the specific interrogations.

Mr. Beach—Certainly it cannot be worth while to waste time in specific interrogatories, when a mere relation of the conversation by Mr. Richards would cover the whole ground and would not, probably, be so extensive as the relation given by Mr. Tracy; but I can pursue the other course if your Honor thinks I ought.

Mr. Evarts—If my learned friend will allow me to put in a word——

Mr. Beach—Certainly; I will allow you because you have a right to.

Mr. Evarts—You often allow me to do things that I have no right to.

Mr. Beach—Yes, I do.

Mr. Evarts—Because you cannot help it. [Laughter.]

Mr. Beach—Yes, I could help it.

Mr. Evarts—I mean that your courtesy would not allow you to help it. [Laughter.]

Mr. Fullerton—Well, he is doing what is not right now.

Mr. Evarts—There seems to be a difference between you, gentlemen.

Mr. Beach—Oh, I'll stop Fullerton. [Laughter.]

Mr. Fullerton—Well, I want him to address the Court.

Mr. Evarts—We could not have shown this conversation with Mr. Richards——

Mr. Beach—You could, if we didn't object.

Mr. Evarts—Well, we could not, and didn't try to.

Mr. Beach—Oh, yes you did.

Mr. Evarts—They introduced the subject by way of collateral impeachment, and then we had a right to have what was said; and all they have a right to do is to bring in a contradiction by showing extra judicial statements that are contrary to what Mr. Tracy said here, and they must be confined to that. A narrative of facts that occurred is collateral, and not within the issue between Mr. Tilton and Mr. Beecher in this case, as all the proceedings of that Committee were wholly collateral, as your Honor knows, and could not, in body, be brought in here at all, nor any part of them *per se*. This stands in that position. They have chosen to introduce a collateral subject in a detail of facts, and they must stand upon it; and if they propose to show that, within the rule of contradiction, by extra-judicial statements of Mr. Tracy, and they have laid the foundation here, why, that is going beyond it.

Judge Neilson—Then the simple question is whether he shall interrogate the witness specifically as to particular parts, or whether the witness may narrate.

Mr. Evarts—I think the particular parts must be inquired about.

Judge Neilson—What Mr. Tracy said?

Mr. Beach—That would undoubtedly be so if they had been content with the examination which we made, specifically calling attention to particular parts. They were not content with that, but, upon their behalf and as evidence in chief upon their part, they gave the whole relation by Mr. Tracy of that interview. The question by Mr. Evarts was: "Now, Mr. Tracy, will you be so good as to give what occurred?" To which Mr. Tracy answered: "Mr. Richards came there, and I went to him as I say"—and then he goes on and relates the whole conversation.

Judge Neilson—You may put the same question to the witness: "Now, Mr. Richards, will you be so good as to give what occurred."

Mr. Beach [triumphantly]—Now, Mr. Richards, will you be so good as to state what occurred? [Laughter.]

Mr. Evarts—That we object to, and ask your Honor to note our exception.

MR. RICHARDS'S CONTRADICTIONS RECEIVED.

Judge Neilson—Yes. Proceed, Mr. Richards.

The Witness—I said to Mr. Tracy that I was there in response to the notice of Mr. Sage, the President of the Committee, to be present, and that I needed no preparation by him to appear before the Committee; he said he was Mr. Beecher's counsel; I said that didn't make any difference in my action with the Committee; he then said they only wished to ask me one question; I said the answering of that question depended upon what the question was; he then made known the question, as has already appeared.

Q. Repeat it. A. He asked me if my sister had ever made confession to me of adultery with Mr. Beecher. I told him I should decline to answer that question. He said my declining would be as bad for my sister as though I had admitted it. I told him that I had nothing to do with inferences; that I must state the facts; that I would decline to answer the question. He asked me, I think, if I—if I did not regard my sister's reputation. I said I did, most certainly, and I was there after consulting with her that afternoon, and she thought it would be better for her that I should appear, than though I declined to appear before the Committee. He went on further, I think, into detail as to the special matters that she had said, and I further declined to say anything about it. I then said to him, "It has been my course for years past to decline speaking with persons on this subject." He said, "That is what you must say to the Com

mittee. Go before the Committee and say that;" which I did. I might add further. I said further to him that if I could say anything concerning my knowledge of the family I would do so, but as to answering that question I declined.

Q. Mr. Richards, are you quite sure that in that conversation Mr. Tracy told you he was Mr. Beecher's lawyer? A. No, Sir; he said he was his counsel; that is the word he made use of.

Q. Counsel for Mr. Beecher? A. Yes, Sir.

Q. Do you know Bessie Turner? A. Yes, Sir.

Q. She states that in the month of December, 1870, I think about the middle—the 14th—she called upon you at the office of *The Evening Post*, in the City of New-York, and made a certain communication to you there in regard to Mr. Tilton's abuse of his wife and of her. Was there any——

Mr. Evarts—What page?

Mr. Beach—That is upon a blank page in my memory.

Mr. Evarts—I cannot find it.

Mr. Beach—I cannot help you. [To the witness.] Did she call upon you at that place at that period, or any other period, and make any communication of that character?

Mr. Evarts—That we object to, if your Honor please, until we find the passage on which it is based.

Mr. Beach—That is not a good objection; but I will wait, if counsel asks.

Judge Neilson—She made a statement on that subject.

Mr. Evarts—Yes, Sir; and we want to see what it was.

Mr. Fullerton—You will find it in the proceedings of March 19, 1875; it may have been 1874, but I think it was 1875.

Mr. Evarts—Cross-examination?

Mr. Fullerton—You will find it in both, in March, 1875; part of it in the direct, and part of it in the cross.

Mr. Shearman—I don't find it.

Mr. Fullerton—That don't——

Mr. Beach—That don't prove it is not there.

Mr. Shearman—It is indirect proof.

Mr. Fullerton—Counsel will recollect she said on the same day she visited Mr. Richards and Mrs. Bradshaw, and that she made this revelation to these various people.

The Court—Yes.

Mr. Fullerton—And Mr. Richards took her out of the room where he found her, and took her up stairs to a private room to have a conversation.

Mr. Evarts—This is the state of the matter upon the judicial question. The plaintiff, by his counsel, introduces into a cross-examination inquiries as to what Miss Turner had said to various people—Judge Morse, Mrs. Richards, Miss Oakley, Mrs. Bradshaw. Now, the passage which I have under my eye is what she did tell; "I think I told the Committee that Mr. Tilton told me that the very day after we—the very day after we got back from Marietta"

"Q. From Marietta? A. Yes, Sir.

"Q. Very well. To whom did you tell this story first on the 14th of December, of the persons that you have named? A. Tell which story?

"Q. The story which you told to these various persons, on the 14th of December? A. The story in regard to myself?

"Q. Yes? A. Who did I tell first?

"Q. Which of them did you tell first? A. I think I went first to Mr. Beecher in the morning.

"Q. And who next did you tell? A. I think then I went over to the office of *The Evening Post*, where Mr. Richards was, and told Mr. Richards."

That is the passage to which you refer?

Mr. Fullerton—Yes; that is part of it.

Mr. Evarts—Now, there is another question.

Mr. Morris—Where she speaks more specifically about it.

Mr. Evarts—Yes; but still cross-examination.

"Mr. Fullerton—You went to *The Evening Post* office, I understand? A. Yes, Sir.

"Q. To see Mr. Richards? A. Yes, Sir.

"Q. Do you refer to the brother of Mrs. Tilton? A. The brother of Mrs. Tilton; yes, Sir; that is the only Mr Richards I know.

"Q. Mr. Joseph H. Richards? A. Mr. Joseph H. Richards; yes, Sir.

"Q. And you told him this story there at *The Post* office? A. I told him which story?

"Q. The story which you did tell him. A. Well, do you mean that I told him in regard to myself?

"Q. Yes. A. And Mr. Tilton's unkindness to Mrs. Tilton?

"Q. Yes. A. I did not tell him right there in the room; he took me up stairs, and I told him there.

Q. And there you told him the story? A. It was in the building, though, of *The Evening Post*.

Now, that is the only matter, and the whole of it, for all I know. And now they call Mr. Richards to give his narrative of what she told him. Well, now, what she told him is wholly immaterial to the issue in this case. It is collateral entirely, and they draw it out on cross-examination. The point they made in regard to the last matter with this witness was that it was our direct. They drew it out on cross-examination, and I got from her whether she has told the story, not differently from what she told it there, but as she told it here. That is the point.

Judge Neilson—Suppose she never called on Mr. Richards at all?

Mr. Evarts—Well, they could not ask her even about that.

Mr. Fullerton—Your Honor will perceive at once that they attempted to impeach Mr. Tilton by showing his abuse of his wife, and they entered into particulars, even to the words which he used and the occasion when they were used. They went further. They attempted to show by this witness that Mr. Tilton had entered her room in the night season, and had been guilty of outrageous conduct there; all of which she testified to on the stand. It becomes important for us to show whether she had or had not ever told that story before she came on the

stand. She says she did tell it to Mr. Richards, to Mrs. Bradshaw, to Miss Oakley and others. Is it not competent for us to produce those witnesses severally, and show she never told them such a story? We suppose it is a recent invention. We suppose it was gotten up in that two hours conversation at Mrs. Ovington's one afternoon, and we propose to show by these witnesses, or by some of them, that she never opened her lips at any time or place and told that story which she related here. It does relate to the issue in this case.

Judge Neilson—It comes very close home to Mr. Tilton, of course.

Mr. Beach—They opened this subject. The counsel is entirely mistaken in assuming that it was called out on cross-examination.

Judge Neilson—You find it there.

Mr. Beach—Yes, Sir. The question put by Mr. Porter was this:

Q. Did you ever tell any one that Mr. Tilton had attempted to violate your person? A. Yes, Sir.

Q. How? A. I did; yes. Sir.

Q. Did you tell that to different people? A. I told it to five persons.

And when we come to the cross-examination we get out the five persons.

Judge Neilson—This witness being one of them?

Mr. Beach—Yes, Sir. I think that settles the case.

Judge Neilson—In one aspect of the case, I think it does.

Mr. Evarts—The law, I suppose, is very clear. Confirmatory statements that the witness has told the same story out of court are not admissible.

Judge Neilson—No.

Mr. Beach—They are sometimes, not as a general proposition, but there are exceptions to that rule.

Mr. Evarts—They are very peculiar.

Mr. Fullerton—There are exceptions, peculiar or not.

Mr. Evarts—This is not one of them.

Mr. Fullerton—We didn't say it was.

Mr. Evarts—If we undertook to give confirmatory statements out of court, they either permitted them to be made or they didn't. If they permitted them to be made, they have no objection. If they objected to them, the law would exclude them, and the rule of law that they cannot contradict confirmatory statements, that is that they cannot contradict the fact that the witness told the same story out of court that she told in, is perfectly settled. You can show that the witness told a different story out of court, if you lay the proper foundation for that. But as the party calling her cannot show that she told the same story out of court, if that fact gets into the evidence, that she told the same story out of court, it is not the subject of contradiction.

Mr. Beach—Well, Sir, what does that amount to?

Judge Neilson—This is a matter that in one aspect of the case reaches Mr. Tilton quite directly, and the witness having stated certain facts in her view, and having stated also upon the direct that she had communicated those facts to other persons, I think it is competent, on cross-examination, to interrogate who those other persons were, and then prove that she is mistaken; that she did not see those persons, or didn't communicate those facts to those persons. This is not remote and collateral; it is a matter that comes quite close home to the plaintiff.

Mr. Beach—Well. Mr. Richards, will you be kind enough to answer the question?

Mr. Evarts—We object and except.

The Witness—What is the question?

Mr. Evarts—We object to the introduction of the testimony proposed, and to this particular question.

Mr. Beach—Yes.

The Witness—What is the question?

Mr. Beach—I don't know that I can repeat it precisely. [To the witness.] The question is whether, in the month of December, 1870, Miss Turner called upon you, at an office in The Evening Post Building, and made any communication to you in regard to any ill-treatment of any kind received by her from Mr. Tilton—of any ill-treatment of your sister by Mr. Tilton; whether she made any communication to you upon those subjects? A. I have no recollection of seeing her at any time in such a relation as that.

Q. In December, 1870, did you occupy an office or a seat in The Evening Post Building? A. I was business manager of *The Evening Post* at that time.

Q. Can you not tell whether or not Miss Bessie Turner called upon you at The Evening Post Building? A. I have no recollection of that.

Q. No recollection at all? A. No, Sir.

Q. Of her calling upon you at any time? A. No, Sir.

Q. Have you any recollection of her making to you any communication in regard to any violence or ill-treatment of any character offered to her person by Mr. Tilton? A. None whatever.

Q. No recollection whatever of any such thing. Well, is not your memory upon that subject sufficiently tenacious to enable you to speak with some positiveness upon the subject? A. I cannot see how I could possibly forget it to the day of my death, such a relation as that.

Mr. Beach—That is all.

Judge Neilson—Anything more from this witness, gentlemen? That is all, Mr. Richards.

Mr. Morris—One moment.

Judge Neilson—Anything you wish? Is that all there is of Mr. Richards?

Mr. Shearman—Yes, Sir, we have nothing to ask him.

Judge Neilson—That is all, Mr. Richards.

Mr. Morris—John Bremer!

TESTIMONY OF JOHN BREMER.

John Bremer, a witness called on behalf of plaintiff, being duly sworn, testified:

Mr. Morris—Q. Where do you reside? A. New-York.

Q. What is your business? A. I am a United States storekeeper.

Q. Are you acquainted with Theodore Tilton? A. Yes, Sir; I seen him.

Q. Do you know him by sight? A. I know him by sight.

Q. Did you know him by sight in December, 1871? A. Yes, Sir.

Q. Did he participate in the procession of that day? A. Yes, Sir.

Q. At what point did you join the procession? A. I joined it in the Bowery and Fifth-st., I believe.

Q. What part of the procession were you in? A. I was about in the center of the procession.

Q. Did you see Mr. Tilton there? A. I saw him in Great Jones-st.

Q. Was he in the procession when you saw him? A. Yes, Sir.

Q. In company with any one? A. He was in the line.

Q. Marching alongside of any gentleman? A. Marching along, yes, Sir.

Q. Did you know the persons who accompanied him? A. No, not at that time.

Q. Did you learn since? A. I learned since; Mr. Swinton; I saw him afterward, and I think he was the man he walked with.

Q. You saw Mr. Swinton after that? A. Yes, Sir.

Q. And recognized him as the man that was walking with Mr. Tilton? A. Yes, Sir.

Q. Now, how near were you to Mr. Tilton in the procession? A. I think I was about three or four lines behind him.

Q. And did you continue to march in the procession during its entire line of march? A. Yes, Sir.

Q. And did Mr. Tilton continue in the procession also? A. Yes, Sir.

Q. Was he at any time in a carriage? A. No, Sir; he was in no carriage in the procession.

Q. Did you see any ladies in the procession? A. Yes, Sir.

Q. What part of the procession did they occupy? A. They were right behind the colored troops—the colored company.

Q. Did you see any one of the ladies carrying a flag—a banner? A. Well, yes, Sir, I did.

Q. Did you see any carriages in the procession? A. Yes, Sir; they were not in the procession, they were behind the procession.

Q. Were you acquainted at that time with Mrs. Woodhull? A. Yes, Sir, I saw her.

Q. And Miss Claflin, her sister? A. Yes, Sir.

Q. Did you see them in the procession? A. Yes, Sir.

Q. And did you see them when the procession was being disbanded? A. Yes, Sir.

Q. Where did you see them? A. I saw them in Fourteenth-st., at the Lincoln Monument, on the hands of Mr. Banks.

Q. The Marshal? A. Yes, Sir.

Q. He was in company with them? A. He was in company with them.

Q. Did you see Theodore Tilton there? A. No, Sir.

Q. Did you know where Theodore Tilton went after the procession disbanded? A. No, Sir.

Q. You didn't see him after that? A. I didn't see him afterward.

Q. Were you present when the ladies took the carriage? A. No, Sir.

Mr. Morris—That is all, I think.

CROSS-EXAMINATION OF MR. BREMER.

Mr. Evarts—Mr. Bremer, where is your station as United States Storekeeper? A. No. 278 South-st.

Q. Whose store? A. Drigg's.

Q. How long have you known Mr. Tilton and in what way? A. I know Mr. Tilton—I saw him in New-York, in Tryon-row, and some one showed him to me and I saw him afterward—Mr. Tilton. I saw him in New-York in Tryon-row; somebody showed him to me, about eight years ago.

Q. In Tryon-row? A. Yes, Sir.

Q. You mean as he was passing along the sidewalk? A. Yes, Sir, and I remember he made so much impression on me that I have never forgotten him.

Q. Now, when was that? A. That was about eight years ago.

Q. And from that time until you saw him in this procession, had you ever seen him? A. I heard his name, but I didn't see him very often.

Q. Did you see him at all? A. When?

Q. Between the time you saw him in Tryon-row and the time you saw him in the procession. A. Well, I saw him pass afterward once again.

Q. Where was that? A. In Nassau-st., I believe.

Q. Well, are you sure of that? A. Yes, Sir.

Q. When was that—how many years ago? A. Oh; I could not tell that exactly.

Q. Six years? A. It may be.

Q. Well, you then saw he was the same person you had seen once before? A. Sir?

Q. When you saw him in Nassau-st., did you remember you had seen him before? A. Oh, yes, Sir; I remembered I saw him before.

Q. Now, except passing him in the street on these two occasions, you had not seen him ever, had you? A. No, Sir, I didn't see him anywhere else.

Q. Now, you joined the procession when it started, didn't you? A. Yes, Sir.

Q. And went all through with it? A. I went all through with it; yes, Sir.

Q. And you saw Mr. Tilton when the procession started? A. Not exactly when it started; I saw him in the way. A friend of mine was walking with me, and he made the remark, "There is Mr. Tilton, too."

Q. What did you say? A. I didn't say anything.

Q. You didn't say, "Oh! I know that?" A. Sir?

Q. You didn't say. "I know that is Mr. Tilton," did you? A. I didn't say it; no, Sir.

Q. You didn't say, "A man that sees Mr. Tilton once never forgets him?" A. No, Sir; I didn't think it was necessary.

Q. Now, who was the gentleman that you were walking with that told you this was Mr. Tilton? A. How is that?

Q. Who was the person you were walking with in the procession that told you it was Mr. Tilton? A. John Brunner; he is also in the store.

Q. You walked with him all through, did you? A. Yes, Sir; if you will allow me to make a remark——

Mr. Evarts—No, that is not permitted.

Mr. Fullerton—We will let you make it by and by.

Mr. Evarts—If it is important.

Mr. Fullerton—Well, we will have it any way; we cannot tell if it is important until we get it.

Mr. Evarts—That you would not allow me to do. [To the witness.] Now, Mr. Swinton, you said something about him? A. Yes, Sir.

Q. Do you know him? A. Yes, Sir.

Q. Personally? A. Yes, Sir.

Q. Are you acquainted with him? A. Yes, Sir.

Q. To talk with him? A. Yes, Sir.

Q. When did you make his acquaintance? A. I made his acquaintance after the Tompkins-square outrage in New-York.

Q. That was after this procession? A. Yes, Sir.

Q. Some time? A. Some time after, on the 13th of January.

Q. Yes, we know about that. Now, when did you first think it was Mr. Swinton that was walking with Mr. Tilton in the procession? A. Sir?

Q. When did you first think that it was Mr. Swinton that was walking with Mr. Tilton? A. I say I didn't know it was Mr. Swinton at that time, but after I saw Mr. Swinton I recollected—you know our party is so small that we recollect our friends.

Mr. Evarts—Well, that has always been the way with me, I know, but I didn't know how you were.

The Witness—Yes, Sir.

Mr. Beach—I don't have any party.

Mr. Evarts—Now, Mr. Swinton and Mr. Tilton were together when you first saw Mr. Tilton in the procession? A. No, Sir; I saw Mr. Tilton before I saw Mr. Swinton.

Q. Yes? A. Yes, Sir.

Q. Well, who did Mr. Tilton start with then? A. Mr. Tilton was in line before me; he was in line before me.

Q. Yes; well, who was walking with him when you first saw him? A. I don't know the man.

Q. It was somebody? A. Yes, somebody.

Q. Well, did he go off when Mr. Swinton came? A. No; I believe he was in the line yet.

Q. Still? A. Yes.

Q. Well, when did you first see Mr. Swinton? A. I saw him in the road, you know, after the procession you don't look so close; I believe it was about half the procession when I saw him—half the line of the procession, I mean.

Q. Well, I don't exactly understand it; you mean that the procession was about half over? A. About half—no; not quite half over; I think it was about Fifteenth or Sixteenth-st., I recollect, that I seen him.

Q. Yes; you first saw Mr. Swinton? A. Yes, Sir.

Q. Well, then, Mr. Swinton joined the procession? A. I don't know about his joining; I only saw him in the procession.

Q. Yes; but you had not seen him before, you think? A. No, Sir.

Q. And he was walking arm in arm with Mr. Tilton? A. He was walking arm in arm; yes, Sir.

Q. Now, how near were you to Mr. Tilton? A. I was about four or five behind him in the line.

Q. Were you in the same division with him? A. I don't know about the division; I only was there with my friend as citizens; we did not belong to any division.

Q. So you think you were in the same division, and were you at the head or the foot of a division, or the middle, or—— A. No, Sir; I was on the left side of the line.

Q. Yes; but were you in the middle of a division? A. In the middle—in the center of the procession.

Q. Yes—center of the procession? A. Yes, Sir.

Q. And the center of a division, too?

Mr. Beach—No; he does not say that.

The Witness—No, Sir, on the left; I was outside on the left in the line; we went up Fifth-ave., and I was on the left hand side when going up.

Q. Well, I understand. A. Yes; well—

Q. And the person who walked with you was on the right hand side? A. Yes, Sir, he was next to me.

Q. Yes, on the right hand side? A. Yes, Sir.

Q. But the question is—you were in the center of the procession—now they were there in divisions, were they, and you belonged to a division of citizens generally? A. I did not; I say I don't know what division I do belong to; I only went in that procession.

Q. Well, what I want to get at is whether you were near the head or the tail of one of the divisions? A. I do n't know nothing at all about divisions; I do n't know how —— [Laughter.]

Q. Well, exactly; I do n't know that you do; you can

not tell whether you were in the same division with Mr. Tilton, can you? A. No, Sir.

Q. Or whether you were near the head of another division? A. Well, I was not marshal; I did n't divide it into divisions, so I do n't know ——.

Q. Well, exactly? A. I was not inquired in this thing.

Q. And you don't know whether Mr. Tilton was near the head of any division? A. No, Sir.

Q. Nor whether you two were in the same division you don't know? A. No, Sir; I don't know that.

Q. You don't know that? A. No, Sir.

Mr. Evarts—Very Well.

Judge Neilson—That is all, Mr. Bremer.

TESTIMONY OF STEPHEN PEARL ANDREWS.

Stephen Pearl Andrews was next called on behalf of the plaintiff, and being duly sworn, testified as follows:

By Mr. Fullerton—Mr. Andrews, where do you reside? A. In the City of New-York.

Q. How long have you resided in the City of New-York? A. With the exception of one year nearly 30 years.

Q. Nearly 30 years? A. Yes, Sir.

Q. And, before you had your residence in New-York, where did you reside? A. I resided six years immediately before in Boston; before that, four years in Texas; prior to that, six years in Louisiana, and prior to that in Massachusetts and New-Hampshire.

Q. Since your residence in New-York what has been your occupation? A. I came to New-York City as an educationist; I was engaged in the business of introducing phonography and phonographic reporting; in founding this profession that is serving you now as it is, Sir.

Q. In what year was that, Mr. Andrews? A. 1859, I think, Sir.

Q. And have you been engaged in any other business besides that? A. Do you mean through the whole course of my life, Sir, or through——

Q. Since in New-York? A. Since in New-York—I remained in that specific business, connected with reporting and with phonetics only about two years, two or three years after I came to New-York.

Q. And in what year did you give up that business? A. 1852.

Q. You said '59 a moment ago. You meant 1849, I suppose? A. '49 I meant; yes, Sir.

Q. And after that what was your occupation, Mr. Andrews? A. My occupation from that time on has been, almost entirely, new and somewhat rare scientific and philosophical investigations—some efforts toward social reorganization—social construction—as a reformer, if you choose.

Q. And in the mean time, Sir, have you given your attention to authorship? A. I have been all through my life an author on various subjects.

Q. And what number of books have you published? A. Well, Sir, I have been almost as voluminous an author as Mr. Beecher. Do you wish some specification of——

Q. If you please, Sir? A. My first publications, when I resided in Texas, were legal translations connected with the Spanish language. My first independent work was a treatise on entails, a legal treatise on entails at the Civil Law and at the Common Law. Then, when my connection began with reporting, with the introduction rather of this special system, which is called "Phonography," for the purpose of reporting, I published an entire series of works—six or eight instruction books of various characters connected with that enterprise. I then published a controversy that was held between myself, Horace Greeley, and Henry James, on Love, Marriage and Divorce. I then published a treatise on individuality and the sovereignty of the individual as social solutions. They were subsequently republished in a single book and called the "Science of Society." I published, wrote, prepared, and the Appletons published two works on French instruction, like the Ollendorff system. More recently I have published two or three works on Universology, which is the name that I confer upon a scientific system which I have been engaged in elaborating, one entitled the "Primary Synopsis of Universology," and one entitled "The Basic Outline of Universology," which is a book as large as the Bible—a book of 900 pages, which very few people read.

Q. What have you recently been employed at, Mr. Andrews? A. I am entirely employed in the promulgation of it as I get opportunity, and in the special elaboration of a new universal language, which grows by logical sequence out of the science of universology.

Q. Had you any connection at any time with Mr. Gerrit Smith? A. I had.

Q. What? A. Variously, at different times.

Q. I wish you would state what that connection was, if you please, Sir. A. I often visited him at his residence, and we sympathized very much with each other in the general anti-Slavery purposes in which we were engaged; perhaps the most markworthy connection that I had with him may furnish a little matter of untold history in connection with the anti-Slavery movement.

Mr. Evarts—Well, is n't it as well, if your Honor please, that it should remain untold.

Judge Neilson—He don't propose to give it now.

Mr. Evarts—I thought he did.

Mr. Fullerton—No; he merely informs you that it has not been given to the world yet; of course, he won't give it if you don't want it.

Mr. Evarts—I have no objection to its substance; but I think the elaboration of the witness's intellectual character has been sufficiently made; it is only in that light that any of this is proper.

Mr. Fullerton—I propose to show what he has been

doing in this world, as they have shown what their witnesses have been doing.

Mr. Evarts—Well, as to a mere witness it is not admissible.

Mr. Fullerton—Oh, yes; Mr. Beecher was a mere witness on the stand.

Mr. Evarts—Oh, no!

Mr. Fullerton—Oh, yes he was; he had no other business there but being a witness.

Mr. Evarts—I don't see the admissibility of this inquiry.

Mr. Fullerton—I insist upon the question, what business connection he had with Mr. Gerrit Smith?

Judge Neilson—Well!

The Witness—I was commissioned and sent down by Mr. Gerrit Smith to the State of Delaware to negotiate with the political men of that State for the abolition of Slavery in that State on condition of the purchase of the slaves of the State. There were but 2,000 slaves in that State when Mr. Gerrit Smith conceived the design of buying out the State, so to speak, and emancipating them. I commenced operations—had an interview with Senator Clayton and a few other leading men, when I was taken with a disease, brain fever, and was prostrated for many months, and that was all that came of the enterprise.

Q. What connection, if any, did you have with Mr. Lewis Tappan, Sir, in his lifetime?

Mr. Evarts [deprecatingly] — Well, if your Honor please!

Judge Neilson—Oh, yes, certainly — be brief, Mr. Andrews.

The Witness—I will be brief, Sir.

Mr. Fullerton—We will reach the recess by the time we get through.

The Witness—I initiated a movement in the then Republic of Texas for the abolition of Slavery. It proved disastrous in the mode in which it was attempted. Another mode was hit upon, and I went to England with a view to negotiate with the British Government for — or with capitalists by the aid of the British Government—for a loan to pay for the slaves in that State—in that Republic. I came on here, and Mr. Lewis Tappan was so much interested in my project that he went with me to England and by his aid and such letters as I had received from the British *Chargé* in Galveston, I was immediately brought into consultation with Lord Aberdeen and the other members of the British Government of that day, and remained there some five months, the whole statement of which would be another chapter in untold history.

Mr. Fullerton—Yes, Sir; I don't propose to go into it. I cannot open another subject and complete it, your Honor.

Judge Neilson—Very well.

The court thereupon adjourned until 11 o'clock Wednesday morning.

SEVENTY-NINTH DAY'S PROCEEDINGS.

HENRY C. BOWEN TESTIFIES IN REBUTTAL.

STEPHEN PEARL ANDREWS, MRS. BRADSHAW, AND JOHN WOOD AS REBUTTAL WITNESSES—INTEREST AND EXCITEMENT CAUSED BY THE APPEARANCE OF MR. BOWEN AS A WITNESS—HIS MANNER OF GIVING TESTIMONY—HIS VERSION OF THE INTERVIEW WITH MR. BEECHER IN MR. FREELAND'S HOUSE—HE DECLARES THAT MR. BEECHER NEVER SPOKE TO HIM ABOUT MR. TILTON'S DISCHARGE — MR. BOWEN'S VIEWS CONCERNING THE TRIPARTITE COVENANT.

WEDNESDAY, May 5, 1875.

After the opening of the session in the morning the examination of Stephen Pearl Andrews by Mr. Fullerton was continued. This was confined principally to the Woodhull scandal, and to Mr. Tilton's relations to Mrs. Woodhull. To show the character of Mrs. Woodhull's house, the witness—notwithstanding the objection of Mr. Evarts, who maintained that such evidence was not admissible in rebuttal under the circumstances of the case—was allowed to give a long list of Mrs. Woodhull's visitors. This list included the names of many persons, men and women, well known in professional and literary circles. Some amusement was created by Mr. Andrews including in this list the name of Mrs. Lockwood, a lawyer of Washington. "A lawyer's wife, you mean," said Judge Neilson. "No, a lawyer herself," replied the witness. "She'd take an exception to that ruling, your Honor," remarked Mr. Fullerton.

Mr. Andrews compared Mrs. Woodhull's house to Mme. Roland's salon during the first French Revolution. He thought Mrs. Woodhull was as remarkable a woman as Mme. Roland, though of a different type. Mr. Andrews said that he had composed portions of the Woodhull scandal narrative as it was published in *Woodhull & Claflin's Weekly*. He wrote the introductory and closing parts, but not the recital. So far as he knew, Mr. Tilton was not aware that such an article was being prepared. The witness asserted that the scandal was communicated to Mrs. Woodhull by Mrs. H. B. Stanton.

The testimony of Mr. Andrews was added to that of the others who have sworn that Mr. Tilton, in the Rossel procession, was not with Mrs. Woodhull and Miss Claflin. The cross-examination of this witness was conducted by Mr. Evarts, who drew from him a statement of some of his socialistic theories.

Mrs. Martha A. Bradshaw was recalled and testi-

fied that Bessie Turner had told her at her house that Mr. Tilton had charged his wife with adultery with Mr. Beecher. Miss Turner's testimony had been that she had not told Mrs. Bradshaw that fact. The plaintiff's counsel stated their object to be to call in question Miss Turner's credibility.

John Wood, the printer of *Woodhull & Claflin's Weekly*, was also called for the plaintiff, and testified that he had put in type the scandal article in 1872. To the best of his knowledge it had not been put in type before. He had ceased publishing the paper in the early part of 1872, and resumed it with the scandal number in November of that year.

Mr. Bowen was called about the middle of the afternoon session. Mr. Fullerton had just dismissed an unimportant witness, and turning quickly around toward the door leading to Chambers, he called out in deliberate tones, and in a loud voice, "Henry C. Bowen!" Mr. Bowen, who had been sitting since the recess on the rear bench for spectators, near the door, quietly arose and came forward, pushing his way through the crowd.

The examination of Mr. Bowen was conducted by Mr. Fullerton. The lawyer's first question was in reference to the interview between Mr. Bowen and Mr. Beecher at Mr. Freeland's house in December, 1870. This Mr. Bowen said was an appointed meeting, and not a casual one as Mr. Beecher had stated. The witness took a note to Mr. Beecher from Mr. Tilton, and asserted that he knew the contents of the note, although Mr. Beecher had said that Mr. Bowen was ignorant of the contents.

When the witness was asked if Mr. Beecher had advised him to discharge Mr. Tilton from *The Independent*, or had advised him about Mr. Tilton's removal from *The Brooklyn Union*, a legal contest arose between Mr. Evarts, assisted by some of his fellow-counsel, and Messrs. Beach and Fullerton. The arguments were principally in regard to the form of the question, which was finally settled by Judge Neilson, and Mr. Bowen replied that Mr. Beecher had said nothing whatever about Mr. Tilton's discharge. Mr. Bowen also testified that at the interview referred to he had given Mr. Beecher a letter which the latter read. Mr. Beecher said that the author must be crazy. This was Mr. Tilton's letter demanding that Mr. Beecher should leave Brooklyn. Mr. Bowen denied that Mr. Beecher had handed him the letter and that he had read it.

The Tripartite Covenant was another principal subject of inquiry. Mr. Bowen testified that that covenant had no connection whatever with his payment of $7,000 to Mr. Tilton; also, that there was no connection between the covenant and the arbitration which led to the payment of the $7,000. Nothing was said when the award was made about the difficulty between Mr. Beecher and Mr. Tilton. Mr. Bowen gave a brief history of what he knew about the Tripartite Agreement. The reason that he at first refused to sign the agreement was the point of a question which led to another battle between the lawyers, in which Messrs. Beach, Tracy, Fullerton, and Porter took part. This exhausted the remainder of the session.

THE PROCEEDINGS—VERBATIM.

STEPHEN PEARL ANDREWS'S EXAMINATION.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Stephen Pearl Andrews was recalled and his testimony on direct examination resumed.

The Witness—Mr. Fullerton, if you will excuse me—your Honor, will you allow me to make a correction?

Judge Neilson—Certainly.

The Witness—I wish to add to the list of books which was called out from me last evening (I don't know that it is important) a work on the Chinese language which I published some years ago, in which I attempted to do, and perhaps did, for the Chinese written system what Champollion did for the Egyptian hieroglyphics; it was a work that was reviewed in Germany and has been used on the coast of China for instruction in the Chinese language.

Mr. Fullerton—When did you become acquainted with Mr. Theodore Tilton? A. When Mr. Tilton was about 13 years of age.

Q. And when did you become acquainted with Mr. Henry Ward Beecher? A. About the period of my first arrival in New-York.

Q. In 1849, was it? A. I should think so. Sir; my recollection is not very distinct about the——

Mr. Beach—A little louder, Mr. Andrews, if you please; the jury don't hear you.

THE MEETING OF SOCIOLOGISTS AT MR. TILTON'S.

Mr. Fullerton—Do you recollect of spending an evening at Mr. Tilton's house some years ago when there was a little gathering of people there—the same visit referred to in the testimony: do you recollect it? A. Yes, Sir.

Q. Referred to by Miss Augusta Moore, I think? A. Yes.

Q. What was the topic of conversation that evening, Mr. Andrews? A. It was discursive; I have [illegible]

distinct recollection of the particular subjects that were talked of; probably the range of ideas in which I am interested.

Q. Yes, Sir; how many people were there present that evening; do you recollect? A. When I read the statement of Miss Moore, if that is the lady's name, I took it as correct, specifying the number of persons.

Q. Did you observe a lady sitting upon the sofa by the side of Mr. Tilton that evening? A. I have a recollection, a somewhat vague recollection to this effect, that some conversation which was held between my wife and Mr. Tilton was travestied in the testimony of that lady.

Mr. Evarts—Oh, well——

Mr. Fullerton—Was your wife present that evening?

Mr. Evarts—It is hardly admissible to say "travestied," if your Honor please. If the witness is able to state what occurred, very well; but that does not give him the license to say that the former witness has travestied the statement.

Judge Neilson—Yes.

Mr. Fullerton—Your wife was present that evening? A. My wife was present that evening with me.

Mr. Evarts—I move that that be struck out.

Judge Neilson—Yes.

Mr. Fullerton—What occurred that evening upon the sofa between your wife and Mr. Tilton? A. As I have observed, my recollection is indistinct with regard to it; my wife was a spiritual medium; she was of the class of persons of whom you have had specimens here as witnesses—a person who acted, as we say, sometimes from impression, and my recollection (somewhat vague) is that she left her seat in a chair and sat for a short time by the side of Mr. Tilton, describing to him her perception of his character by this interior method.

Q. Was there anything beyond that? A. Nothing whatever.

Q. Any undue familiarity? A. None.

Q. Was it all under your observation? A. All under my observation and the observation of all the other persons present, among whom were strangers.

Q. Anything beyond the mere illustration of what might have been the subject of conversation? A. Nothing, I should say, Sir.

Q. Did you know, or do you know, Deacon Freeland? A. I do.

Q. Do you recollect whether he was present that evening? A. I think he was; yes, Sir.

Q. And a son of his? A. A son of his; yes, Sir; Mr. Edward B. Freeland.

Q. Yes. Do you know whether they were there in your company? A. I think they came together by a prearrangement; Mr. Edward B. Freeland, the young gentleman, was residing in my family.

Q. Yes. A. And I think he went for his father, and that they came together; and met us at Mr. Tilton's house.

Q. You may state, if you please, how Mr. Freeland was residing, or a member of your family. A. Mr. Edward B. Freeland?

Q. Yes. A. He was for six years a member of my family, and one of my principal coadjutors in elaborating the science of universology; he was profoundly interested in that whole branch of things.

Q. His father visited you often? A. Frequently.

Q. And when did Mr. Freeland the younger cease to be a member of your family? A. I don't remember the year—he died, this young gentleman; Mr. Beecher attended his funeral at Mr. Freeland's house on the Heights, and I was present at the funeral.

Q. Do you recollect the year? A. I should think it was about eight years ago.

THE WITNESS'S ACQUAINTANCE WITH MRS. WOODHULL.

Q. Yes, Sir. Now, if you please, you may state whether you know Victoria Woodhull, and when you first became acquainted with her. A. I know Victoria Woodhull; I made my first acquaintance with her, I think, in the Winter of 1870.

Q. What part of the Winter? A. I should think in the month of February.

Q. Of 1870? A. Yes, Sir.

Q. Where was she residing then? A. She was residing at the Hoffman House, a hotel in Broadway, New-York.

Q. Where did she remove to from there, if you recollect? A. Whether she removed directly from that hotel to her subsequent residence in Thirty-eighth-st. or not I do not remember—don't know.

Q. Well, do you remember when she became a resident of Thirty-eighth-st.? A. I do.

Q. When was that? A. I should think in the early Summer of 1870.

Q. Yes. Now, Sir, you may state whether you became, and if so, at what period, an inmate of her family? A. I was an inmate of her house at two different periods; I went into it with her at the opening of the house.

Q. Yes. A. My wife, being sick, had gone on a voyage for the recovery of her health, and I went and remained at Mrs. Woodhull's during that period, perhaps three months.

Q. Commencing and ending when? A. Commencing when she moved into the house, ending perhaps three months after that; my wife returning, I left her house; at the period of my wife's death I resumed my residence in her house.

Q. When was that? A. That was on the 6th of May, 1871.

Q. Did you occupy a room in the house, or—— A. I did.

Q. Take your meals there? A. Both in part; I occupied a room, and in part took my meals there?

Q. Who composed the family or the household of Mrs

Woodhull during those periods? A. There was Mrs. Woodhull and Miss Tennie Claflin.

Q. Her sister? A. Her sister, the father and mother.

Q. Of whom? A. Of those ladies—and Dr. Woodhull, who had been a previous husband of Mrs. Woodhull, and who was at this time an imbecile, myself and the servants.

Q. You omitted Col. Blood, I think? A. Col. Blood—I intended to have mentioned him.

Q. And what relation did he bear to Mrs. Woodhull? A. He is her husband, I suppose; he passes as such.

MRS. WOODHULL'S VISITORS NAMED.

Q. Yes, Sir. Now, Mr. Andrews, I want you to state, as well as you can remember, who were in the habit of visiting that house? A. This question—may I make an explanation? I am under subpena here from both parties, and this question having been asked me, or intimation of it from both sides. I expected to be asked the question, and I took the liberty to make a list to refresh my memory; if I might consult that——

Q. You are at liberty to consult anything which will refresh your recollection.

Mr. Evarts—How does this, if your Honor please, become material in rebuttal?

Judge Neilson—The general fact, perhaps, may be well enough; only the general fact; a long enumeration is not called for.

Mr. Evarts—In rebuttal?

Mr. Fullerton—Well, the general fact that people visited the house required the enumeration of the names.

Judge Neilson—There has been a good deal of evidence in regard to the house, and its occupation, and so on.

Mr. Fullerton—No, Sir; but reproach has been cast on it, or, at least, there has been an attempt to do it by showing improper familiarities and practices there.

Mr. Evarts—Well, that does not license this generality of evidence in rebuttal.

Mr. Fullerton—I think it does, Sir.

Mr. Evarts—As I understand it, no evidence has been given concerning that house except in regard to Mr. Tilton's presence, and what occurred during that presence in that house.

Judge Neilson—Yes, well, there was a good deal of that you know.

Mr. Evarts—Well, that I agree, that I agree; and on rebuttal in respect to occurrences within that reach——

Judge Neilson—Yes.

Mr. Evarts [continuing]—That would be rebuttal, unless some special objection arose that it was not rebuttal. But this is not rebuttal, as it seems to me.

Judge Neilson—Oh, I think the general fact though as to the occupants of the house might be taken in a general way; we don't want a long enumeration of names.

Mr. Evarts—The question is, who were visitors of that house. Well, now, there is no limit I guess as to time either; I don't know how that was.

Judge Neilson—While he was there, I suppose.

Mr. Fullerton—I will limit it to the time while Mrs. Woodhull was there.

Mr. Evarts—Well, so there is no limit to the time then, except during her occupancy of the house.

Judge Neilson—I think we will take the general fact; make it as brief as you can.

Mr. Evarts—It is not a general fact; he asks a list of the persons who visited there.

Judge Neilson—Yes.

Mr. Fullerton—It cannot be disguised, if your Honor please, that they attempt to cast reproach upon the plaintiff in this case, and some of his witnesses because they visited the house of Mrs. Woodhull, and I think it is eminently proper for me to show the character of the house, the character of those who frequented it, and the objects they had in view in going.

Judge Neilson—Oh, I think it could hardly be disputed that you could show that this was a literary place where distinguished, well-known gentlemen were wont to congregate and converse on literary subjects.

Mr. Fullerton—Certainly.

Judge Neilson—Or anything else giving character to the house in a general way.

Mr. Evarts—But, if your Honor please, they first introduced the subject of Mrs. Woodhull's house and the plaintiff's relations to her; they introduced it as a part of their case that the operations in which Mrs. Woodhull figures in reference to this scandal were operations which led to association, or which followed from association between Mr. Tilton and Mr. Moulton, if you please, to some extent, and this lady, under certain definite motives which were described. Now, we have limited ourselves, as I understand, in the defendant's evidence, to showing what the nature of Mr. Tilton's relations to that house and its inmates, and the office and its inmates, was, I think, entirely. We have not undertaken to show that persons of an improper character visited there—not at all. We have taken such persons as we have found there necessarily whenever any evidence was given.

Judge Neilson—Yes.

Mr. Evarts—That was not our seeking; for instance, Mr. Cowley.

Judge Neilson—You generally proved the fact, however—for example of visitors there, by Mrs. Moulton. I think we can take the general fact. Don't give us a long history.

Mr. Evarts—But still that, if your Honor please, was a part of their direct examination of Mrs. Moulton.

Judge Neilson—Well——

Mr. Evarts—We don't prove it; they proved that she had made three or four visits there. All I did was to attempt to ascertain with particularity when they were.

Judge Neilson—Yes, Sir.

Mr. Evarts—Now, it is certainly a matter of some consequence whether the lines of rebuttal are to be drawn open or not; and if it was a part of their case to show the particular character of Mrs. Woodhull and of her house, why then, as it was a part of their case, they introduced the house and the lady into this case, and, as I say, we, in return, have done nothing and attempted to show nothing concerning other visitors of the house than Mr. Tilton, and he only by reason of his presence there, and in respect to what occurred in his presence, have we attempted to affect him at all; and now there seems to be no reason why the general character of the visitors of that house should be for the first time introduced into this cause.

Mr. Fullerton—It is true, Sir, that we introduced——

Judge Neilson—I don't think we will take evidence of the general character, but I think the witness can give you a very brief answer to this question without enumerating their names.

Mr. Fullerton—Well, when I ask him who visited the house, how can he do it without giving the names?

Judge Neilson—Many names, I say——

Mr. Fullerton—We don't care about many names.

Judge Neilson—Go on.

Mr. Evarts—Your Honor will note our exception, on the ground of its not being in rebuttal and not evidence in chief.

Judge Neilson—Go on.

The Witness—William Orton, President of the Western Union Telegraph Company; Whitelaw Reid, Editor of THE TRIBUNE; A. F. Willmarth, President of the Home Fire Insurance Company; ex-Collector Smythe, Gen. Hillyer, Grant's Chief of Staff; Orville Grant, Gen. Grant's father; Gen. Dent, Gen. J. H. Hammond, Chief of Gen. Sherman's staff; Gen. Benjamin F. Butler, Gov. Hahn, ex-Gov. Campbell, Judge H. C. Dibble, Senator Spencer, Gov. Ashley, Gov. Geo. W. Julian, T. J. C. Flint, President of the Continental Bank; T. J. Durant, Vice-President of the Union Pacific Railroad; Henry Clews banker; Frank Work, George B. Grinnell, Jesse Wheelock, President of the Stock Board; Albert Brisbane, sociologist; Edward M. Davis, brother-in-law of Lucretia Mott; Josiah Warren, sociologist; Josiah Cummins, representative of the Workingmen's Association; M. Drury, representative head of the Internationals; Theodore Banks, another representative of the labor movement; Richard H. Trevelick, also of the labor movement; O. B. Frothingham, clergyman.

Judge Neilson—I think that will do.

The Witness—I have a shorter list of ladies.

Judge Neilson—I think we will omit the ladies, Sir; go on.

Mr. Beach—I think we ought to have the names of the ladies, Sir.

Judge Neilson—Very well, the ladies, then; let us have them; it won't do much harm

The Witness—Mrs. Henry B. Stanton, Mrs. Paulina Wright Davis, Miss Susan B. Anthony, Mrs. Isabella Beecher Hooker, Mrs. Elizabeth Phelps, Mrs. Brisbane, Mrs. Frances Rose McKinley, Mrs. Laura Cuppy Smith, Mrs. Theodora F. Spencer, Mrs. Lillie Devereux Blake, Mrs. Middlebrook, who has been a witness here; Mrs. Sarah F. Norton, Mrs. Palmer, also a witness here; Mrs. Martha C. Wright, sister of Lucretia Mott, Mrs. Matilda Joslyn Gage, Mrs. Bella Lockwood, a lawyer of Washington.

Judge Neilson—Wife of a lawyer?

Mr. Fullerton—No, Sir, the lawyer.

The Witness—The lawyer herself, Sir.

Judge Neilson—Oh!

Mr. Fullerton—She will take an exception to that ruling, Sir.

The Witness—Mrs. Griffith, a friend of Michael Scanlon, attaché of *The Irish World;* Mrs. Emily Verdey Battey, attaché of *The Sun*, reporter of Mr. Beecher's sermons; Mrs. Eleanor Kirk, Mrs. Ames, Mrs. "Brick" Pomeroy, Mrs. Esther B. Andrews, Mrs. Barnard, Washington correspondent of *The Herald* newspaper; that completes the list of those that I remember, Sir.

Q. Now, Mr. Andrews, you may state what was the occupation, if I may term it such, of these people while there. How did they spend their time? A. I will state, Sir, that for many years past my own residence, wherever I have been, has been a kind of center around which have gathered the radical, advanced minds on the basis of science and progressive reform; and that going to Mrs. Woodhull's to reside, I transferred to her house that portion of my influence that attracted persons to me; and I found that Mrs. Woodhull had also a very wide acquaintanceship with leading men and women, and great power of attracting and interesting; that our combined powers were on purpose exerted for the purpose of making this household a center of agitation in behalf of radical reform in various directions. Perhaps the household resembled nothing that has existed in this country so much as it would have resembled the salon of Mme. Roland during the First French Revolution—a rendezvous for men of genius, and women of genius, and the men interested in radical progress, and the women of similar interest.

Q. And how did they spend their time while in the house? A. By discussions, and socially.

Judge Neilson—No—by discussions. Go on.

Mr. Fullerton—Yes, by discussions. Now, Mr. Andrews, I want you to state whether Theodore Tilton was in the habit of visiting that house? A. For a period—a considerable period—he was.

MR. TILTON'S INTRODUCTION TO MRS. WOODHULL.

Q. Do you know when he became acquainted with Mrs. Woodhull? A. I do.

Q. State, if you please? A. I sometimes wrote an

article, occasionally, for *The Golden Age*, near the period of its commencement, and called in there from time to time to see Mr. Tilton; being there on one occasion Mrs. Woodhull's name came up between us, and he said that he had been impressed by things that he had seen of her's that she must be an extraordinary woman.

Mr. Evarts—Don't give the conversation.

Judge Neilson—Don't give the conversation.

Mr. Fullerton—Don't give the conversation. When he was introduced, if he was introduced, by you? A. I proposed to take him down to Mrs. Woodhull's.

Mr. Evarts—Well, now, now. This is a mere question of fact.

Mr. Fullerton—Just state when it was. A. It was in the early part—it was in the middle of the early part of this same month of May, that we have spoken of. What I suppose would be an answer to the question asked me is, that I personally introduced Mr. Tilton to Mrs. Woodhull.

Q. In May, 1871, you think it was? A. Yes, Sir.

Q. Where was it done? A. At the office.

Q. In Broad-st? A. In Broad-st.

Q. What number, please? A. It was then 44, I think.

Q. And did you introduce them, as if strangers, together? A. Entirely so; yes, Sir.

Q. Do you recollect when she moved her office from 44 Broad-st.? A. It is my impression that she entered the office at 48 Broad-st. when she resumed the publication of her paper, at the time of the publication of the scandal article.

Q. Well, I will come to that part of the examination again. I want you to state whether you observed any undue familiarities at the house in Thirty-eighth-st., after Mr. Tilton commenced his visits there, between himself and Mrs. Woodhull, or any other person there? A. I never did; no, Sir.

Q. What portion of your time did you spend there, Mr. Andrews? A. The major portion of my time; I did my writing at the house; I was there, therefore, every evening and morning; I usually went down to the publication office in the course of the day for an hour or two.

Q. The publication office of what paper? A. Of Mrs. Woodhull's paper—Woodhull & Claflin.

Q. Were you in the habit of seeing Mr. Tilton and Mrs. Woodhull together at the office? A. Often; yes, Sir.

Q. And what was the character of their intercourse in your presence? A. Altogether that of the lady and gentleman in society, Sir.

Q. How was Mr. Tilton in the habit of addressing Mrs. Woodhull when he did address her? A. As "Mrs. Woodhull," so far as I remember, Sir.

Q. And how did she address him? A. As "Mr. Tilton;" and, I think, sometimes as "Theodore."

Q. Now, when, if you can state, did he commence his visits there, and how long did they continue? A. I think his regular visits—his frequent—I think his visits commenced at the house, if that is what you inquire of——

Q. Yes. A. Not very long after the publication of Mrs. Woodhull's card—in *The World* was it?

Q. Yes. That was in May, 1872, was it? A. No, Sir.

Q. 1871, I should say? A. 1871.

Q. And when did they cease, if you know? A. I cannot speak with such certainty with regard to that, because they continued until after I left Mrs. Woodhull's house.

Q. And did he continue to visit the house after you resumed your residence there? A. It was only after I had resumed my residence there that his visits began.

IMPORTANT CONTRADICTIONS OF THE WITNESS WOODLEY.

Q. Now, were you in the habit of writing for Mrs. Woodhull's paper? A. I was.

Q. Did you write frequently for it? A. I wrote frequently, extensively.

Q. Did you read the proofs of the articles that you wrote? A. I did.

Q. Where was the proof generally read? A. Generally at the office.

Q. At 44 or 48 Broad-st.? A. At 44.

Q. At 44 Broad-st. Now, Sir,——

Mr. Evarts—How is this material, if your Honor, please? What does it rebut—what the witness did about writing for this paper and correcting proof sheets, etc.

Mr. Beach—It rebuts Mr. Woodley.

Mr. Fullerton—It rebuts your principal witness, Mr. Woodley.

Mr. Evarts—In what respect?

Mr. Fullerton—In respect of his story that he told.

Mr. Evarts—Well, I don't so understand it. If you point to any part of the evidence——

Mr. Beach—Mr. Woodley spoke in regard to reading the proofs, and we are going to show by this witness that it was not true.

Mr. Evarts—What did he say about reading proofs?

Mr. Beach—Well, I will refer; I cannot repeat all the evidence.

Judge Neilson—He spoke of having printed slips there.

Mr. Evarts—Certainly, if you talk about the very slips that we were talking about, that is proper.

Mr. Fullerton—Well, I am coming to that.

Judge Neilson—That would imply that they read the proofs, of course, or else the slips would not be there.

Mr. Evarts—The question is confined to this witness's communications to this paper, and his habit of correcting the proofs there.

Mr. Fullerton—Yes.

Mr. Evarts—Now, that would not be evidence in chief.

Judge Neilson—No, we cannot take the general rule as a general course of business.

Mr. Evarts—If this gentleman is able to speak as an inmate or employé of the office of Messrs. Woodhull & Claflin

about their business, why, that is one thing. Whenever that is offered, then I shall object that that is immaterial. But he does not put himself in that way, nor does the inquiry reach that point. It is his own communications to this paper, and his habit of correcting the proofs. Now, rebuttal, as we all know, is a limited right, and it must reach something that is made the matter of definite proof in the defendant's case, when the plaintiff takes up the rebuttal.

Judge Neilson—Well, there will be no disagreement about that. You must get yourself pretty close to what the evidence was.

Mr. Evarts—Your Honor will be so good as to note my objection to this evidence as not evidence in the cause, and not in rebuttal.

Judge Neilson—Well, I don't propose to take the evidence at large.

Mr. Evarts—And our exception.

Mr. Fullerton—And I don't propose to give it at large.

Judge Neilson—Well, keep within the line.

Mr. Fullerton—My last question was, Sir, when, if at all, the publication of *The Woodhull & Claflin Weekly* was suspended? A. That was in the Spring of 1872.

Q. Do you recollect the last number that was published in that Spring? A. I do not.

Q. In what month was it suspended, if you recollect? A. I don't think I can state with certainty. I was not as much connected with the paper at that period as I had been during 1871.

Q. Do you recollect what month it was suspended in? A. I do not distinctly.

Q. But it was in the Spring of 1872? A. Yes, Sir; I think so.

Q. And when was the pubilcation of the paper again resumed? A. The paper that contained the so-called scandal article was the first issue after.

Q. That was November 2, 1872? A. November 2, 1872, yes, Sir.

Q. And from the Spring of 1872 to November 2, 1872 there was an interregnum was there in the publication of the paper? A. Yes, Sir.

Q. No issue of the paper at all, was there? A. No issue of the paper at all.

THE WRITING OF THE WOODHULL SCANDAL.

Q. Now, you have spoken of the scandal; you refer to the Beecher scandal, so-called—the Beecher-Tilton scandal, published Nov. 2, 1872. What had you, if anything, to do with the composition of that article?

Mr. Evarts—Well, how is that material?

The Witness—Shall I answer?

Judge Neilson—The learned counsel asks how that is material.

Mr. Evarts—Will you tell us how that is material in rebuttal?

Mr. Fullerton—Well, Sir, I can state, if counsel wishes me to do so, I shall by the evidence that we now propose to give, contradict distinctly and emphatically the testimony of the man Woodley.

Judge Neilson—Well, go on.

Mr. Evarts—Ah! Well, that you have a right to do.

Mr. Fullerton—That is the reason I do it.

Mr. Evarts—This does not do it in the least.

Judge Neilson—Well, as preliminary.

Mr. Evarts—Mr. Woodley has never said that this gentleman had nothing to do with this article.

Judge Neilson—I know; but as preliminary, if he proposes to show his relation, and, in consequence, open the door to show his knowledge of that article or to show that he wrote it.

Mr. Evarts—How would it prove that?

Judge Neilson—It would be introductory to it.

Mr. Beach—Suppose he composed it two days before its publication, what becomes of Mr. Woodley's testimony, your Honor?

Judge Neilson—I should not like to say. [Laughter.] Go on.

Mr. Fullerton—I will show that Woodley had no connection with that office at that time, never saw the proof of that article, and testified to something that he knew nothing about.

Mr. Evarts—That I don't object to, of course.

Mr. Beach—You are objecting to it if you object to this evidence.

Mr. Fullerton—I want to prove that he wrote the article, and when he wrote it, with reference to its publication, and with reference to the time when that miserable man said he saw the article in the office there, in slips.

Judge Neilson—Don't speak disrespectfully of an absent witness.

Mr. Fullerton—Oh, well, Sir, that is respectful to call a man miserable. [Laughter.]

THE SCANDAL ARTICLE WRITTEN BY MRS. WOODHULL AND MR. ANDREWS.

Judge Neilson—Go on, Sir.

Mr. Fullerton—Now, will you answer the question, if you please?

The Witness—Your Honor, I don't know whether witnesses have some rights which lawyers are bound to respect.

Judge Neilson—Not in that respect; you are bound to answer.

The Witness—Excuse me, I wish to inquire whether in stating certain acts I shall be permitted to state the motives which led up to those acts.

Judge Neilson—No, probably not.

The witness [to Mr. Fullerton]—Shall I answer the question?

Mr. Fullerton—What had you to do, if anything, with

the composition of the scandal which you have spoken of?

Judge Neilson—The scandal article.

Mr. Fullerton—Yes. A. That article was written and composed originally by Mrs. Woodhull, as I supposed; Mrs. Woodhull was the author, in a sense, of the article; I was myself, in a sense, the author of the article; but I wish to explain what sense Mrs. Woodhull stood related to it, and in what sense I stood related to it.

Judge Neilson—The question really is, did you write the article or contribute to it in any way? A. I contributed to the writing of the article.

Mr. Fullerton—When was that, Sir? A. It was within four or five days of its publication.

Q. Some time, then, in the latter part of October, 1872? A. Yes, Sir.

Q. How positive are you enabled to speak of the time that elapsed after it was written before it was published? A. With great certainty that it was not more than five days—I think not more than two or three; it was merely the time requisite for rushing it through the press.

WHERE AND WHEN THE ARTICLE WAS WRITTEN.

Q. Where did you write what you did write of that article? A. I wrote it at my own residence, at that time, which is the same place at which I reside now.

Q. Where is that, Mr. Andrews? A. No. 970 Sixth-ave.

Q. In what shape did the material for the article come to your hands? A. It came as a recital in manuscript. The recital—the entire recital contained in the article remained as it came to me; the introductory part and the close, the literary cast and the philosophic cast of the paper shows my marks, perhaps.

Q. Now, Mr. Andrews, did you ever see any part of that article in print until the article itself was printed that you prepared? A. Never.

Q. And how long after you prepared the article, or it went from your hands, did you see printed slips of it, if at all? A. Within the term that I have specified.

Q. Did you read the proof of that article? A. I did.

Q. Where? A. At my own rooms.

Q. Who brought you the printed slips? A. It is barely possible that I went down to the office to read the proofs; I don't remember distinctly with regard to it; the manuscript—the original manuscript—was brought to me by Mrs. Woodhull and Col. Blood.

Q. At your residence? A. At my residence.

Q. And within a few days before the article was published? A. Before the article was published; yes, Sir.

Q. Do you recollect who printed the article? A. It was their publishers, Wood and something; I have forgotten the second name—their printers, I mean.

Q. Yes, their printers. Up to that time had this scandal been spoken of publicly before you prepared this article? A. It was whispered about, Sir.

Q. Had you heard of a speech made by Mrs. Woodhull, in Boston, at that time? A. I had; yes, Sir.

Q. Had you heard it spoken of, or had you read an account of it in some newspaper? A. I do not remember how it came to me, but it came to me variously, I think.

Q. Had you any interview either before or immediately at the time of writing that paper with Theodore Tilton in regard to it? A. None.

Q. As far as you know, was he ignorant of the fact that you prepared the article.

Mr. Evarts—That we object to, if your Honor please.

Judge Neilson—Well, so far as you know, was he aware that the article was in preparation?

Mr. Fullerton—Well, Sir, I will adopt that question.

Mr. Evarts—That is no subject of evidence ever.

Mr. Fullerton—It certainly is a subject of evidence.

Mr. Evarts—What this witness knew concerning Mr. Tilton. If he is able to state anything that he does know affirmatively—but his ignorance concerning Mr. Tilton is not a matter of evidence—to state that Mr. Tilton did not confer with him. It is evidence of no special import, but then there is no limit to asking people.

Mr. Fullerton—I desire to cover the whole ground and close up every avenue of suspicion that Theodore Tilton had any knowledge whatever that this article was in process of preparation by the witness on the stand.

Mr. Evarts—That is not admissible on direct examination.

Mr. Fullerton—I think it is, in view of the testimony of Woodley.

Judge Neilson—You may ask him whether, according to his knowledge, Mr. Tilton knew anything about it.

Mr. Fullerton—Now, Sir, so far as your knowledge is concerned, did Mr. Tilton know anything about the preparation of this article by yourself? A. Nothing whatsoever; I think it was an entire surprise when he learned it since the commencement of this trial.

Mr. Evarts—One moment, Sir.

Mr. Beach—Oh, well.

Mr. Fullerton—Mr. Andrews, did you know this man Woodley? A. I did.

Q. Where did you become acquainted with him, or first see him? A. I saw him simply as a servant at the house, and at the publication office.

Q. Now, during what period was he a servant at the house or office? A. From some period of the year 1871.

Q. When did he cease to be an attaché of the office or house? A. That I cannot tell.

Q. Well, did he cease to be an attaché at either or both of those places? A. I don't know with regard to the detail of that, Sir.

Q. Up to the time of the composition of that article or its preparation, had you seen any of the articles referred to in it—any of the papers or documents? A. No, Sir, I had not; I had known with regard to a purpose on the part of Mrs. Woodhull at an earlier date.

THE COWLEY INTERVIEW AT MRS. WOODHULL'S.

Q. Do you know this gentleman called Charles Cowley, who has been a witness in this case? A. Mr. Cowley called on me at the time he gave his evidence here, or about that time, and I then remembered having seen him at Mrs. Woodhull's house one evening.

Q. Were you present during his visit there—the whole of it? A. I was present that evening.

Q. Do you recollect that Mrs. Middlebrook was present? A. I do.

Q. Now, I want to ask you this question: whether, during the conversation that evening, this scandal was the topic of discussion? A. No, Sir.

Q. Or remark? A. No, Sir, not within my hearing, but I am not at all certain that I was there during the whole evening.

Q. Well, while you were there? A. While I was there there was not anything of the kind.

Q. Nothing of the kind? A. No, Sir.

Q. You don't recollect of Mr. Cowley's being there but once, do you? A. No, Sir.

Q. Were you present when any conversation or discussion was had with reference to the operatives at Lowell, that evening? A. I seem to have a vague remembrance of something of that kind, Sir, but it is not clear.

Q. Now, Mr. Andrews, I will recur again to the office of Mrs. Woodhull. When, with reference to the publication of the Woodhull scandal, so called, was the office changed from 44 to 48 Broad-st.? A. My recollection is that it was when the publication of the paper was resumed, and at the time of the publication of the scandal article.

Q. These interviews that you have spoken of between yourself and different persons were in the parlor of Mrs. Woodhull in Thirty-eighth-st., were they not? A. Usually in one or the other of the parlors.

Q. Did you become familiar with the furniture in those parlors? A. I did; yes, Sir.

Q. Was there ever at any time a sofa bedstead in either of those parlors? A. Never, not to my knowledge, and I believe there was never.

Q. There was none while you were in the habit of visiting the house or being an inmate of the house, was there? A. I should say not, Sir.

Q. In reference to Mr. Tilton's habit while at that house, do you know whether he stayed all night at any time? A. I think he did, at any rate on one occasion.

Q Do you recollect of more than one occasion? A. Not with any distinctness; no, Sir.

Q. Do you recollect where he remained that night when he did stay? A. I do not; I don't know how he was accommodated.

Q. Do you recollect the occasion when he did stay there? A. I think it was on the occasion of his preparation of the "Life of Victoria Woodhull."

Q. Were you aware of the fact at the time that he was preparing that "Life?" A. I was.

Q. How long was he occupied in doing it? A. I should think it was struck off at a white heat I don't know that it lasted very long; I don't remember distinctly.

THE FIRST WHISPERINGS OF THE SCANDAL.

Q. When did you first hear of this scandal? A. I first heard of it from Mrs. Henry B. Stanton.

Mr. Evarts—Well, never mind.

The Witness—Ah!

Mr. Fullerton—When did you first hear—first? A. In the beginning of the month of May, 1871.

Q. Where were you when you first heard it? A. In Mrs. Woodhull's parlor.

Q. From whom did you hear that?

Mr. Evarts—Well, I object to all that.

Judge Neilson—I don't think you can give that.

Mr. Evarts—It is not important when Mr. Andrews first knew it.

Mr. Fullerton—It is important to know when Mrs. Woodhull became acquainted with it.

Mr. Evarts—This don't prove that.

Mr. Fullerton—Yes, it does; I shall prove that the communication was made in the presence of the witness to Mrs. Woodhull.

Mr. Evarts—A communication?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—The difficulty is that that don't show it.

Mr. Fullerton—I can't show two things at a time; I will show one.

Mr. Evarts—I object to this evidence as not admissible in the cause, and not evidence in rebuttal.

Mr. Fullerton—Well, Sir, it will be contended on the other side that this scandal was communicated to Mrs. Woodhull by Mr. Tilton. They think that they have laid the foundation for such a charge as that, and it certainly is competent for us to meet it by showing how Mrs. Woodhull became possessed of any knowledge upon that subject, and from whom that knowledge was derived, and to show that it was in point of time anterior to the introduction of Mrs. Woodhull to Mr. Tilton.

Mr. Evarts—Well, this witness cannot prove that.

Mr. Fullerton—He can prove part of it.

Mr. Beach—He can prove just that.

Mr. Evarts—He cannot prove it.

Mr. Beach—He can prove it; he can prove that the subject was mentioned to Mrs. Woodhull before he introduced Tilton to her.

Mr. Evarts—At a certain date he can prove that the subject was mentioned by somebody else; that don't prove that Mr. Tilton had not mentioned it, nor does it prove that that was Mrs. Woodhull's first knowledge of it.

Mr. Fullerton—I believe I have your Honor's permission to go on with the proof.

Judge Neilson—Yes, keep within the bounds.

Mr. Evarts—If your Honor please, we object to this evidence as not being within the cause, and not evidence in rebuttal. Note our exception. Of course it is hearsay; it is mere talk between Mrs. Woodhull——

Judge Neilson—The objection to taking the conversation or declarations of third persons remains. You cannot give her conversation, but you can prove the fact that at a certain time——

Mr. Fullerton—That is what I attempt to do.

Judge Neilson—Ascertain whether that was prior to the publication—that at a certain time this subject was communicated, if you can.

Mr. Evarts—Well, the difficulty, if your Honor please, is that the whole of it is conversation. It does not cease to be conversation from your giving the result of it.

Mr. Fullerton—That is the way we prove what one person said to another—by the conversation.

Judge Neilson—That is the way you prove that notice is given of a certain thing.

Mr. Evarts—There are, of course, special cases, in which the fact of certain knowledge in a person is material; that is permitted to be given; but this is not that case at all. This is undertaking to prove by conversation between this gentleman and Mrs. Woodhull, or between persons of whom they constituted two, that at a certain date there was a conversation about this scandal at Mrs. Woodhull's office. Now, it is admitted that that in itself is not matter of evidence at any stage of the case, unless Mr. Tilton or Mr. Beecher were connected with it; that is plain. Now, how does it become evidence here—by what circumstance? The rules are stricter now than they are in the introduction of evidence in chief.

Mr. Fullerton—It certainly is proper for us to show that Mrs. Woodhull had knowledge of this scandal prior to the publication of her card in May, 1871. It is proper for us to show when and by whom the communication was made.

Judge Neilson—If she were on the stand you could put her the question, of course; and in a certain limited degree you can ask this witness.

Mr. Fullerton—And it is certainly extraordinary that counsel hold that that is no evidence—that that was the first time she ever heard of it. If counsel alleges that she knew it before I will admit it.

Mr. Evarts—Your Honor notes our objection and exception. We suppose it is very objectionable.

Judge Neilson—Of course you think it is, or you would not make the objection at all.

Mr. Evarts—Well, I mean that the nature of it is inadmissible, and that it is especially so in regard to this stage of the case. I understand your Honor excludes the conversation.

Judge Neilson—Yes.

Mr. Fullerton—I should think it was understood by this time, if it ever will be.

Judge Neilson—Go on.

Mr. Fullerton—Will you be kind enough to state whether at any time, and if so by whom, the facts connected with this scandal were communicated to Mrs. Woodhull?

Mr. Evarts—I object to that question; it is wholly objectionable.

Judge Neilson—We will take it.

Mr. Evarts—The question is objectionable; it assumes that they ever were. They certainly may ask the question whether this scandal was brought to the notice of Mrs. Woodhull.

Judge Neilson—Put your question in that form.

Mr. Evarts—To ask the witness whether the facts of this scandal—who has ever found out what the facts of this scandal were?

Judge Neilson—Put your question in that form.

Mr. Fullerton—If your Honor rules that my question is improper, I will put it in that form.

Judge Neilson—There is a shade of impropriety in it, undoubtedly. Put it in that form: "Was the subject of this scandal article ever communicated to Mrs. Woodhull in your presence?"

Mr. Fullerton—That question you may answer now.

Mr. Evarts—That we object to, and except. Your Honor will note our exception.

The Witness—It was communicated to her by Mrs. H. B. Stanton, in my presence.

Q. When? A. I should think the 3d or 4th of May, 1871.

Q. Where? A. In Mrs. Woodhull's parlor.

Q. Was it before or after your introduction of Mrs. Woodhull to Mr. Tilton? A. I should think it was a week or 10 days prior to that.

THE ROSSEL PROCESSION.

Q. Mr. Andrews, do you recollect the Commune procession in the city of New-York? A. I do.

Q. Did you participate in it? A. I did.

Q. At what time—when did you leave it? A. I began with it and ended with it.

Q. Did you see Theodore Tilton in that procession? A. I saw him as the procession broke up; Mrs. Woodhull directed my attention to him.

Q. Where did it break up? A. At Union-square, near the Lincoln monument.

Q. Where was Mr. Tilton when your attention was called to him? A. He was coming through the opening made by the black guards, from the rear portion of the procession.

Q. Had you seen him in the procession before that? A. I had not—I hadn't noticed him.

Q. With whom did you walk in the procession, if you remember. A. I walked with Mrs. Woodhull, Col. Blood, and an old gentleman by the name of West. I think there were four abreast.

Q. And where did Mrs. Woodhull join the procession? A. At the commencement of it; at the formation of the particular section that she was in, which, I think, took place in Fourth-st.

Q. Where did Mr. Blood join it? A. At the same point.

Q. And this gentleman, West, of whom you speak, where did he join it? A. I don't know whether he began with the procession; I saw him in the course of the procession.

Q. Did you see Miss Claflin in that procession? Yes, Sir; she was in front of us, walking alone and carrying a flag.

Q. Now, from the commencement to the end of that procession were Mrs. Woodhull and Miss Claflin out of your view? A. No, Sir; hardly out of my *reach*. I was close by them.

Q. And during the whole course of that procession was Mr. Tilton in their company? A. He was not.

Q. Are you positive upon that subject? A. Quite so; yes, Sir.

Q. During the whole course of that procession, from its commencement to its end, was either Mrs. Woodhull or Miss Claflin in a carriage? A. Not until the procession broke up. I assisted in getting them into a carriage at the close of the procession.

Q. And who got into the carriage with them? A. Col. Blood and Theodore Banks. I intended to get into the carriage myself, but there was a little jostling of the crowd, and I was fearful of its being necessary to hurry, and I left and went away.

Q. I will put the question a little broader. From the commencement of that procession, when you entered it with Mrs. Woodhull and Miss Claflin, up to the time that it broke up, when Mrs. Woodhull and Miss Claflin got into a carriage, were either of those ladies in a carriage? A. They were not.

Q. You speak of your positive knowledge on that subject? A. I do, Sir.

Q. From the commencement to the end of that procession was Theodore Tilton in company with either of those ladies? A. He was not; no, Sir.

Q. Were you at the Steinway Hall meeting when Mrs. Woodhull delivered her lecture? A. I was.

Q. When did that take place? A. Was it the 17th of October? I have heard the date mentioned since I have been here; I don't remember otherwise.

Q. Is your recollection in harmony with the date as it has been mentioned? A. It is.

Q. The 20th of November, 1871, I believe it was. Do you know where Mrs. Woodhull went immediately after that lecture? A. I think she left the very next morning for a lecturing tour in the West.

Q. How long was she absent? A. My recollection is vague with regard to that; I should think some weeks.

Q. Do you recollect whether she corresponded with her paper after that? A. I don't think she did, Sir. She seldom did when away.

MR. CLAFLIN'S CALL AT MRS. WOODHULL'S.

Q. Do you recollect an occasion when Mr. Claflin was at Mrs. Woodhull's? A. Which Mr. Claflin?

Q. Horace B. Claflin, I think the name is.

Mr. Evarts—How is that material?

Mr. Fullerton—Mr. Claflin has given evidence on that subject.

Mr. Evarts—On cross-examination.

Mr. Fullerton—That does not prevent us from giving this evidence.

Mr. Evarts—It does. It is not rebuttal. Whether the interview of Mr. Claflin at Mrs. Woodhull's was material evidence in the case is not a question that has ever arisen. We did not introduce it as part of our affirmative evidence, you know, and on cross-examination you get in, under a variety of motives, within the law, a good many things; but that does not give the right to make them matters of evidence in chief, as we all know. Mr. Claflin's visit to Mrs. Woodhull's office was made the subject——

Mr. Fullerton—I will state, if you will allow me, what my object is, and if your Honor does not approve of it the matter is easily settled.

Judge Neilson—Your inquiry is as to an interview at the office?

Mr. Fullerton—Yes.

Judge Neilson—They have in mind an interview at the house, when Mr. Bowen was present.

Mr. Evarts—No; it is the office they are speaking of.

Mr. Fullerton—Yes; I call attention to the interview at the office.

Mr. Evarts—The subject is introduced to Mr. Claflin simply in this way on cross-examination:

Q. Do you know Victoria Woodhull? A. I know her a little.

Q. How little or how much? A. I have seen her on two or three occasions; she has called at my office once or twice.

Q. Did you return the call? A. Yes, Sir, I did, once at her office in Broad-st., soon after she came.

Q. Was it soon after she established herself in Broad-st.? A. Pretty soon after that, I know, because it was rather a novelty, lady bankers.

Then the object is asked, and he goes on to say: "She had been to my house," &c. He was proceeding to state what Mrs. Claflin said, and he was asked, "You were not present when Mrs. Claflin said this?" and he answered, "No, Sir;" so he was not allowed to state.

Judge Neilson—What is the object of this, Mr. Fullerton; what is the purpose?

Mr. Evarts [continuing]—Mr. Claflin says further: "I did not say anything else there except about subscribing for the paper." He is asked, "Did you pay for it?" and——

Judge Neilson—Yes; he said he had an advertisement in the paper and discontinued it.

Mr. Evarts—He was asked whether he paid for the paper, and he said he did not know whether she ever sent

the bill. Now, that is altogether in the way of collateral inquiry, and has nothing to do with this case. They must take his answer, and they cannot contradict it.

Mr. Fullerton—Well, if I cannot, it is because the law won't allow it; not because I am not able to do it.

Mr. Evarts—Well, I say the law won't allow it.

Mr. Fullerton—Well, Sir, I don't regard it as very important, and I won't press it; though I would like to show that the interview was a private one. [To the witness.] That is all.

CROSS-EXAMINATION OF MR. ANDREWS.

Mr. Evarts—Mr. Andrews, how are you able to fix the 3d or 4th of May in your mind as an occasion on which you heard a conversation between Mrs. H. B. Stanton and Mrs. Woodhull? A. I do not fix the date with entire certainty; but Mrs. H. B. Stanton was——

Q. Don't give the conversation. A. No, Sir; Mrs. H. B. Stanton was waiting in the city to be present at the May Conventions, and I called upon her and took her to Mrs. Woodhull's house; that is one of the circumstances which enables me to fix the time; another is, that I remember that it was prior to the death of my wife, which occurred on the 6th of May.

Q. Well, that would account for its being prior; but how do you know but it was much earlier in the season? A. The first circumstance settles that, that Mrs. H. B. Stanton was then remaining for a few days, or for the next day, perhaps, to be present at a convention which occurs at the 1st of May or near it.

Q. Yes. Well, do you mean to say that in your memory you connect the date of that visit with the date of this Convention? A. I do; yes, Sir.

Q. That seems to be the point? A. Yes, Sir.

Q. Now, you have said something about its being a week or ten days before you introduced Mr. Tilton to Mrs. Woodhull; that would make your introduction about the 10th or 13th of May? A. Probably.

Q. Is that about the time you think you introduced him? A. It is, Sir.

Q. Now, what circumstance is there that enables you to fix the date of this introduction of Mr. Tilton to Mrs. Woodhull as late as that week in May? A. My remembrance is that I was at the time residing at Mrs. Woodhull's house, and that I only went there on the 6th of May.

Q. But this introduction of Mr. Tilton was at the office? A. Yes, Sir; but I say that I have in my memory that my introduction of Mr. Tilton was while I was—was after I was already residing at Mrs. Woodhull's house.

Q. What connection is there between the two facts? A. Simply a connection in my memory; I remember that the facts were so.

Q. Your memory connects them, not the facts, in any relation of their own? A. No, Sir; not otherwise than that I happen to remember that that was the fact.

Q. There is nothing in the facts that assists your memory? A. Not particularly, Sir.

Q. Now, who was present when you introduced Mr. Tilton to Mrs. Woodhull? A. The usual attachés of the office were probably there, but I have no remembrance of other persons than Mrs. Woodhull, Mr. Tilton, and myself.

Q. You don't remember anything—— A. Not distinctly.

Q. About it. And did you then leave Mr. Tilton with Mrs. Woodhull? A. No, Sir; I remained until he left. The interview was a very short one. It did not seem to make any very special impression on either side.

Mr. Evarts—That we will have struck out, if your Honor please.

Judge Neilson—Yes.

Q. Now, Mr. Andrews, you have spoken of certain periods at which you were an inmate of Mrs. Woodhull's house; can you give us, with definiteness, those periods? A. The first period was in the Summer of 1870.

Q. Beginning when? A. As I mentioned in the direct, I can fix the beginning of that residence only by recurring to the beginning of Mrs. Woodhull's residence at the house; I do not remember the date.

Q. You went there when she began? A. I went there when she began at that place.

Q. Mrs. Andrews was then living? A. She was then living.

Q. Were your whole family inmates there? A. I have no family remaining with me except——I have none, and had none then, but my wife.

Q. I mean at that time. Mrs. Andrews was living; were you and she inmates of that house? A. When she returned from the country she came to me there, and we remained, she and I, at the house of Mrs. Woodhull a week or ten days, and then removed to our own residence.

Q. Your own house? A. Yes, Sir.

Q. When did you so remove? A. I cannot tell.

Q. Then you do not know how long you were at Mrs. Woodhull's house in 1870? A. No, I do not.

Mr. Beach—He said about three months.

The Witness—About three months, I think.

Mr. Evarts—When did you resume your residence at that house? A. The 6th of May, 1871.

Q. How long did you continue? A. Until the 6th of January, 1872.

Q. While you were there can you give us the names of the servants at that house? A. I know this servant, Lucy, the colored girl.

Q. Was she there at both times? A. No, I think not; I think it was the last of these two occasions.

Q. Are you sure about that? A. I am not.

Q. She was there the last, you are sure? A. Yes, Sir.

Q. During the whole of it? A. I could not say that; during some portion of the time.

Q. Have you any idea that she was not there during the

whole? A. Yes; I think she left before I left the house.

Q. Before you did? A. Yes, Sir.

Q. How long before? A. I cannot tell you.

Q. That is one; now the other? A. This man whose name has been given as Woodley—is that the name?

Mr. Morris—Woodley.

The Witness—Woodley; and the other Grey; I met them all there as servants—knew of their being present, and also saw the two men often at the office.

Q. Very well. Now, through what periods of time did you see Woodley and Grey as being at the house occasionally or permanently, or at the office occasionally or permanently? A. During the period of my second residence at Mrs. Woodhull's; but whether covering—what part of that residence, I do not think I could fix.

Q. Didn't that cover the whole? A. With regard to Lucy, I think not.

Q. Well, I have got through with Lucy? A. Yes. With regard to the others it may have been so, or it may not; I am not able to say.

Q. You cannot say about them? A. No, Sir.

Q. Now, Sir, were not Grey and Woodley servants or attachés at the office during the Summer of 1870 or the Fall of 1871? A. Certainly during the Summer—during a portion of the Summer of that year, and I think it likely extending into the Fall.

Q. During the preceding year, the Fall of 1870 and the Winter of 1870-71, were not these two colored men, or one of them, attachés of the office, as you understand? A. That may have been so, but I do not remember.

Q. You do not remember whether it was so? A. No.

MR. ANDREWS'S RELATION TO THE WOODHULL PAPER.

Q. Now, Sir, had you any proprietorship in this newspaper? A. I had not.

Q. Nor any editorship of the newspaper? A. A partial editorship, yes; at times I was almost the editor in charge—for short periods.

Q. Will you give us the times that you were almost editor in charge? A. I cannot say that; they were mere casual supplies for the absence of the—of other parties.

Q. And you can give us no idea at all? A. Not definitely with regard to the periods.

Q. Nor the years? A. Yes, Sir; during the year 1871, and perhaps somewhat during the year 1870.

Q. Are you sure of that—that in 1871 you were almost the editor in charge?

Mr. Beach—Do you mean during the whole year?

Mr. Evarts—During the year.

The Witness—No; within that year, for short periods.

Q. What weeks were those? A. I don't know.

Q. What do you mean by being *almost* the editor in charge? A. Well, I mean that I performed the labor that belongs to an editor; although formally, the position was not yielded to me, or I was not inaugurated in any formal way into that office.

Q. Did you have a salary or compensation? A. I never had any.

Q. None whatever? A. None whatever.

Q. Did you have any avowed or public responsibility of editorship for that paper? A. I wrote a great many articles.

Q. Under you own name? A. Over my own name; and at one period, think during the Summer of 1871, I had a department assigned to me in that paper which I edited as my own.

Q. What department was that? A. It was called the Bureau of the Pantarchy—"Pantarchy" was the head line of my department.

Q. The Pantarchy? A. Yes, Sir.

Q. Was that a distinct branch of the paper, separate from any interest in everyday affairs? A. It was, Sir.

Q. Now, in what sense or connection was this title of "Pantarchy" adopted for a column or department of that newspaper? A. Pantarchy is a name which I have adopted to express the practical purposes of my reformatory movements.

Q. That is enough. I understand it perfectly. [Laughter.] A. Yes, Sir.

Q. Are you reformatory movement and "pentarchy" convertible terms? A. On the practical side of my reformatory movement—yes, Sir.

Q. They are? A. Yes, Sir.

THE MEDIUMISTIC EXHIBITION AT MR. TILTON'S.

Q. We understand that. Now, Mr. Andrews, you have said that at this visit at which you and your wife were present, of which Miss Moore spoke, there was nothing but some action or behavior of your wife in the capacity of spiritual medium, or acting from impression, or something of that kind? A. Yes, Sir.

Q. Of course I don't wish to misrepresent you; I call your attention to it. Did you mean to say that what she did or said to or toward Mrs. Tilton was in a mediumistic state on her part? A. I presume it to have been so. My recollection, as I have said, is not very distinct.

Q. And the nature of that is, that though the observer saw and heard what she said and did, she herself was not conscious. Is not that it? A. That is the state in what is called complete trance. There are, then, all sorts of approximations to that state, in which mediumistic persons live, as it were, in a double world—a dreamy kind of existence.

Q. A sliding scale, then? A. Exactly.

Q. Now, what stage of this sliding scale was your wife in at the time of this affair? [Laughter.] A. I don't know, Sir.

Q. Well, from your observation? A. I have said that

my recollection is very indistinct in regard to the scene at all.

Q. Have you any recollection at all? A. I have, Sir, the recollection——

Q. Is it not a matter of mixed reasoning, between natural reason and the mediumistic state? A. I have not spoken of any mediumistic state on my part, Sir.

Q. No, no; still you are so much with these people—how is that now, have you any particular remembrance of that affair? A. I remember, as I stated, my wife leaving her seat in another part of the room, and going and seating herself by the side of Mr. Tilton in a manner which I recognized, knowing her as I did, as somewhat characteristic of her partial trance states.

Q. Now, what stage? That is what I want to get at. A. I don't know that I have any gauge.

Q. Whether she passed the Rubicon between the natural condition and an entire trance state, you cannot say? A. I should think not.

Q. You think not? A. Yes, Sir.

Q. Was not this mediumistic treatment or condition, as exhibited toward Mr. Tilton—didn't it involve this manipulation of his face and head, and reference to this spiritual insight into him? A. Not to my recollection.

Q. You don't remember how that was? A. No, Sir.

Q. But that is the ordinary form? A. It might happen, but I don't remember.

Q. Do you remember whether what was said by your wife to Mr. Tilton, and received by him, was what ordinary people consider sensible or foolish? A. I never heard anything that to me was not sensible through that lady.

Q. Well, I don't mean to say that it was not sensible. I only speak of the estimate of ordinary people, who are not affected with Spiritualistic ideas. A. I think that would depend upon how ordinary they are. [Laughter.]

Q. Now, you have spoken of Mrs. Woodhull's house and the company assembled there as coming nearer to the celebrated salon of Madame Roland than anything of our times, haven't you? A. I did make that comparison.

Q. That is your view? A. Yes, Sir.

Q. Now, did you assimilate Mrs. Woodhull to Madam Roland? or didn't you assign the different parts sufficiently to determine that? A. I had not that particularly in mind, but I think her quite as distinguished a personage—of a different type.

Q. Yes; but the question is more whether they resembled one another, than whether they are equally distinguished. A. I don't know that I had that in view.

Mr. Beach—Of a different type; you say?

The Witness—Yes, Sir, of a different type.

Mr. Evarts—But an equally large impression? A. Yes, Sir.

Q. And this company that attended there, you compared with the company that frequented Madame Roland's salon? A. I do.

Q. Do you give the preference to this company over the company at Madame Roland's? Does the preference extend to the visitors? A. I think this century is in advance of the last.

Q. And these people move with the century? A. I think so.

Q. And they are in the van, are they? A. I think so. That is a matter of judgment.

TERMS OF FAMILIARITY USED BY MR. TILTON AND MRS. WOODHULL.

Q. Now, you have said something about Mrs. Woodhull and Mr. Tilton's manner toward each other when you saw them together, and their address. Do you think you never heard Mr. Tilton address Mrs. Woodhull as "Victoria?" A. I don't remember having heard it. Very many people did.

Q. How can you account for it that Mr. Tilton did not? A. Well, I should say that his manner was courtly and reserved, in the presence of others, and I don't remember his ever falling down to that degree of familiarity.

Q. With Mrs. Woodhull? A. With Mrs. Woodhull.

Q. Was his manner especially cold toward her? A. No Sir; it was, on the contrary, very friendly, manifesting, I should say, a great deal of interest; but I speak of any discourtesy——

Q. Oh, not discourtesy? A. Or any vulgar familiarity, or anything——

Q. Yes, I was only asking—I have only asked——

Mr. Beach—Let him finish his answer.

Q. I have only asked you about his calling her Victoria

Mr. Beach—Let him finish his answer.

Mr. Evarts—This is cross-examination.

Mr. Beach—I know that, but that does not afford you an opportunity of interrupting the witness.

Mr. Evarts—Certainly it does, when he is answering beyond the question.

Mr. Beach—He was not answering beyond the question.

Mr. Evarts—Certainly he was.

Mr. Beach—Well, a reference to the question would show that he was not. However, the gentleman has succeeded in stopping the mouth of the witnessb efore he had finished his answer.

Mr. Evarts—I could not have done it without the aid of the law.

Mr. Beach—I don't know; I think you do a great many things without the aid of the law, and in defiance of it.

Q. Now, you say a great many persons did address her in that salon as "Vickey." That was not disrespectful, was it? A. It was not so regarded.

Q. How? A. It was not so regarded by those who used the term, no doubt. I have sometimes felt a little shocked at the familiarity that many persons took. Sometimes she was even called "Vic" and "Victoria" and "Vickey," and I never saw her when that familiarity—I felt a little shocked by it sometimes myself. I did not perceive

that character in Mr. Tilton. That is all I meant to say.

Q. "Vic" you considered familiar? A. Rather too much so.

Q. Was that common? A. Well, it was too common.

Q. Did you observe that Mr. Tilton refrained from that familiarity that others used? A. That is my remembrance of his deportment.

Q. You are quite sure? A. I am.

MORE ABOUT THE WRITING OF THE SCANDAL.

Q. So impressed on your mind. Now, Sir, during the Summer of 1872, and between the Spring and the publication of what is called the scandal number of Mrs. Woodhull's paper, was there any such paper in existence, or on foot at all, or was it all gone, this *Woodhull & Claflin* paper? A. It was a complete interruption of the publication of the paper, but never was an abandonment of the intention of continued publication.

Q. That is, no public announcement of its termination? A. It was announced simply as an interruption—as a postponement.

Q. Well, this scandal number was the beginning of its new life? A. That is my recollection; I believe so; yes, Sir.

Q. Was not this interval occupied in preparing for a great sensation on the reopening of this paper? A. Not to my knowledge, nor according to my belief.

Q. You don't think that the article was in the course of consideration and preparation by its authors in that period, either in an incomplete or in—— A. Do you wish me——

Mr. Evarts—I wish your knowledge.

The Witness—Well, I——

Q. You don't know anything about it? A. I know very little about that, Sir.

Q. Now, are you quite sure that you never saw any slips of the subject matter of this scandal article as distinct from its complete literary, philosophical completion? A. I am quite sure of that, Sir.

Q. You never saw that? A. I never did.

Q. If there were any such, you didn't see them? A. I did not.

Q. And how early before the matter was brought to your attention—or, rather, the material was brought to your hands for your editorship—how long before that material was brought to your hands had you heard that anything of this kind was brewing? A. Your present question refreshes my memory. and I would wish to correct a prior statement. I did hear somewhat earlier with regard to the purpose of such a publication. I was consulted by Mrs. Woodhull; it may have been one month or two months earlier than the publication with regard to her ethical rights, as I may say, in the matter.

Q. Well, Sir, that is enough; I don't care about the conversation. Now, you say that this introduction of the subject of her ethical rights was as early as the Spring of 1872? A. No, it was not, although I have reason to believe——

Q. I have not asked you your reason. You are certain it was not? A. I am certain it was not. I was going to add something I thought you would like to know.

Mr. Evarts—No; I have no curiosity except what the law allows.

The Witness—That is right, Sir.

Mr. Evarts—Now, how early are you able to say that this introduction of the ethical rights question did not arise? You say it didn't in the Spring? A. Yes, Sir. Not more than two months prior to the publication.

Q. Not more than two months prior to its being brought to you? A. That is what I mean.

Mr. Beach—Its publication, he says.

Mr. Evarts—No, being brought to him.

Mr. Evarts—Now, how early in October do you think the material was brought to you for your finishing hand? A. I should think about the 25th.

Q. And it was published on the 28th? A. It was published on the 28th.

Q. And when did your article go in the printer's hands? A. Immediately as it was prepared; I think part of it was going before the remaining parts were finished.

Q. Now, upon looking at this article, can you tell us what is wholly your own composition, and what is the composition of other people? A. I presume I could by merely looking at the article; yes, sir.

Q. Be so good as to designate upon this article the parts you composed, and the parts that were the composition of others than yourself. [Handing paper to witness.]

Mr. Shearman—Be kind enough to mark your own passages; that is all.

Mr. Evarts—You have two kinds of crayons; mark with the one which is your own.

The Witness—Well, Sir, one of the reds; I have put a red line around those which I either wrote or recast; the middle portion, which is not so encircled, went as it was brought to me, with the exception of the fact that I may have run my pen through a single line to correct literary style, or something of that kind.

Q. And the parts not marked in red, as I understand you, are substantially as the material came to your hands, with nothing but verbal emendations, possibly? A. That is it, Sir.

Mr. Evarts—I ask that this may be marked for identification. I offer it in evidence as part of this witness's testimony.

Mr. Beach—I object to it; you cannot bring the article in by any means, because he wrote it.

Judge Neilson—It is marked for identification as present.

Mr. Evarts—I offer it in evidence.

Judge Neilson—Let the offer be noted.

Mr. Evarts—As part of this witness's cross-examina

tion as to what he did of this, and what the others did.

Mr. Beach—I hope your Honor will consider that question.

Judge Neilson—Oh, yes; I will hear you hereafter, Mark it at present for identification.

[Paper marked "For identification, Ex. D, 141."]

MR. TILTON'S SYMPATHY WITH MRS. WOODHULL'S REFORMS.

Q. Mr. Andrews, where was your lodging-room while you were an inmate of this house of Mrs. Woodhull? A. It was up two pairs of stairs—two flights of stairs, front room.

Q. What we call the third? A. There is some confusion here with regard to third and first.

Q. Two flights of stairs? A. Yes, Sir.

Q. And the front room? A. Yes, Sir.

Q. That led you to pass up and down the stairways and through the halls up to that story? A. Very often.

Q Up to that story and back? A. Very often; yes, Sir.

Q. Now, Sir, in what parts of that house have you seen Mr. Tilton? A. I have seen him in the parlors—front and back parlors, and in Col. Blood's and Mrs. Woodhull's room, which is at the head of the first stairs.

Q. How often have you seen him on that floor where Col. Blood's room, as last mentioned, is spoken of—Mrs. Woodhull's room? A. Well, with some frequency; several times at any rate.

Q. Was it not an ordinary thing to see him there? A. I should think, through a certain period of time, while he was engaged in writing for Mrs. Woodhull a good deal, that he was several times, perhaps frequently, in that room.

Q. It was nothing strange for you to see him there? A. At that period it was not; no, Sir.

Q. At that period? A. No, Sir.

Q. Now, Sir, when was that period? A. The center of attraction, to quote a phrase that has been used here, was the month of August; I think his visits were more frequent there, and his labor in behalf of Mrs. Woodhull and her ideas was concentrated more in the month of August than in any other month of that season.

Q. That was 1871? A. Yes, Sir.

Q. When this fervor of August you noticed as a fact? A. I did; yes, Sir.

Q. And how much was he there during the month that you describe as August? A. Well, I should say with great frequency.

Q. Often at meals? A. No, Sir; very rarely.

Q. How often did you see him there at breakfast during that month of August? A. I think I never saw him at breakfast but once—the morning after the occasion which I speak of.

Q. Did you breakfast usually—— A. With the family?

Q. With the family? A. I did; yes, Sir.

Q. Now, can you not remember seeing Mr. Tilton at breakfast more than once during that month of August? A. I really do not remember.

Q. Still it may have been? A. It may possibly; well, I think I should have remembered it if it was true—if it were so.

Q. Why? What should impress you about that? You noticed he was there very much. Why should you notice his being there at breakfast? A. Well, it was rather a rare circumstance for parties to be invited to the meals in that house; the house was more like a club-house for public purposes, as it were, and the privacy of the family was very seldom invaded by visitors, and it was an exceptional thing that Mr. Tilton was occasionally invited.

Q. Well, now, during the whole of the time that you were aware of his being a visitor at that house, how often did you see him at breakfast there? A. Only once that I remember.

Q. During the whole of the Summer? A. At breakfast only once.

Q. Only once. How many times at dinner? A. I should think two or three times.

Q. And how many times were you aware of his passing the night there? A. Only the once that I have mentioned.

Q. How did you come to be aware of that? A. From the fact that I was there in his company until very late at night, perhaps 2 or 3 o'clock, and that I found him there in the morning, and that he breakfasted with us, and that I understood he had remained there during the night.

Q. Did you understand that Mr. Tilton, in the frequency of his visits and the attention that he paid to Mrs. Woodhull, was enlisted in her opinions and interested in her ideas?

Mr. Beach—That is objected to, Sir—what he understood.

Mr. Evarts—Well, on the cross-examination I think it is admissible.

Mr. Beach—No, that is not admissible on cross-examination.

Judge Neilson—I think we will take it. It tends to show the relation, whatever it was.

Mr. Beach—Is that to be shown, if your Honor please, by the mere understanding of the witness and not by the acts and declarations?

Mr. Evarts—It is on the cross-examination of the witness, and is admissible.

Judge Neilson—The question includes observation a well as understanding.

Mr. Evarts—It is cross-examination.

Mr. Beach—It don't make any difference. If you will allow me to get a word from the Court instead of you, Mr. Evarts, I will be obliged to you.

Mr. Evarts—I don't mean to prevent you.

Mr. Beach—I never knew you to. I submit that the

understanding of this witness is not admissible as against Mr. Tilton.

Judge Neilson—That would be so as to any witness. The only idea is to whether this word "understanding" don't really import observation, which I think is a better word.

Mr. Evarts—On cross-examination I can ask all sorts of questions as to the interior movements of his mind and show him up.

Judge Neilson—There is a good deal of license allowed on cross-examination——

Mr. Beach—There is no objection to this examiner showing up this gentleman to the extent of his ability; and the more he tries it the better we will be satisfied.

Mr. Evarts—I don't mean any particular witness; I am speaking of the right to cross-examine as not being limited (as is well understood) to evidence in chief in the case.

Mr. Beach—He did, Sir, mean this particular witness when he said he wanted to find out, or show up, this witness.

Mr. Evarts—That is speaking of my interior movements.

Mr. Beach—Your interior movements are just as immaterial and incompetent as the witness's when they are directed toward our case.

Mr. Evarts—I did not bring them in.

Mr. Beach—You are trying to bring them in, and you did bring them in.

Judge Neilson—Almost any question can be asked on cross-examination.

Mr. Beach—I submit not, if your Honor please.

Judge Neilson—That has any bearing on the relation of the parties.

Mr. Beach—Your Honor certainly does not mean to announce such as a decision of the law, that almost any question is admissible to a witness on cross-examination?

Judge Neilson—That has any relation.

Mr. Beach—That has any relation. I submit, Sir, that you cannot ask a witness upon cross-examination as to his understanding of a fact relating to either of the parties, for the purpose of establishing a conclusion of facts attributable to either of the parties. You may ask a witness upon cross-examination his understanding and reason in regard to his own action, or facts relating to his own conduct. That is admissible. But you cannot ask him his understanding of the purpose, views, or sentiments of a party to an action whose conduct and views, position and condition are to be determined by words or acts.

Judge Neilson—Therefore the word "observation" is better than the word "understanding," which the counsel put.

Mr. Beach—Yes, Sir; that is what I was endeavoring to satisfy your Honor about.

Judge Neilson—I was recommending the substitution of that word.

Mr. Beach—Very well. Then I will be content.

Mr. Evarts [to the witness]—Well, please answer the question with that modification—*observation*, instead of *understanding*.

The Witness—My observation was that Mr. Tilton was a great deal interested in the ideas, perhaps, that he heard agitated at that house, but always with a vein of strong dissent on his part, which led to a great deal of discussion.

Q. And which tended, I suppose, to bring out the right of the matter more distinctly? A. Perhaps.

Q. Did he convince, or was he convinced? A. Perhaps neither.

MR. ANDREWS'S LABORS FOR SOCIAL REFORM.

Q. Your opinions and views, as I understand it, Mr. Andrews, accorded with Mrs. Woodhull's—or perhaps I should say hers accorded with yours—on this matter of social reform? A. Yes, Sir.

Q. You had been longer an advocate of these opinions than she, had you not? A. Very much.

Q. How far back do you date your advocacy of them? A. My first published statement on the subject, from which these ideas have been mostly disseminated, was, perhaps, I think, in 1851.

Q. Did you at any time establish a hall or school for public discussion of these social doctrines? A. I have been doing that kind of thing, off and on, all along, Sir.

Q. All along? A. Yes, Sir.

Q. And in the City of New-York, I infer? A. In the City of New-York, mainly.

Q. During what period was any such establishment maintained? A. There has hardly been any period at which there was not something of the kind.

Q. Going on all the time? A. All these years.

Q. All the time, more or less permanently, I suppose? A. Yes, Sir.

Mr. Evarts—That is all.

RE-DIRECT EXAMINATION OF MR. ANDREWS.

Mr. Beach—What social views do you refer to when you say they were in conformity, to any extent, with those of Mrs. Woodhull? A. I refer to the whole statement, which has been made by myself and by others, of the doctrine which we call the "Sovereignty of the Individual," which is an attempt at a scientific definition of the legitimate sovereignty of the individual in society, and of the sphere of the community as such.

Q. Well, how far do those views relate to the subject of marriage and divorce? A. They cover that whole ground incidentally, and as a branch of the larger doctrine of the sovereignty of the individual.

Q. Well, Sir, in those views of which you have spoken

to Mr. Evarts do you include any idea of promiscuous intercourse of the sexes? A. Yes, and no; I must adopt that.

Q. Well, Sir, I want to know. You have spoken to the counsel of those views; I want to know what they are. What is the view to which you referred in that relation, with reference to the intercourse of the sexes? A. The view is, that the relation of the sexes is a department of human life which should be relegated to the jurisdiction of the individuals immediately concerned. If they, then, are promiscuous in their nature and character, it is for them to manifest that. If they are Mormons, or if they are Shakers, or whatsoever be their individual conscience and view and character, that will manifest itself under this doctrine.

Q. Well, do you understand by the doctrines which you maintain that the law should, to no extent, interfere with the relation of husband and wife, or parent and child? A. That is our view, with certain minor modifications.

Q. Well, Sir, those modifications I want to get? A. Well, Sir, it would lead us into a very broad field of definition.

Q. Make it as brief as you can; for instance, we can illustrate all I desire to know. In case two persons who have lived in the marital character are inclined to separation, what is your view, or doctrine, in regard to the care or maintenance of the children of the intercourse? A. The doctrine contemplates "hands off" with regard to the State—the interference of the State in the affairs of the individual in so far as their affectional relations are concerned. The economical relations, those that relate to property, care of children, &c., are perfectly legitimate for the State.

Q. For the State to govern? A. Yes, Sir.

Q. And your doctrine, therefore, is that in case two persons in the position in which I assumed, the union dissolved by voluntary consent, that the State, by law, should regulate the terms upon which that separation should be allowed with reference to the children, or the economical relations? A. Or the inheritance of property.

Q. That is, that people who have been married should be allowed to separate at their will, the State making proper regulations in regard to the disposition of the property and the children? A. That is it.

MRS. WOODHULL'S FIRST ALLUSION TO THE SCANDAL.

Q. You speak, Sir, of Mrs. Woodhull having consulted you some two months before the publication of this article in regard to her ethical rights connected with this publication. That was at the first suggestion, to your knowledge, of the propriety of publishing the article? A. No, Sir; it was not.

Q. Well, what was it? A. Do you mean to ask what was the first suggestion?

Mr. Beach—Yes.

Mr. Evarts—Well, let us see.

The Witness—What was the occasion of the first suggestion?

Mr. Beach [To the witness]—Mr. Evarts inquired of you as to a consultation of Mrs. Woodhull with you, occurring some two months prior to the publication of this article. I don't care for a detail of the whole conversation, but I want to get the subject matter of that consultation.

Mr. Evarts—I only got it in respect to date.

Mr. Beach—You got it in respect to facts—in respect to the conversation.

Mr. Evarts—I don't ask the conversation.

Mr. Beach—You certainly got the fact that he was consulted by Mrs. Woodhull upon the subject of her ethical rights concerning the publication, or connected with it.

Mr. Evarts—The witness stated that.

Mr. Beach—You took it as part of the answer, and it is in evidence.

Mr. Evarts—It was in answer to my question showing the date that it was brought to his mind.

Mr. Beach—Yes, and it shows something more than the date.

Mr. Evarts—What do you ask him that for?

Mr. Beach—That is my business now. [To the witness,] I want to know what ethical rights were the subject of conversation as between you and Mrs. Woodhull on that occasion.

Mr. Evarts—Well, I object to going into that conversation.

Judge Neilson [To the witness.] Did it relate to this article? A. Yes, Sir; it did.

Mr. Evarts—There I left it. There was an earlier date at which the matter was brought to his notice.

Mr. Beach—And there was the subject talked of, and where the gentleman left it, I took it up.

Mr. Evarts—Well, of course, his Honor has ruled over and over again, and we have abided by it, the subject indicating his notice and attention, being brought to the subject, but it does not authorize the conversation.

Judge Neilson—We could not take the conversation, of course.

Mr. Beach—I want to know what ethical rights he referred to in his answer to Mr. Evarts.

Judge Neilson—I think he may answer that.

Mr. Evarts—That I object to.

Judge Neilson [To the Witness]—What ethical rights did you refer to?

The Witness—The question which she wished my advice upon was whether she had a right, as social agitator, to interfere with the deportment of individuals, or whether she should confine herself entirely to the discussion of principles.

Mr. Beach—That is all, Sir.

RE-CROSS-EXAMINATION OF MR. ANDREWS.

Mr. Evarts—Mr. Andrews, when you speak of those topics as in the opinions that you embrace and advocate as falling within individual sovereignty, or being relegated to the region of individual sovereignty, does that mean in your mind or expression anything more than the Scriptural statement that a man is to do what is right in his own eyes? A. If you will explain the Scriptural statement to me I can answer the question.

Q. It is much more common than relegated to individual sovereignty, and I didn't ask you to explain that. A. I think it means substantially the same thing.

Q. A man's doing what is right in his own eyes? A. Yes, Sir.

Mr. Evarts—That is all.

The Witness—Allow me to add to the answer that what we familiarly call the "sovereignty of the individual" is in the larger statement of limitation—the scientific limitation upon that freedom, which I could show if it were required, but it is probably beyond your question.

Mr. Beach—When you apply this Scriptural phrase to your theories, that a man should do what is right in his own eyes, you refer to the affectional relations of the sexes? A. I do.

Q. And not to what you call the economical relations? A. No, Sir.

Mr. Beach—That is all.

Judge Neilson—Get ready to retire, gentlemen. Return at 2 o'clock.

The court then took a recess until 2 o'clock.

MRS. BRADSHAW RECALLED.

After recess Mrs. Martha A. Bradshaw was recalled by plaintiff, and testified as follows:

Mr. Fullerton—Mrs. Bradshaw has already been sworn.

Judge Neilson—Yes.

Mr. Fullerton—Mrs. Bradshaw, are you acquainted with Elizabeth A. Turner, known as Bessie Turner? A. Yes, Sir.

Q. And when did you first become acquainted with her? A. Well, I have been in the habit of seeing her ever since she was with Mrs. Tilton.

A Juror—A little bit louder.

Mr. Fullerton [repeating]—"I have been in the habit of seeing her since she lived with Mrs. Tilton."

Q. Did you see her frequently or otherwise? A. Yes, Sir, quite frequently.

Q. Do you recollect having seen her in the month of December, 1870? A. Yes, Sir.

Q. Where did you see her in that month? A. I saw her at Mr. Tilton's and at my own house.

Q. Where did you first see her during that month? A. I don't recollect that, Sir.

Q. How, Madame? A. I don't recollect that, Sir; I have the record of two visits to me that she made to me.

Q. Do you mean at your own house? A. Yes, Sir.

Q. When was the first visit that you have a record of that she made at your own house? A. On the 9th of December.

Q. 9th of December? A. Yes, Sir.

Q. 1870? A. Yes, Sir.

Q. Did you send for her, or did she come voluntarily? A. No, Sir; she came voluntarily.

Q. Did you make a record of the day on which she visited you? A. Yes, Sir.

Q. In a diary? A. Yes, Sir.

Q. Were you in the habit at that time of keeping a diary? A. Yes, Sir; I always have.

Q. State whether or not it was an unusual thing for you to make an entry in your diary of visits of other persons to you at your house? A. No, Sir; it was very common.

Q. I wish to ask you whether at that visit you had a conversation with Miss Turner? A. Yes, Sir; she did with me.

Q. How? A. She did with me, rather.

Q. Yes; in that conversation did she state to you that Theodore Tilton had charged his wife with the commission of adultery with Henry Ward Beecher?

Mr. Evarts—One moment.

The Witness—[answering the question]—Yes, Sir.

AN EFFORT TO EXCLUDE THE TESTIMONY.

Mr. Fullerton—Just wait a moment.

Judge Neilson—Was there any statement of that kind by Miss Turner?

Mr. Fullerton—No, Sir; she stated that she did not do it.

Judge Neilson—Well, I mean in reference to that.

Mr. Evarts—Can you refer us to the page?

Mr. Fullerton—Yes, Sir; on page 510 you will find it.

Judge Neilson—That is of the pamphlet—have you got the pamphlet?

Mr. Fullerton—Yes; volume IX.

Mr. Evarts—Is this the cross-examination.

Mr. Fullerton—Yes, Sir. After Bessie Turner had sworn to the charges that Mr. Tilton had made against his wife after her return in the month of December, 1870, she was asked whether she ever communicated to any person the fact that such a charge had been made; she says that she communicated the fact that Mr. Tilton had ill-used his wife, and had attempted her virtue, but denied that she ever communicated to Mrs. Bradshaw or any other person the charge of adultery that Mr. Tilton made against his wife. This question was put to her [reading]: "Now, what"——

Mr. Evarts—One moment! That is the only point at present?

Mr. Fullerton—That is the only point at present; that is the only thing involved in my question.

Mr. Evarts—The case, if your Honor please, does not seem to arise upon this. The conversation between Miss Turner and this lady, Mrs. Bradshaw, is of course evidence, of itself not admissible, not bearing—not of the quality—hearsay evidence, whatever passed between them. And it has no tendency to prove the fact that is stated between them, if any such fact was stated. That we will start with. Now, Miss Turner was asked this question—she seems to have fixed a visit of the 14th of December, the only date I see here, Mr. Fullerton.

Mr. Fullerton—Yes, Sir; she don't positively fix it on that day.

Mr. Evarts—Well, that is the only date that is named. Where is this first question to Mrs. Bradshaw? Your question there starts off, "Now, what did you tell Mrs. Bradshaw, if anything, as to the charge which Mr. Tilton had made against Mrs. Tilton and Mr. Beecher?"

Mr. Shearman—Look on page 509.

Mr. Evarts—This is page 509; what part of it?

Mr. Shearman—The second column.

Mr. Evarts [reading]—"Now, Miss Turner, will you be kind enough to tell us what you told Mrs. Bradshaw." That is the second column of the 509th page.

Mr. Fullerton—Yes, Sir.

Mr. Evarts [reading]—"A. I will as near as I can recollect." The witness says: "I told Mrs.—— I will as near as I can recollect, Sir; I told Mrs. Bradshaw, I think, about his having knocked me down and saying that I tripped and fell, and how he had acted, and that he was very unkind to Mrs. Tilton; that Mrs. Tilton was crying all the time, and then I told him about myself"—it should be "her," I suppose. "That is as near as I can recollect."

Q. Tell us what you told her? A. I told her that he had offered to ruin me, and that is all I said about it, as I remember.

Q. You did not tell her the details then? A. Oh! no, Sir.

Q. Did you tell any one of these persons, on the 14th of December, if that be the date, the details of what occurred in your room between Mr. Tilton and yourself as you have related it here substantially? A. No, Sir; I think not.

Every date is fixed as the 14th of December concerning which Miss Turner was inquired about.

Mr. Fullerton—No, I beg your pardon.

Mr. Evarts—Well, it is the only date claimed—"Or prior to the 14th of December, if that were the date, had you told any person this story? A. I had told Mrs. Putnam at Marietta." Miss Turner starts with the 14th of December, as being the date concerning which she was speaking as to what she had told here, and as far as I can see, the only date. There is another date named, but left out. Then we come to the bottom of the 510th page, apparently renewing this inquiry. [Reading]:

Q. Now, what did you tell Mrs. Bradshaw, if anything, as to the charge which Mr. Tilton had made against Mrs. Tilton and Mr. Beecher? A. I never said a word to Mrs. Bradshaw or a living soul about the charge Mr. Tilton had made *as* to Mr. Beecher, I suppose.

Q. Was the subject alluded to in your conversation with Mrs. Bradshaw? A. No, Sir; I never said a word about it.

Q. Do you confine that answer now to the 14th of December when you visited her, or do you mean to be understood as saying that you never at any time told Mrs. Bradshaw anything whatever in regard to the charge which Mr. Tilton brought against Mr. Beecher and Mrs. Tilton in respect to criminality? A. I mean to say that I never told Mrs. Bradshaw or anybody else about this charge that Mr. Tilton had made about Mrs. Tilton's criminality with Mr. Beecher.

Mr. Fullerton—Now, you get rid of the 14th.

Mr. Evarts—Now, Miss Turner's declaration that Mr. Tilton had charged Mr. Beecher or his wife, or both, would not be evidence in itself, and cannot be made evidence (that is what they now propose to show, I suppose, from their introduction of the subject) cannot be made evidence by reason of anything that has passed in this examination of her. When a witness has spoken within the merits and has given evidence that is good in chief, then extra-judicial, or outside declarations not under oath to the contrary, if there is a proper foundation laid, may be brought in. But when the cross-examination introduces a subject that is not evidence, cannot be evidence *per se*, it is not made evidence by its being introduced by cross-examination so far as to be the subject of contradiction. You take the witness's answer concerning anything by which your cross-examination seeks to impeach them, and there is the end of it. If, on the merits of the issue, and in respect to evidence that is itself admissible, you ask the witness whether she has not made contrary statements out of court, and follow the requirements of the law, then you contradict on the issue; but when, passing from the issue, you strive to make the witness say whether or not she has not said so and so, with a view of affecting her credibility or otherwise, you take her answer, and you do not make it evidence in chief for the purpose of contradicting her by any such transaction; that is, you do not make it evidence in chief, so that you have a right to show statements out of court to the contrary of her testimony.

Mr. Fullerton—It certainly became important upon the examination of the witness Bessie Turner, to ascertain what she said to these four different persons whom she named, and with whom she communicated, as she supposed, on the 14th of December, although she does not fix that date with any degree of certainty in her own mind. Your Honor will recollect that she said she started out on the morning of the day—whatever day it was—for the purpose of communicating with these four individuals, and did communicate with them all on that day, with reference to the matter then in hand. She was asked particularly, upon the direct, whether in her communication with Mr. Beecher she stated to him that

Mr. Tilton had made the open charge in her presence against his wife of adultery with him (Mr. Beecher), and she said that she did not. She was asked, then, whether she communicated that fact to Mrs. Bradshaw and to the other witnesses—they were all named in the question addressed to the witness and designed to call out that answer—and she denied it; she stated that she never communicated to any one of them the fact that Mr. Tilton had made this charge against his wife. Now, it becomes important for us to show that she did communicate that fact—that she communicated it to the witness on the stand, and, by inference, if she told the same story to the other three witnesses, that she communicated the same fact to them, Mr. Beecher being among the number. Now, your Honor will perceive that this bears strongly upon the issue in this case. We do not pretend that we prove the truth of what Bessie Turner told by proving that she uttered these words; but we do prove that Bessie Turner denied the truth and told a folsehood when she denied having made these statements to these witnesses. It is for the purpose of impeaching that witness and impairing her credibility; that is the only object we have in view. Now, your Honor will perceive that while she does not limit the time to the 14th of November, she stated that she did visit these people all on the same day, and went on and narrated what she told them severally, but denied in each instance that she ever communicated the fact that the charge of adultery was included among the charges which Mr. Tilton made against his wife.

Mr. Evarts—If your Honor please——

Mr. Beach—On page 485 of the direct examination, Sir, this occurs: [Reading.]

"Mr. Porter—Had you before that—" I will precede that by a question, Sir.

"Q. When was it that you visited Mr. Beecher? A. December 14, 1870.

"Q. Had you before that communicated to him anything about these visits to your room? * *

"Mr. Porter—Had you before that communicated to Mr. Beecher the fact of Mr. Tilton visiting your bed—your bed-room? A. Had I before that time?

"Q. Before the 14th of December? A. No, Sir; that was why I visited Mr. Beecher on the 14th of December.

"Q. Did you on that occasion communicate to him anything about the charges which he had made against him? A. That he had made against her, you mean?

"Q. That Mr. Tilton had made against Mr. Beecher and his wife? A. Did I communicate that to Mr. Beecher?

"To Mr. Beecher? A. No, Sir; not to any one.

"Q. Had you, prior to your leaving for Marietta, communicated to any other than Mrs. Tilton the charges which Tilton made against her in respect to Mr. Beecher—to Steubenville, I should say? A. Before going?

"Q. Had you ever communicated to any one other than Mrs. Tilton before you went to Steubenville? A. Yes, Sir.

"Q. The charges which had been made by Mrs. Tilton against Mr. Beecher, and I corrected Mr. Porter, and Mr. Porter said: 'Made by Mr. Tilton against Mr. Beecher?' A. No, Sir; I never communicated that to any one."

That was upon their direct examination.

Judge Neilson—Then upon the cross they call attention to it?

Mr. Beach—Then upon the cross we called attention to Mrs. Bradshaw; she denied that, and we propose now to contradict her.

Judge Neilson—That ought to be admitted, I think.

Mr. Evarts—Well, I think not, if your Honor please. You cannot bring into a controversy the truth or falsehood of every statement that a witness has made. That is not the law. The witness has testified as to certain charges having been made by Mr. Tilton, in her presence, about his wife committing adultery with four persons—something of that kind. Now, they do not lay any foundation for saying that she made a statement to somebody else contradictory to that statement. All they seek is to find out from her whether she has stated anything about it. Now, corroborative evidence of what she had stated would not have been admissible on our part. They cannot ask her whether she has made corroborative statements, and then, on her not remembering or saying that she has not, prove the falsehood or error in her memory or her statement as to whether she had or had not made the corroborative statements. There is not the least foundation laid in any inquiries put to her in respect of an interview with Mrs. Bradshaw, to show that she had made contradictory statements to her. If they had desired to bring Mrs. Bradshaw to show that she had made contradictory statements to her present statements under oath on the merits, they should have asked her: "Did you not say to Mrs. Bradshaw, on the 14th," or, if you please, the 9th, "so and so?"

Mr. Beach—You are assuming a proposition that we do do not make. We propose no proof of that kind.

Mr. Evarts—I know you don't.

A POUND OF ARGUMENT TO GET A GRAIN OF TESTIMONY.

Mr. Beach—Very well; why are you arguing on it, then?

Mr. Evarts—Then I bring it right back to whether you are contradicting her memory as to whether she had made corroborative statements outside of the case. Now, corroborative statements are not evidence; and if you ask a witness whether he has made corroborative statements, and he says "No," you must take his answer, because that is collateral; you cannot try the cause between the witnesses

Judge Neilson—No——

Mr. Evarts (continuing)—Mrs. Bradshaw and Bessie Turner, as to which is mistaken as to the fact of the corroborative statements being made or not being made. You would have a right to call other witnesses, if you had them, as to what Mrs. Bradshaw said, and if you

had two or three witnesses present, why you would have a conflict of trying that case.

Judge Neilson—But you interrogated Bessie Turner on that subject—opened the door.

Mr. Evarts—We did as to showing whether what she then told Mr. Beecher was the first statement that she made concerning it. That is all.

Judge Neilson—She proceeded to say that she had told no one.

Mr. Evarts—Whether she told Mr. Beecher before was the principal point of inquiry, so far as Mr. Beecher was concerned. Now, whether she told these other people was immaterial in any point.

Judge Neilson—I believe we will take the answer.

Mr. Evarts—Your Honor will be so good as to note our objection and exception.

Mr. Fullerton—Can you turn to the question, Mr. Reporter?

The Tribune stenographer read the question as follows: "In that conversation did she state to you that Theodore Tilton had charged his wife with the commission of adultery with Henry Ward Beecher?"

The Witness—Yes, Sir; she did.

Mr. Fullerton—Speak a little louder? A. Yes, Sir.

Q. How long did that conversation last, Mrs. Bradshaw? A. At least two hours.

Q. Now, what did she say upon that subject?

Mr. Evarts—That I object to,

Judge Neilson—I think you have sufficient conflict upon that one point.

Mr. Beach—Well, Sir, we only want to get the language Miss Turner used.

Judge Neilson—The subject is embraced in the question.

Mr. Beach—I know it is, Sir, but not the language; we want to get the facts.

Mr. Evarts—That is all that Miss Turner's attention was called to.

Judge Neilson—Yes; I think that is as far as you can go.

Mr. Fullerton—Well, whether she told that story——

Mr. Evarts—No—whether she told about the charge having been made.

Judge Neilson—Mr. Stenographer, can you refer to that last question and answer?

Mr. Beach [reading]—"Had you, prior to leaving Marietta, communicated to any other person but Mrs. Putnam the charges that Mr. Tilton made against Mr. Beecher?" She says she did.

Judge Neilson—Well, now, a question embodying that substance is put, and Mrs. Bradshaw says she did; and there is your contradiction, I think.

Mr. Beach—Certainly, Sir; but we have a right to have the language which constitutes the contradiction.

Mr. Evarts—This is not a new question in this case. Your Honor has limited them over and over again.

Judge Neilson—I think we won't go any further than this; I think this answer covers it.

Mr. Fullerton [to the witness]—Did you make any request of Bessie Turner during that conversation, or after she communicated this fact to you?

Mr. Evarts—That is objected to.

Judge Neilson—It may be introductory to something; we may as well take it.

The Witness—I told her not to repeat the charges.

Mr. Fullerton—No; did you make any request?

Mr. Evarts—That is objected to; it is no matter what occurred in that conversation, as I view it; and your Honor has excluded the conversation.

Mr. Fullerton—Well, we have n't got to the point where the objection is applicable, as yet.

Judge Neilson—This is a mere preliminary question—"Did you make any request—" to be answered "Yes" or "No."

Mr. Fullerton—Did you make any request to her? A. Yes, Sir.

Mr. Fullerton—Now you need not answer the question, although I put it, until we determine whether it is proper or not: What request did you make of her at that ime in regard to repeating it?

Mr. Evarts—I object.

Judge Neilson—I do not recall anything in Bessie Turner's evidence that would justify that.

Mr. Fullerton—Your Honor will perceive that there is something upon the subject here.

Judge Neilson—Well.

Mr. Fullerton—[Reading]:

When you told Mrs. Bradshaw, did she say anything, about keeping silent in regard to that story, to you? A. I don't remember what Mrs. Bradshaw said, Sir.

Q. Didn't you state in substance anything?

Then the witness went on to answer.

Except—no; I don't think she said anything; I think that every one I told it to remained very silent, except Mr. Richards, and what he said to me was, "Whom God hath joined together let no man or woman put asunder."

Now, I want to contradict her in that respect; I want to show that Mrs. Bradshaw did make a request to her, and show what that request was.

Mr. Evarts—That brings us right to the proposal.

Judge Neilson—I think you have gone as far as you can go.

Mr. Beach—It brings up the same question that your Honor has decided, in admitting the other portion of what we have proved.

Judge Neilson—Well, this other is specific, and is a specific contradiction; I don't think that this is.

Mr. Beach—Yes, Sir; but we want the specific contradiction upon that point also.

Mr. Evarts—You should have asked Miss Turner.

Mr. Beach—We did ask Miss Turner, specifically, whether Mrs. Bradshaw did not request her to keep si

ence in regard to this matter. Now, Sir, it is an attack upon the credibility and the memory of Miss Turner.

Judge Neilson—I understand that.

Mr. Evarts—Well, that is the very point; the law does not allow it to be made, except within the issue.

Mr. Beach—It does not?

Mr. Evarts—We will be trying all sorts of questions with all the witnesses if, on collateral inquiries, you are going to bring in testimony.

Judge Neilson—On collateral questions the answer is to be taken; and that stands, of course.

Mr. Beach—Yes, Sir; but, is this a collateral question?

Judge Neilson—I have not said so; if I thought it was I would have excluded the last question.

Mr. Beach—Well, I suppose so. If it is not a collateral question, we have a right to contradict this witness.

Judge Neilson—What is the question that was put to Bessie Turner on this subject?

Mr. Fullerton—[Reading]:

When you told Mrs. Bradshaw, did she say anything about keeping silent in regard to this story to you? A. I do not remember what Mrs. Bradshaw said.

Judge Neilson—Well, that is a mere impression of the witness; it would not amount to a contradiction.

Mr. Beach—Oh, yes, Sir; if the witness says she don't remember, you can prove it.

Judge Neilson—Well, that goes to the memory.

Mr. Beach—Yes, Sir; but she says, in addition to that, that she does not think Mrs. Bradshaw said anything.

Mr. Evarts—Then, if there was anything special that you wanted to prove that she said, you should have asked her, "Didn't Mrs. Bradshaw say so and so?"

Mr. Beach—We have read it three times to the counsel, and if he cannot apprehend it on three readings, we will make no further effort to reach his understanding.

Mr. Evarts—All that you read is this [reading]: "When you told Mrs. Bradshaw, did she say anything about keeping silent in regard to this story to you?"

Mr. Beach—Very well.

Mr. Evarts—And she says: "I do not remember what Mrs. Bradshaw said"—that is the whole answer to that question. "Q. Did you state in substance"—— and then they leave that question incomplete, because the witness apparently resumes her answer.

Except—no; I don't think she said anything; I don't think she said anything.

Now, if you wanted to contradict her by Mrs. Bradshaw, by proving that Mrs. Bradshaw said certain words—to wit, a request—then you should have put the question.

Mr. Beach—Well, didn't we put it to her when we asked if Mrs. Bradshaw said anything to her about keeping silent in regard to this?

Mr. Evarts—You didn't ask her.

Mr. Beach—Yes, Sir: "anything."

Judge Neilson—The suggestion is that if you had put to Bessie Turner the very words which you can, perhaps, prove by Mrs. Bradshaw, that would have helped her recollection.

Mr. Beach—No, Sir; "anything respecting her keeping silence"—"that draws her attention to the specific subject"—"or anything in substance"—that we can show in our question. We put now the question to Mrs. Bradshaw:

"In that conversation did you say anything to Miss Turner in regard to keeping silence about this story?"

Mr. Fullerton—I put the question in another form, Sir [Reading]: "Did you not tell Mrs. Bradshaw that Theodore Tilton had charged his wife with adultery; and did not Mrs. Bradshaw then say to you, 'You must not tell anybody of it'? A. No, Sir; I don't remember any such thing about it."

Mr. Evarts—Where is that.

Mr. Fullerton—That is on page 512, about midway.

Mr. Evarts—Well, that is what we were on before.

Mr. Fullerton—No; that is what we are on now.

Judge Neilson—Well, in view of that last (that is a qualification somewhat of the position), you may put the question in the terms of that last answer that you have read there.

Mr. Evarts—Your Honor will be good enough to note our objection and exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton [to the witness]—When Miss Turner told you that Theodore Tilton had charged his wife with adultery, did you say to her, in substance, "You must not tell anybody of it?" A. Yes, Sir.

Q. Your answer was, "Yes, Sir?" A. Yes, Sir.

Mr. Fullerton—That is all.

Mr. Evarts—That is all, madam.

Judge Neilson—That is all, Mrs. Bradshaw.

TESTIMONY OF JOHN WOOD.

John Wood was next called on behalf of plaintiff, and, being duly sworn, testified as follows:

Mr. Fullerton—What is your occupation? A. Printer.

Q. How long have you been engaged in that business? A. In business for myself, do you mean?

Q. Yes, Sir. A. Since August, 1872.

Q. And before that, how were you in business? A. I had charge of an incorporation for about four years.

Q. Printing? A. Printing; yes, Sir.

Q. Well, what was the character of your business, printing newspapers, or pamphlets, or books, or what? A. All kinds of printing—newspapers, books, and job work.

Q. Everything? A. Yes, Sir.

Q. Did you know Victoria Woodhull? A. I did.

Q. And when did you become acquainted with her? A. In May, 1870.

Q. And did you know Col. Blood, her husband? A. Yes, Sir.

Q. And when did you become acquainted with him? A. At the same time.

Q. And Mr. Stephen Pearl Andrews, do you know him? A. Yes, Sir.

Q. And when did you form an acquaintance with that gentleman? A. It was somewheres in 1870; in the Fall of 1870, I think.

Q. Now state whether or not you printed the newspaper called *The Woodhull & Claflin's Weekly*? A. Yes, Sir.

Q. When did you commence its publication? A. I commenced the publication with the third number, I think in May, 1870, when I had charge of that corporation known as the Journeymen Printer's Coöperative Association.

A. And how long did you continue to print or publish that paper? A. I think till about February, 1872.

Q. And then what became of it? A. It was then taken to the office of *The American Spiritualist.*

Q. And how long was it published there? A. I think it was discontinued.

Q. When was that? A. I think it was in May or June of 1872; I am not positive of the time.

Q. Now, was it afterward resumed, and if so, when? A. In November.

Q. Of what year? A. 1872.

Q. And who printed it in November, 1872? A. I set the type for it.

Q. Where? A. At my office.

Q. Well, was it printed there? A. The type was set there, only.

Q. And taken to a press somewhere else? A. Press-room, and printed.

Q. Now, what time in 1872 was the type set? A. In the last week of October.

Q. How are you enabled to state that it was the last week of October. A. Because that is the first time that I had any men employed in my place—only our two selves previous to that.

Q. How? A. That is the first time that I had any men employed; our two selves used to do all the work previous to that last week in October.

Q. You did your own work, you say? A. Yes, Sir.

Q. Among yourselves? A. Yes, Sir, our two selves.

Q. Whom do you mean? A. My partner and myself.

Q. And that was the first week that you employed any journeymen? A. Yes, Sir.

Q. The first week in October, 1872? A. Last week.

Q. The last week of October, I should say, 1872. And you are enabled to state positively, are you, that that paper was set up in type. That number of *Woodhull & Claflin's Weekly* in the last week of October, 1872? A. Yes, Sir.

Q. When did the form go out from your place? A. On Saturday evening, the 26th of October.

Q. And by whom was it taken? A. Taken away by the carman from the press-room.

Q. Did you see it after that? A. I saw the copy of the paper after that.

Q. How long after? A. On Monday.

Q. And did it contain the article which had been set up in your place? A. Yes, Sir.

Q. Had any part of that article been set up before that time, to your knowledge? A. Not to my knowledge.

Q. If it had been, you had no connection with it? A. No, Sir.

Q. As a whole or a part? A. No, Sir.

Q. Do you know whether any number of that paper was published after May, 1872——

Mr. Beach—May or June.

Mr. Fullerton—May or June, 1872—up to the first week of November, 1874? A. I don't think there was any; the number that I done was numbered after the one that was stopped in May or July, 1872.

Mr. Beach—Followed regularly? A. Yes, Sir; followed in regular order.

Mr. Fullerton—It was the next succeeding number? A. The succeeding number; yes, Sir.

Mr. Fullerton—That is all.

CROSS-EXAMINATION OF MR. WOOD.

Mr. Shearman—I understand you that this article when set up, or the paper when set up—the type of the paper——

Mr. Evarts—The form.

Mr. Shearman—The form was taken away Oct. 26, 1872? A. Yes, Sir.

Q. About what time in the day was it taken? A. It was in the evening.

Q. When was it set up? A. It was set up during that week, from Monday to Saturday evening.

Q. State whether you set up the whole of that paper in one day, if you please? [Handing witness the number of *Woodhull & Claflin's Weekly.*] A. No; I did not set it up only during the week from Monday to Saturday.

Q. Did you begin on Monday? A. Beginning on Monday, we commenced, and set all except this large type—this large speech. That was set up about two months before.

Q. The speech, in large type was set up about two months before? A. Yes, Sir.

Q. In your office? A. Yes, Sir, with a view for a pamphlet.

Q, And which part of this paper did you set up last? A. I set up the Beecher matter last, this article.

Mr. Fullerton—That is, the Beecher article? A. The Beecher article.

Mr. Shearman—Do you recollect what time in the day you set that up, or what day? A. I think we got the first copy for that article on Tuesday.

Q. That would be Oct. 22? A. About that date; yes, Sir.

Q. This speech that you set up two months before was the speech delivered in Boston, was it not, by Mrs. Woodhull? A. I am not positive about it.

Q. Look at it? [Handing the witness the paper.] A. Yes, Sir.

Q. A speech delivered before the Association of Spiritualists in Boston on September 11, 1872? A. Yes, Sir.

Mr. Shearman—That is all.

Mr. Fullerton—Mr. Wood, I see that this number of this paper is Volume 5, No. 7. Do I understand you to say that the next preceding number, Volume 5, being No. 6, was printed in May or June of that year? A. May or June; yes, Sir.

Q. This succeeded in number? A. Yes, Sir.

Mr. Shearman—How do you know that, Mr. Wood?—did you see it? did you print the previous number? A. No, but when giving instructions to make up that paper they gave me a marked paper, the previous number, with the dates changed and the numbers changed, as they do every week.

Q. You did not print any of the *Woodhull & Claflin Weeklies*, if I understand you correctly, between February, 1872, and the issue of this number? A. No, Sir.

Q. What were the periods of publication of this paper, Mr. Wood? A. Every week; weekly.

Q. Prior to what time? A. It was published weekly all the time, from the time that I done it in May, 1871, until February—May, 1870, until February, 1872.

Q. Well, after that you did not print it any more until this number; now, how often was it printed after this number commenced? A. I think it was suspended after that number, and the next number was got out in December or January.

Q. 1873? A. 1873.

Q. December, 1872, or January, 1873? A. Yes, Sir; and continued weekly after that.

Q. Have you continued to print it since? A. Yes, Sir.

Q. And have printed it down to the present time? A. Yes, Sir.

Q. Was this set up in common type, or was it stereotyped? A. It was set up in common type, and then stereotyped afterward, after there was an edition printed from the type.

Q. Well, this particular edition; can you tell the edition? A. I could not tell, Sir.

Q. Is there any difference in the type? A. No, Sir, there is no difference.

Q. Can you print from type that is used for stereotyping? A. Yes, Sir.

Mr. Shearman—That is all.

Judge Neilson—That is all.

HENRY C. BOWEN TESTIFIES FOR THE PLAINTIFF.

Mr. Fullerton—Henry C. Bowen.

Henry C. Bowen, sworn on behalf of the plaintiff, testified as follows:

Mr. Fullerton—Mr. Bowen, I believe you have been for many years a resident of Brooklyn? A. I have.

Q. How many, Sir? A. About 30.

Q. And you are now the publisher and proprietor of *The Independent*, I believe? A. I am.

Q. And for many years in New-York a merchant? A. Yes, Sir.

Q. When did you become acquainted with Theodore Tilton? A. About 18 or 20 years ago, I should think.

Q. I suppose you have known Mr. Beecher a longer period than that, have you not? A. About 28 or 30 years.

THE RESIGNATION LETTER DELIVERED AT A PREARRANGED MEETING.

Q. I want to call your attention, Mr. Bowen, to the month of December, 1870, and ask you if you recollect of being a bearer of a note or letter from Mr. Tilton to Mr. Beecher in that month? A. I recollect bearing such a letter.

Q. Do you recollect the date upon which you bore it to Mr. Beecher and delivered it? A. I think it was on Monday following Christmas day.

Q. Christmas was on Sunday? A. On Sunday, and it was on Monday.

Q. And it was the following day? A. Yes, Sir.

Q. Where did you deliver that note? A. At the house of James Freeland.

Q. And pray who was Mr. James Freeland? A. A resident of Brooklyn, residing in Columbia-st.

Q. Did you meet Mr. Beecher there? A. I did.

Q. Was it by accident that you met him there? A. By appointment.

Q. Appointment made with whom? A. I wrote a note to Mr. Freeland asking him to make the appointment.

Q. I want to call your attention to Mr. Beecher's testimony upon that subject, Mr. Bowen. He states that you called in at Mr. Beecher's house casually; that he did not expect you, and you delivered that note to him; does that correspond with your recollection? A. It does not.

Q. With what degree of certainty are you enabled to say that you did deliver that note at Mrs. Freeland's house, and in pursuance of an appointment through Mr. Freeland? A. I am positive that I delivered it there.

Q. At what time in the day, or evening, did you deliver it? A. About 4 or 5 o'clock in the afternoon; I am not sure about that.

Q. Was the note sealed, or unsealed? A. I am not positive in regard to that.

Q. Mr. Beecher also states that you informed him that you were ignorant of the contents of the note.

MR. BOWEN'S TESTIMONY RECEIVED AFTER STERN OPPOSITION.

Mr. Evarts—Well, wait a moment.

Mr. Beach—What for?

Mr. Fullerton—Do you recollect whether that was so or not?

Mr. Evarts—Mr. Bowen, if a witness at all, is a witness to the interview. It is not a question of contradiction of Mr. Beecher's statements.

Mr. Beach—Yes, it is.

Mr. Evarts—Mr. Beecher has been a witness on one side; another witness comes on the other side. It is not a question of contradiction of Mr. Beecher's statements as produced on the direct examination—or the cross-examination of Mr. Beecher, to be contradicted by Mr. Bowen.

Mr. Beach—We offer it as a contradiction of Mr. Beecher's statements on his direct examination.

Mr. Evarts—You offer to prove another witness's view of an occurrence. Of course you must examine him in the usual way, unless you point me to some inquiries that you put to Mr. Beecher.

Judge Neilson—Suppose *you* put the inquiry; cannot you contradict any statement that a witness makes?

Mr. Evarts—You cannot in that form; you can call another witness to the transaction. A witness swears that a mast is so many feet high; another witness can swear that it is *so* many feet high.

Judge Neilson—Yes.

Mr. Fullerton—Well, that is the same thing.

Mr. Evarts—No, the emphasis is different. If a witness speaks to a conversation of a third person, another witness can speak to that conversation, and the two witnesses give different stories. It is not a question of contradiction of witnesses; it is the contradiction of producing witnesses that give different views, if your Honor please; but each witness must be examined according to the rules of evidence.

Mr. Beach—I most heartily coincide in that conclusion, Sir.

Mr. Evarts—You cannot present leading questions to a witness of your own. In order to prove an interview you must prove it.

Judge Neilson—Go on, Sir.

Mr. Fullerton—Mr. Stenographer, will you repeat the question?

The Tribune stenographer read the question as follows:

"Mr. Beecher also states that you informed him that you were ignorant of the contents of the note; do you recollect whether that was so or not?"

The Witness—That was not so.

Mr. Evarts—That I object to, if your Honor please. It is a leading question.

Mr. Beach—it is not a leading question.

Judge Neilson—Oh, I think the question is rather leading—to be avoided hereafter.

Mr. Evarts—It is put exactly as if it was in the form of a contradiction, to which Mr. Beecher's attention has been called.

Mr. Beach—That is just the form that we propose to put it in.

Mr. Evarts—Now will you show me——

Judge Neilson—We will let that stand, as merely contradicting what a previous witness has said, which it is competent to do. I think you cannot do it by a leading interrogatory; you must ask the general question.

Mr. Beach—We put a question to this witness stating that Mr. Beecher, a witness and a party, made a certain statement in regard to an interview with this witness; and we ask him what is his recollection upon that subject. Now, is that leading, Sir? I submit to your Honor, not. It is a perfectly admissible inquiry.

Judge Neilson—Well, it will stand as it is, only I think that the better way is to examine the witness in the ordinary form; if it amounts to correction or contradiction, well and good.

Mr. Evarts—It is not a question of extra-judicial statements of Mr. Beecher that are now being called for.

Judge Neilson—It is perfectly competent to contradict any statements made by the witness, and quite early in our discussions Mr. Abbott handed up a case to Mr. Evarts, which was read, that any statement made by a witness could be contradicted afterward.

Mr. Evarts—Anything that is evidence in chief, of course.

Judge Neilson—Whether material or not.

Mr. Evarts—It is material in the sense of giving collateral evidence. I have no objection to this, excepting that the inquiries are of producing an independent witness to speak of the same occurrence.

Judge Neilson—Yes.

Mr. Evarts—And he must be examined the same as an independent witness, according to the rules of evidence.

Judge Neilson—I think so. They have no occasion to lead him. Go on, Mr. Fullerton.

Mr. Fullerton—I supposed the rule was, Sir, that I must repeat the language of the witness to be impeached and ask the witness upon the stand whether that language was used.

Judge Neilson—Well, you may be allowed to do so where it is found to be necessary.

Mr. Fullerton—In this case I will put the question in that way.

Judge Neilson—Well, go on.

Mr. Fullerton—In that conversation did Mr. Beecher say to you in substance that it was his judgment that a man that was tainted as Mr. Tilton was could not properly be retained on such a paper without doing it damage, referring to *The Independent*, and as it respected *The Brooklyn Union*, that he thought Mr. Tilton an impracti-

cal man, that he was not apt to agree with parties or with movements, except so far as he led them, and that "I thought that as the editor of the Republican organ in Brooklyn he would be found to be a man that would get the paper into trouble?"

Mr. Evarts—Don't answer, Mr. Bowen.

Judge Neilson—I think you should first examine in the usual form, and if you don't get the attention of the witness to any such statement, or the correction of any such statement, then you may put the simple interrogatory.

Mr. Fullerton—Well, Sir, that will bring a stronger objection than this one has.

Judge Neilson—That may be.

Mr. Fullerton—Did Mr. Beecher, in that interview on Monday, following Christmas in December, 1870, advise you against the retention of Mr. Tilton as editor of *The Independent*?

Mr. Evarts—That I object to, if your Honor please.

Judge Neilson—It is too leading. Did he give you any advice upon the subject of retaining Mr. Tilton; if so, what?

Mr. Evarts—The point, if your Honor please, is this: that this is not an examination of the witness, except in chief. He is called to speak to an interview of which one party to it has given a view. It is the ordinary case of a witness on one side speaking to an occurrence; the witness called on the other side to speak to the same occurrence is to speak to it as an independent witness, and under the same rules of examination that the first witness was examined. The fact that a witness has first been called on one side to speak concerning an occurrence, does not alter the rules of examining another witness who is called by the opposite party to speak concerning the same occurrence, it being evidence in chief. All this apparatus of questions, and confinement of contradiction to questions, is based upon not evidence in chief, or to the merits, but collateral impeachment by out of court to the contrary. Now, that is not this case. There was an interview between Mr. Beecher and Mr. Bowen. Mr. Beecher has given his view of it; Mr. Bowen is called here either to confirm or to give a different view. Whatever it may be, he, in the hands of his counsel, is a primary witness, to be examined according to the rules of evidence.

Judge Neilson—Very well. That only goes to the form of the question to be put, it being conceded that it was proper to call the witness to correct or contradict the statements.

Mr. Beach—The idea, if your Honor please, that the contradiction of a witness is confined to statements which he has made out of court, repugnant to the evidence he gives in court, and to which his attention is primarily and preliminarily called, is a somewhat novel one. I suppose we can contradict a witness by proving that a statement to which he swears is inaccurate.

Judge Neilson—Undoubtedly.

Mr. Beach—Well, Sir, Mr. Beecher upon the stand swears that, upon a certain occasion, he communicated a certain thing to Mr. Bowen, the witness on the stand. We can contradict that, I suppose, Sir?

Judge Neilson—Yes, Sir.

Mr. Evarts—How? By proving what did take place.

Mr. Beach—By proving, Sir, that no such thing took place.

Mr. Evarts—No, you cannot.

Mr. Beach—Yes, we can do it, and will do it.

Judge Neilson—There is no trouble about it, gentlemen. We have gone along upon the theory from the first, and it is so everywhere, that when a witness on one side makes certain statements, the other side may call witnesses to correct, explain, or contradict. The only question is whether they shall put at once to Mr. Bowen, leading questions.

Mr. Beach—Well, Sir, how can we contradict?—and see what a dilemma you would put us in.

Judge Neilson—Do it this way: Ask Mr. Bowen whether anything was said on a given subject.

Mr. Beach—But Mr. Beecher swears to a specific declaration. Suppose we don't want all of the conversation?

Judge Neilson—It may not be worth taking altogether.

Mr. Beach—Very well, Sir, that is what we suppose, but your Honor's rule, I submit, of examination, would force upon us an inquiry in regard to a portion of the conversation which we do not desire, and which is not necessary for the contradiction of Mr. Beecher. Still, I understand from my colleague, Sir, that we are quite willing to take that course.

Judge Neilson—I think you are at liberty to interrogate him whether anything was said upon a given subject or topic, or branch of a subject.

Mr. Beach—Well, Sir.

Judge Neilson—Without indicating precisely what you want.

Mr. Fullerton—Your Honor, we all take too narrow view of this question, and I will state my reasons for making that observation. It will be remembered that Mr. Beecher stated here in court that the cause of his overwhelming grief on the 1st of January following the delivery of this letter was in consequence of some advice that he had given to Mr. Bowen on the 27th of the December previous as to the dismissal of Mr. Tilton from *The Independent*.

Judge Neilson—I understand that.

Mr. Fullerton—And we propose to take away the foundation of that grief, to show that it was caused by another reason, and not by the one stated by the witness then upon the stand.

Judge Neilson—You can do that.

Mr. Fullerton—It is important for us to show that no such advice was given at that time, and consequently it could not be the cause of the great commotion.

Judge Neilson—You can do that.

Mr. Evarts—You can show it, but not by leading questions.

Mr. Fullerton—I have tried both kinds of questions, and have been met with the same kind of objection.

Mr. Evarts—Both leading.

Mr. Fullerton—Both leading, and not leading; I altered them to please you in the first place, and then to please the Court.

Judge Neilson—You are at liberty to ask whether anything was said on a given subject.

Mr. Evarts—Then what was said?

Judge Neilson—Yes, go on.

Mr. Fullerton—What advice, if any, did Mr. Henry Ward Beecher give you on the Monday following Christmas, December, 1870, when you delivered this letter, with reference to the discharge of Theodore Tilton from his position on *The Independent*?

Mr. Evarts—That I object to, if your Honor please.

Mr. Fullerton—Of course.

Mr. Evarts—That assumes he gave him any advice. This witness must be examined as all other witnesses are examined.

Judge Neilson—I understood that. I assented to your suggestion on that point.

Mr. Evarts—Your Honor pointed it out.

Judge Neilson—It is rather leading, Mr. Fullerton.

Mr. Evarts—They are to ask, was anything said on that subject; then what was said.

Judge Neilson—Yes.

Mr. Fullerton—I asked the question, what was said on that subject, if anything.

Mr. Evarts—That was not your question.

Mr. Fullerton—Yes it was. Just read it Mr. Reporter, for the instruction of Mr. Evarts. I remember it.

The Tribune stenographer read the question as follows: "What advice, if any, did Mr. Henry Ward Beecher give on the Monday following Christmas, December, 1870, when you delivered this letter, with reference to the discharge of Theodore Tilton from his position on *The Independent*?"

Judge Neilson—This question is whether he gave you any advice on that subject.

Mr. Evarts—That we except to.

Judge Neilson—Well.

Mr. Evarts—The question is was anything said on a certain subject, without characterizing it as advice.

Judge Neilson—Well.

Mr. Evarts—And if he says nothing, there is the end; if he says something, then what was said?

NO ADVICE BY MR. BEECHER THAT TILTON BE DISCHARGED.

Mr. Fullerton—Will you answer, Mr. Bowen?

The Witness (to the stenographer)—Read the question.

The Tribune stenographer read the question as follows:

"What advice, if any, did Mr. Henry Ward Beecher give you on the Monday following Christmas, December, 1870, when you delivered this letter with reference to the discharge of Theodore Tilton from his position on *The Independent*?"

The Witness—Shall I answer that, your Honor?

Judge Neilson—The objection is to the word "advice." It depends somewhat upon the opinion and construction of the witness.

Mr. Fullerton—Well, Sir, shall I omit that word, then?

Judge Neilson—You had better.

Mr. Fullerton—What, if anything, was said by Mr. Beecher in that conversation with reference to the discharge of Mr. Tilton from his position at that time on *The Independent*? A. Shall I answer that?

Judge Neilson—Yes.

The Witness—None whatever.

Mr. Fullerton—What, if anything, was said upon the subject of his retention as editor of *The Brooklyn Union* at that time? A. I don't recollect that anything important was said in regard to his remaining on *The Brooklyn Union*. It might have been alluded to, but I have no remembrance of anything definite stated about it.

Q. Was anything said in reference to his fitness for the position of contributor or editor of either one of those papers? A. Nothing whatever, according to my recollection.

Q. Did you state to Mr. Beecher upon that occasion any reason why you requested the interview at Mr. Freeland's house? A. That it might be private.

Q. Was any one present during that interview? A. No one.

Q. I will ask you this general question now, Mr. Bowen, whether anything was said by Mr. Beecher at that interview to you which influenced you in any degree whatever in the action which you subsequently took with reference to Mr. Tilton?

Mr. Evarts—That I object to.

Judge Neilson—We cannot take that.

Mr. Porter—They are asking for the effect upon his action of words not stated.

Mr. Beach—Will your Honor please consider a moment whether we cannot prove that Mr. Beecher said or did nothing which operated to produce the discharge of Mr. Tilton from his business association with Mr. Bowen?

Judge Neilson—You can prove he said and did nothing calculated to lead to that result, but going beyond that calls in the operation of this witness's mind.

Mr. Beach—Very well, Sir. Mr. Beecher has over and over again, with repeated emphasis, said that he was afflicted and sorrow-stricken from the fact that he had influenced in some degree Mr. Bowen to discharge Tilton from his employment. *He* uses that expression, Sir: he himself swears that he exerted that influence upon Bowen, and may we not inquire from Mr.

Bowen, the party who was influenced, whether Mr. Beecher at any time said or did anything which influenced him in his treatment of Mr. Tilton or in his discharge of Tilton?

Judge Neilson—If it was *calculated* to influence him, you can ask him.

Mr. Evarts—That, in our view, is perhaps even more objectionable.

Mr. Beach—I should suppose it would be.

Judge Neilson—The only objection to this question is that it calls for the operation of this witness's mind.

Mr. Beach—Very well, Sir. Mr. Beecher has testified in regard to the operation upon his mind, by his own action. He says he did operate upon Mr. Bowen, and did influence Mr. Bowen.

Mr. Evarts—Where?

Mr. Beach—Over and over again, some twenty times in the course of his testimony.

Mr. Evarts [in a loud voice]—Where?

Mr. Beach [excitedly]—Look for it and find it.

Mr. Evarts—Ah! [Laughter.] That is not the way to dispose of it.

Mr. Beach—Yes, it is the way to dispose of it. I am talking to the intellect and the recollection of this Judge, who knows that that thing was said over and over again, and if your Honor is willing to sit here I am willing to look up the evidence.

Mr. Fullerton—Your Honor will recollect the letter that he said he wrote to Mr. Bowen the next day, where he spoke of the influence.

Mr. Evarts—Let us see that. Well, we have produced evidence, and produced it in a proper shape. Now, if you want to show whether or not he did say anything to influence, show what they said.

Mr. Porter—And let the jury judge.

Mr. Evarts—The jury will judge whether it influenced him.

Mr. Beach—Well, Mr. Beecher judged from the effect——

Mr. Evarts—He had a right to, and he thought it did influence him.

Mr. Beach—Well, then we have a right to know whether it did influence him.

Mr. Evarts—What difference does it make whether Mr. Beecher was mistaken or not in what he said having influenced him?

Mr. Beach—It makes a good deal of difference.

Mr. Evarts—Not the least.

Mr. Beach—Well, we will see about that by and by.

Mr. Evarts—Mr. Beecher told him something, and he discharged him the next day.

Mr. Morris—He says not.

Mr. Evarts—He told him something.

Judge Neilson—Of course you are at liberty to examine this witness as to everything that took place between him and Mr. Beecher, for the purpose of correction of what we have before us.

Mr. Beach—Well, if Mr. Beecher testified——

Judge Neilson—To the influencing. That was his opinion or impression; he might be mistaken in that.

Mr. Beach—That was a fact. He testified to it as a fact, Sir.

Judge Neilson—It was his conclusion.

Mr. Beach—Most certainly, it is his conclusion from his own actions, but he presented it in his evidence as a fact, which he gave as the motive for certain manifestations on his part.

Judge Neilson—Well, you can inquire as to the fact.

Mr. Beach—Well, the fact is the influence. Mr. Beecher says he influenced Mr. Bowen.

Mr. Porter—Find that.

Mr. Evarts—Where does he say that.

Mr. Beach—Well, the gentleman probably will gain some information by repeating his question. I referred him to the evidence when he asked me before, and I repeat the reference.

Mr. Evarts—That is not a proper reference.

Mr. Beach—Yes, Sir, it is a proper reference.

Mr. Evarts—Look at the letter; the letter speaks for itself.

Mr. Beach—I refer you to that.

Mr. Evarts—Well, look at the letter.

Mr. Beach—If you want it get it.

Mr. Evarts—I don't want to be told, Sir, over and over again that when Mr. Beecher has stated what he said to the witness to influence him, and confined himself to that, they can ask this witness whether it did influence him with the view of contradicting Mr. Beecher.

Mr. Beach—You have not been told that once yet.

Mr. Evarts—Heaven only knows what influenced him. He left the interview, and he turned Mr. Tilton out the next day.

Mr. Fullerton—No, he did not.

Mr. Evarts—Well, soon after.

MR. BOWEN TELLS HOW HE PRESENTED THE SUMMONS TO MR. BEECHER.

Judge Neilson—Leaving out, at present, the question whether it influenced Mr. Bowen, give us the facts—what occurred between him and Mr. Beecher.

Mr. Fullerton—Now, give us the facts that occurred between you and Mr. Beecher, at Mr. Freeland's house that night.

Judge Neilson—Go on, Mr. Bowen.

The Witness—Do you want all the conversation that was had?

Q. Yes?

Judge Neilson—Yes; go on.

A. I presented the letter to Mr. Beecher and he read it and put it into his pocket—he had his overcoat on. I then asked him what he had to say, and he made a reply

something like this, "He is crazy," or "I think the man is crazy." I sat a few moments, and he asked me if I was friendly to him; I said, "We have settled our difficulties, Mr. Beecher; I have no unfriendly feeling toward you." He said he was glad to hear that. He asked me if I—what action I had taken in regard to the matter of discharging Mr. Tilton as an editor. I told him I had canceled the agreement—had heretofore done it—that it was an accomplished fact. He wanted to know if I knew anything about the condition of his family. I told him I did not—anything special. He said he could enlighten me in regard to some facts which he thought it would be important for me to know. There was a conversation of that character for half an hour, I should think, amounting to about that, closing by his asking me to call at his house the next morning and have a conference with Mrs. Beecher, who had some letters which he would like to have me see. That, in substance, was the interview.

Q. If I understand you correctly, Mr. Bowen, he did not communicate to you that night the facts which he thought you might want to know or which might interest you? A. He did not, except in general, he alluded——

Q. Well, in the terms that you have employed in answering the question, I suppose? A. Yes, Sir.

Q. Did Mr. Beecher ask you if you knew the contents of the letter which you then delivered?

Mr. Evarts—We object to that, if your Honor please. They have not exhausted this witness's statement of this conversation by any means.

Mr. Fullerton—Yes, I have.

Mr. Evarts—I don't think you have. Mr. Bowen says that Mr. Beecher told him, in the course of a conversation that took half an hour, about Mr. Tilton's family.

Mr. Fullerton—You have forgotten that "period of silence" after he read that letter and put it in his pocket.

Mr. Evarts—No, I have not forgotten.

Mr. Fullerton—Now, will you be kind enough to state all that occurred at that interview on the 29th? If there is anything more that you have not stated, please state it. A. He said that he had received letters from Mrs. Tilton from Ohio which he desired—which contained facts and statements which he desired me to see, and that they were statements of a damaging character, in his judgment.

Q. My question embraces everything that was said here, by yourself or by him? A. That is the substance, Sir.

Q. Do you recollect anything else? A. I don't recollect anything else.

Q. Then I will now repeat the question I put when the objection was made: Did you state to Mr. Beecher that night whether you did or did not know the contents of the note you delivered? A. I did not.

Q. Did he ask you? A. He did not.

THE LETTER NOT SHOWN TO MR. BOWEN BY MR. BEECHER.

Q. *Did* you know the contents of the note? A. I did.

Q. Did you say to Mr. Beecher this, or, in substance, this [referring to Mr. Beecher's testimony]?

Mr. Evarts—Give us the page.

Mr. Fullerton—I am going to read from this large book. [To the witness.] Did you say this, or, in substance, this—that you "had a letter for him from Mr. Tilton; that you were not aware of its contents, but as you were going home or coming this way, you had offered to bring it to him for Mr. Tilton." Is that so? A. It is not.

Q. I read from Mr. Beecher's evidence: "He [that is Mr. Bowen] said he did not know exactly what was in it, and with that I handed it to him and he read it." Did Mr. Beecher hand you that note, and did you read it? A. He did not, and I did not read it, there. [Sensation.]

Q. Mr. Beecher also states, "Mr. Bowen then proceeded to say that he and Mr. Tilton had had some differences themselves." Did you state that? A. I did.

Q. Did you tell Mr. Beecher in that conversation that you had dismissed Mr. Tilton from the editorship of *The Independent*?

Mr. Evarts—Whereabouts is that?

Mr. Fullerton—Following right on there, Mr. Evarts.

The Witness—I did.

Q. Or did you say that you had canceled your agreement? A. That I had dismissed him, or canceled the engagement as editor.

BESSIE TURNER'S CHARGES NOT MENTIONED AT THE INTERVIEW.

Q. Did he say anything to you that night about any charges of Bessie Turner against Mr. Tilton? A. I have no recollection of it whatever—of the name.

Mr. Evarts—Of the name, did you say?

The Witness—Of the name, or any reference to the individual. I did not know the person. I have no recollection in regard to the matter.

Mr. Fullerton—Did he narrate to you that night anything that Bessie Turner had told him in reference to any attempt by Mr. Tilton upon her virtue? A. I have no recollection of it.

Q. Are you enabled to say whether he did or did not? A. I am not able to answer it in any other way than I have.

Q. State whether you received a letter from Mr. Beecher after that, early in January, 1871? A. I believe I did.

Q. Have you the letter with you? A. I think I have.

Q. Produce it, please. [The witness produced the letter, which was passed around between the counsel.]

Mr. Fullerton [handing the letter back to witness]—We have that already, Mr. Bowen.

Mr. Evarts—That letter turns out to be the original letter of which the draft is already in evidence.

Judge Neilson—Yes.

Mr. Evarts—On being compared that is found to be so.

Mr. Morris—It is Exhibit 4½.

NO CONNECTION BETWEEN THE COVENANT AND THE ARBITRATION.

Mr. Fullerton—Do you recollect what has been termed here the "Tripartite Agreement?" A. I do.

Q. Do you recollect the payment of the $7,000 to Mr. Tilton? A. I do.

Q. The result of the arbitration? A. I do.

Q. I want you to state whether there was any connection between that arbitration and the payment of that money—I mean between the "Tripartite Agreement" and the payment of that money?" A. None whatever.

Q. None whatever? A. No, Sir.

Q. Was there any connection between the "Tripartite Agreement" and the arbitration which led to the payment of the money? A. None whatever, so far as I know.

Q. Were you always willing to arbitrate with Mr. Tilton in regard to that matter? A. I was; and gave him notice to that effect.

Q. And willing to abide by the result? A. I was, Sir.

Q. Whatever it might be? A. I was, Sir.

Q. What connection had Mr. Beecher or his affairs with the arbitration, if any? A. I did not know that it had any.

Q. Do you recollect, Mr. Bowen, when you gave Mr. Tilton the check for that money? A. I can tell you, Sir.

Q. Please state. It was paid promptly the same night, I believe, was it not? A. It was; I gave it [referring to a memorandum] on the evening of April 3, 1872, and the check was dated the next morning.

Q. April 4? A. April 4.

THE ARBITRATION.

Q. Where did the arbitrators sit when they determined this question? A. At the house of Mr. Moulton.

Q. In this city? A. In this city.

Q. Were you present at the time? A. I was.

Q. Were you present during the whole sitting of the arbitration? A. I was.

Q. Did you remain there until they made their award? A. I did.

Q. And broke up? A. I did.

Q. Now, from the commencement to the end of that arbitration on that night, was there anything said about Mr. Beecher's affairs in connection with the arbitration, and if so, what was it? A. I am not able to recollect that there was anything more than perhaps a casual conversation. Nothing was said to the arbitrators, according to my recollection. Whether there was any casual conversation, as they were sitting about, before they all got there, I don't remember.

Q. Well, I mean after you got there, of course, and before you left, you heard nothing on that subject that you remember of? A. No, Sir; I have no recollection of any thing.

Q. Was there any written submission between you and Mr. Tilton? A. None whatever, Sir.

Q. It was verbal? A. What?

Q. The submission of your affairs with Mr. Tilton, was that verbal or was it written? A. No, Sir; it was written.

Q. Have you the written submission? A. I have; there it is [handing it to Mr. Fullerton].

Q. Is that signed by yourself and Mr. Tilton? A. It is.

Mr. Fullerton—I offer it in evidence.

The paper was marked "Exhibit No. 22."

Mr. Fullerton—I read the submission. [Reading.]

We agree to submit to James Freeland, H. B. Claflin, and Charles Storrs, the question as to the amount of money due Mr. Theodore Tilton from *The Independent* and *Brooklyn Daily Union*, in full, for all claims and demands to this date, and to abide by their decision, or a majority of them, without appeal.

(Signed.) HENRY C. BOWEN,
THEODORE TILTON.

Brooklyn, April 3, 1872."

Q. Now, was that the only submission to those arbitrators? A. The only one.

Q. I mean was it the only submission, either in writing or verbally? A. The only one. There were some statements made in regard to it by both parties.

Q. Oh, statements of facts? A. Yes, Sir.

Q. But did those statements of facts refer to the matters mentioned in the submission—to those connected with *The Independent* and *The Brooklyn Union*? A. Those and those alone.

Q. Now, the award was made, I believe, soon after the submission, on the same evening? A. The same evening.

Q. Were you present when it was announced? A. I was.

Q. Was there anything said there by any person, then, in regard to Mr. Beecher's matters connected with Mr. Tilton? A. No, Sir; not that I recollect.

Q. Was there anything said then about burning the papers connected with Mr. Beecher's and Mr. Tilton's matters? A. I have no recollection of it.

Q. And you gave the check, I believe, there that evening? A. I did.

Q. To whom did you hand the check? A. To Mr. Tilton.

Q. And did you go away until the thing was at an end? A. I did not—first taking his receipt.

Q. When was the arrangement made for an arbitration first? A. Within a very few days before; I am not confident in regard to it.

Q. Who suggested the arbitration to you? A. Who first suggested it?

Q. Yes. A. The papers themselves suggested it, and were made repeatedly to me from the day Mr. Tilton left town to the day it was decided.

Q. Who first made the suggestion which resulted in this

arbitration at that time? A. I am not able to recollect positively.

Q. Do you recollect what part Mr. Claflin had in it? A. I think he spoke to me about it, but whether he originated it I am not able to say.

Q. Do you recollect with whom you went away that night? A. I think with Mr. Storrs.

Q. One of the arbitrators? A. Yes, Sir.

Q. And where did you go with him? A. We went in the same direction.

Q. He lived in the same direction you did? A. Yes, Sir; we parted, I believe.

Q. Where did you leave the other arbitrators when you left? A. I am not certain whether they went out at the time; I don't recollect. We left together pretty nearly; I should think all together.

THE TRIPARTITE COVENANT.

Q. Now, Mr. Bowen, in regard to this "Tripartite Agreement;" do you recollect when it was executed? A. I could not state the date positively.

Q. Do you recollect the year? A. Yes, Sir.

Q. 1871? A. Yes, Sir, 1871.

Mr. Morris—1872.

The Witness—Yes, 1872.

Mr. Fullerton—I want you to give us the history of that Tripartite Agreement? A. I know but very little of its history, Sir.

Mr. Fullerton—Well, it won't take long to give it, then.

Mrs. Evarts—I don't know about that Tripartite Agreement. It is part of their evidence; they introduced it.

Mr. Beach—Yes; but you have given some affirmative evidence in regard to it.

Mr. Evarts—In the original matter, whatever this gentleman saw and did with his own eyes.

Mr. Fullerton—That is what I asked him.

Mr. Evarts—You asked him for a history of the Tripartite Agreement.

Mr. Fullerton—Within his personal knowledge.

Judge Neilson—As far as he knows.

Mr. Fullerton—Mr. Bowen won't state beyond what he knows.

The Witness—I was waited upon by Mr. Claflin, I believe, with the document as it was originally drawn, and asked to read it and sign it. Do you wish me to go on?

Mr. Fullerton—Yes, go on, please.

The Witness—I read the document, and told him I could not sign it as it was originally drawn. He urged me to do so. I told him that I could not, and would not. He asked me if I could make some emendations not very material, and with those emendations whether I would sign it. I said: "I can change it so that I would be willing to sign it on your personal request," and he urged me to make them there. I told him to leave it with me, and I would see him again the next day. I made some changes in it, and told him I would assent under the circumstances, giving my reasons why I would sign it, and I did so. That is about the whole of it.

Q. What did you say to Mr. Claflin in regard to it?

Mr. Evarts—Objected to. That is *inter alias.*

Mr. Fullerton—It is part of the history which he started to give.

Mr. Beach—What he said.

Mr. Evarts—What he said to Mr. Claflin. Mr. Claflin was not Mr. Beecher's agent.

Mr. Fullerton—It is what he said accompanying it.

Mr. Evarts—Mr. Claflin was his own friend, and undertook to do his side of this business. Mr. Beecher represented his own side, and Mr. Tilton his, and now what passed between Mr. Claflin and him cannot be given in evidence, except as they acted.

Mr. Beach—You called it out, an interview between Mr. Claflin and Mr. Bowen.

Mr. Evarts—I did, so far as carrying the paper and leaving it with him, and getting it back.

Mr. Fullerton—What he said.

Mr. Beach—What he said.

Mr. Evarts—Yes, what he said.

Mr. Fullerton—Your Honor will bear in mind I am only giving in evidence an event that was described by Mr. Claflin, who was a witness for the other side. He stated he went for Mr. Bowen, that he requested him to sign the paper that had been prepared, and was going to give the whole of the conversation between himself and Mr. Bowen on that subject, and the reason why he didn't give more than he did of that conversation was because of the failure of memory. We propose to supply that hiatus in the history of the case.

Judge Neilson—I think you can do that.

Mr. Evarts—The question is as to the reasons he gave for signing it.

Judge Neilson—The conversation with Mr. Claflin.

Mr. Fullerton—It is due to the witness that he should state here what he said then, as qualifying the act which he did.

Judge Neilson—Yes, in connection with the act of refusing to sign or signing.

Mr. Evarts—He did sign it, and that concludes him.

Judge Neilson—Yes.

Mr. Evarts—And everything else is merged between the parties by that, by a well-known principle of law.

Mr. Fullerton—If the action was on an agreement, that would apply.

Mr. Evarts—A treaty between parties that is contained in a bargain contains the settlement.

Mr. Beach—It is an action on the part of a contract.

Judge Neilson—If Mr. Claflin gave part of it, perhaps he gave all of it.

Mr. Fullerton—State what you said to Mr. Claflin on that occasion. A. I told him that I could not sign the original.

Mr. Evarts—He has already stated that.

Mr. Fullerton—Is that the objection?

Mr. Evarts—No.

Mr. Fullerton—Mention it.

Mr. Beach—I think we had better give the gentleman the night to look that up.

Judge Neilson—No, that would be too liberal.

Mr. Porter—The point is, there is no such evidence. The point is for them to find it if there is.

Mr. Fullerton—I appeal to the recollection of his Honor.

Judge Neilson—I remember Mr. Claflin stated the fact that he took the paper to Mr. Bowen, and at Mr. Bowen's request he left it with him, and afterward chided him for not signing it.

Mr. Fullerton—The arbitrators chided him for not signing it.

Judge Neilson—No, not the arbitrators; the witness.

Mr. Fullerton—For not getting it signed on the spot.

Mr. Beach—The distinguished Samuel Wilkeson.

Judge Neilson—Yes, he suggested the opinion that the paper would never be got back again.

Mr. Evarts—That was at another time. That was not in Mr. Bowen's presence.

Judge Neilson—Certainly.

Mr. Evarts—That is when the parties were all together. Mr. Tilton was present when he said that. That made it good evidence. Now, Mr. Claflin has been permitted to say only that he took the paper to Mr. Bowen and brought it back.

Judge Neilson—He left it with Mr. Bowen, and Mr. Bowen requested him to leave it with him for examination, and he did leave it.

Mr. Evarts—That is all. If we had introduced Mr. Bowen's conversation, I presume an objection would have been made, and it would have been a proper objection; his conversation between Mr. Claflin and Mr. Bowen didn't affect the parties to this suit, either of them, Mr. Beecher or Mr. Tilton. Mr. Bowen and Mr. Claflin were on one side friends, and how they talked together could not have been introduced, and cannot be by them.

Judge Neilson—Undoubtedly; but the question is whether you have given in evidence anything on that subject.

Mr. Evarts—And we ask them to point that out.

Mr. Prior—We have it.

Judge Neilson—Mr. Porter has it.

Mr. Porter [reading]:

Q. You took the paper and went to Mr. Bowen's, did you? A. Yes, Sir.
Q. And left it with him? A. I think I did.
Q. That evening? A. Yes, Sir.
Q. Left the paper with him? A. I left the paper.
Q. For his consideration? A. Yes, Sir.

Mr. Fullerton—Go on.

Mr. Porter—What do you refer to?

Mr. Fullerton—I refer to this: It is as fresh in my recollection as if it took place to-day, that Mr. Bowen objected to signing it. I don't want to look for it. The testimony is that Mr. Bowen objected to signing the agreement, and requested that it should be left with him overnight, and that upon the return of Mr. Claflin to the party whom he had left he was chided for not bringing it back signed, and the prophecy was indulged in that he would never get it signed.

Mr. Evarts—What has that to do with it?

Mr. Fullerton—It has this to do with it: that when you proved on your behalf that Mr. Bowen objected, that I have a right to know in what language he clothed that objection. That is my point. I am only following up the inquiry of the other side.

Mr. Evarts—What took place in Mr. Tilton's presence at Mr. Moulton's house was the subject of evidence, whatever it was, and that was given in evidence. What took place between Mr. Bowen and Mr. Claflin at Mr. Bowen's house was not the subject of evidence, except so far as Mr. Claflin brought it to be the subject of evidence by what he stated when he came back. Now, that was given in evidence.

Judge Neilson—Unless you inquired into the conversation had between them when he left the paper.

Mr. Evarts—We did not.

Mr. Porter—There is not one single inquiry on that subject, and the simple question is this: Shall they, as a part of their rebutting evidence, be permitted to prove, as evidence against Henry Ward Beecher, a conversation between Mr. Bowen and his arbitrator, as to which we have not inquired? That is not competent evidence.

Judge Neilson—It was only suggested on the idea that you had inquired.

Mr. Evarts—Ah!

Judge Neilson—Pass to some other topic, Mr. Fullerton, and this can be looked up between now and the morning.

Mr. Morris—It is within four minutes of the time of adjourning, if your Honor please.

Mr. Beach—If your Honor please, I find on looking at page 649——

Mr. Morris [To Mr. Beach]—It is within four minutes of the time of adjourning.

Judge Neilson [To the jurors]—Get ready to retire, gentlemen. Return to-morrow morning at 11 o'clock.

The Court here adjourned until 11 o'clock Thursday morning.

EIGHTIETH DAY'S PROCEEDINGS.

HENRY C. BOWEN'S TESTIMONY CLOSED.

SHORT QUESTIONING BY MR. FULLERTON FOLLOWED BY A SEARCHING CROSS-EXAMINATION BY MR. EVARTS—MR. BOWEN CONTRADICTS MR. CLAFLIN CONCERNING ARBITRATION DETAILS—THE TRIPARTITE COVENANT FURTHER DISCUSSED—OTHER DENIALS BY MR. BOWEN OF TESTIMONY FOR THE DEFENSE—MINOR EVIDENCE BY JOHN N. LONGHI.

THURSDAY, May 6, 1875.

The direct examination of Mr. Bowen by Mr. Fullerton was short, and there were manifestations of disappointment from the spectators when about 11:45 a. m. Mr. Fullerton said "That's all," and sat down. His questions to the witness had referred in the main to what had passed between Mr. Bowen and Mr. Beecher concerning Mr. Tilton, about the time of the holidays in 1870-71, and to the degree of friendliness which the witness had expressed for Mr. Beecher. Mr. Bowen substantially repeated what he had said on Wednesday.

Mr. Evarts began the cross-examination of Mr. Bowen with unusual harshness of tone and manner. At times his questions were delivered in terms apparently of reproach, and he threw great earnestness into his voice, and pointed his finger at the witness, who seemed stung by his severe method of examination. Mr. Evarts went exhaustively into the history of the arbitration between Mr. Tilton and Mr. Bowen. During his cross-examination the witness flatly contradicted some of the statements of the defendant's witnesses and called others in question. He denied that he had ever seen the Tripartite Agreement, or any part of its text, before the settlement by the arbitration of his difficulties with Mr. Tilton. He positively denied that at the announcement of the award Mr. Claflin had said that "they had made up their minds to burn all the papers connected with the scandal, that Mr. Bowen should pay $2,000 to Mr. Tilton, and that they should sign the Tripartite Agreement." Afterward Mr. Bowen qualified his denial by saying that there was conversation in the room among knots of persons after the award was made, and Mr. Claflin might have uttered the words referred to, but not in his hearing, or as addressed to the arbitrators. "Well, Sir," said Mr. Evarts, "how many knots could you make out of five people?" "Three at least," replied the witness.

Mr. Bowen also called in question the statements of Charles Storrs and Deacon Freeland, who had confirmed in general terms what Mr. Claflin said. Mr. Bowen denied, moreover, that he had asked to have the "Woodstock letter" returned to him. These denials or contradictions of the statements of the defendant's witnesses caused a stir of interest among the spectators, which was expressed in whispers and nods, and more than once Judge Neilson had to rap for order. The witness also, in a qualified way, denied that he had made certain statements to Mr. Eggleston. He frequently, during the course of his cross-examination, made use of the expressions, "it may have been so," "I don't recollect," &c. When shown the yellow slip of paper which was said to have accompanied his check for $7,000 he said, "I should say I never saw it before."

Mr. Bowen was on the stand during nearly the whole of the day. There was some argument among the lawyers about the admission of his testimony on certain points, but much less than might have been expected. Both sides appeared to be careful not to overstep the bounds with which the law hems in the production of testimony in rebuttal. Mr. Bowen did not reveal, if he possessed, the great secrets that it has been popularly supposed that he knew about the Brooklyn scandal, and the general effect produced by his testimony was disappointment.

John N. Longhi, employed at Delmonico's eating saloon in Broad-st., was called and testified for the plaintiff. He stated that the upper room of Delmonico's establishment in Broad-st., in which the colored witness Woodley said that Mr. Tilton and Mrs. Woodhull lunched together, was not opened until June 27, 1874. Mr. Evarts, on the cross-examination of Mr. Longhi, drew out the fact that a German eating-saloon on an upper floor closely adjoins Delmonico's establishment.

THE PROCEEDINGS—VERBATIM.

MR. BOWEN'S TESTIMONY CONTINUED.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Fullerton—Mr. Bowen, take the stand.

Henry C. Bowen recalled, and direct examination resumed.

Mr. Fullerton—Mr. Bowen, returning to December 26, 1870, I desire to ask you how long prior to the meeting on the day after Christmas, of that month, had it been since you saw Mr. Beecher? A. I saw him almost every Sabbath, Sir.

Q. Had you any communication with him prior to that

time—prior to the Monday after December 26, when you delivered that letter?

Mr. Evarts—Monday was the 26th.

Mr. Beach—The Monday after Christmas.

Mr. Fullerton—Yes, the Monday after Christmas that you have spoken of—within several weeks? A. I have no recollection of having had any.

Q. Had Theodore Tilton and his affairs been the subject of conversation or correspondence between you and Mr. Beecher prior to the 27th of December, 1870? A. It had not.

Q. When did you next see Mr. Beecher after the 27th?

Mr. Evarts—The 26th?

Mr. Fullerton—The 26th; yes, Sir.

The Witness—New Year's Day.

Q. Where did you then see him? A. At his house.

Q. Was that anything more than a formal call on New Year's? A. It was not.

Q. Did you have any conversation on that day with Mr. Beecher in reference to Mr. Tilton or his affairs—on the 1st of January, 1871? A. I simply said to him——

Q. No; did you have any conversation with him? A. I had no special conversation, except the ordinary conversation which would naturally occur on New Year's.

Q. On New Year's Day? A. Yes, Sir.

Q. Was the affairs of Mr. Tilton, or Mr. Tilton himself, the subject of conversation between yourself and Mr. Beecher after the 26th of December, at the time of the conversation that you have spoken of, and the delivery of the letter? A. I said to him New-Year's, as I was about leaving him——

Q. I don't ask you what you said to him, but whether Mr. Tilton or his affairs were the subject of conversation between you and Mr. Beecher? A. No farther than the simple announcement that his relation with the papers was severed.

Q. That was all? A. That was all; no conversation.

Q. And that announcement was made on the 1st of January? A. On the 1st of January I made the announcement to him.

Q. What time of the day? A. It was in the evening.

Q. Of the 1st of January? A. Yes, Sir.

Q. 1871; what time in the evening? A. I should think early in the evening, 5 or 6 o'clock perhaps; not later than 6; early in the evening.

Q. That was the first that you announced it to Mr. Beecher? A. That was the first.

Q. And when did you announce it to Mr. Tilton? A. On Saturday morning, previous.

Q. That was on the 31st of December, was it not? A. On the 31st of December, Saturday morning.

Q. Sunday being the 1st of January? A. Yes, Sir.

Q. Did you visit Mrs. Beecher after this interview of the 26th between yourself and Mr. Beecher? A. I did.

Q. When? A. The following morning.

Q. What time in the day? A. I should think about 9 o'clock.

Q. And you had an interview with her? A. I did.

A. Of what duration? A. I should think about half an hour, perhaps less.

Q. Any other person present? A. There were not.

Q. Mr. Beecher was not present? A. He was not.

INCONSISTENCIES IN MR. BEECHER'S LETTER TO MR. BOWEN.

Q. You produced a letter of the 2d of January, 1871, yesterday, written by Mr. Beecher to you, Mr. Bowen; did you reply to that letter? A. I did not.

Q. I want to call your attention to the expression, or some expressions in this letter, Mr. Bowen. It commences: "My Dear Mr. Bowen: Since I saw you last Tuesday I have reason to think," etc., etc. Did you see Mr. Beecher on the Tuesday preceding the writing of this letter, or the date of this letter? A. I have no recollection of it; it was on Monday.

Mr. Evarts—No doubt it was Monday. There was a doubt at first, you remember, Mr. Fullerton, whether it was the 27th or 26th.

Mr. Fullerton—I read still further, Mr. Bowen:

Since I saw you last Tuesday I have reason to think that the only cases of which I spoke to you in regard to Mr. Tilton were exaggerated in being reported to me, and I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare.

I want to ask you what Mr. Beecher said to you that was referred to in this paragraph, if anything? A. He said very little, as he expresses it there, except what I stated yesterday. He called my attention to letters which had been received from Mrs. Tilton at the West, and desired me to know their contents. He made some remarks in regard to Mr. Tilton, that there were stories about him which I ought to know; he made some general remarks. I at this moment do not recall the——

Q. Do you recollect what stories they were? A. I only know in general—stories against his moral character.

Q. You don't recollect the particulars? A. Not more definitely than that, at this moment.

Q. Well, have you now stated all that you said to Mr. Beecher in that conversation that you can recollect? A. In substance?

Q. Yes, Sir. A. Not the words, perhaps; so far as I recollect.

Q. Can't you state with any particularity, Mr. Bowen, what these stories were that Mr. Beecher alluded to, where they originated, from whom they emanated?

Mr. Evarts—Not his opinion; what Mr. Beecher said.

Mr. Fullerton—Yes, that is a good observation.

Mr. Evarts—What Mr. Beecher said on the subject.

Mr. Fullerton—That is just exactly what I ask for. A. I can only remember that he said that there were stories in circulation which had been communicated to him af-

fecting his moral character, the particulars of which I do not remember; they were new to me at the time, that is, the stories which he mentioned.

Q. Did he at the time speak in general terms of the existence of stories, or did he descend to particulars? A. He did to some particulars; yes, Sir.

MR. BOWEN'S MANIFESTATIONS OF FRIENDSHIP.

Q. But you cannot recall them? A. I don't remember, except in general that he referred to several stories which he had heard, which were similar in their character.

Q. I read to you a question put to Mr. Beecher, and his his answer.

Now, Sir, did anything more occur at that interview that you can rehearse? [This was the interview on Monday.] A. Nothing except that Mr. Bowen grew more and more friendly, and in view of this attack, or rather this warning to send me out of town—I was not ready to go then, and expressed myself so to him, and he said that he would stand by me as a friend.

Q. Did you make use of such an observation as that or its equivalent? A. He asked me if I was friendly with him. I said that we had previously settled our difficulties, and that I had no unfriendly feeling. He said he was glad to hear that. That was the substance.

Q. Is that all that was said by you upon the subject—upon that subject, or by him? A. It is.

Q. Did you make use of the term that you would stand by him as a friend? A. Only as I answered it previously. He asked me if I was his friend; I said I had no unfriendly feelings toward him.

Q. Well, did you in the course of that conversation grow more and more friendly to him, as is represented in this answer?

Mr. Evarts—I think we should take the facts.

Judge Neilson—It is calling for an opinion.

Mr. Beach—No, Sir; that is calling for a fact.

Mr. Fullerton—It is calling for a fact.

Mr. Evarts—Let us get the fact, whatever it was. It is Mr. Beecher's opinion. Now, whether Mr. Beecher was right or not in the opinion that he formed of this gentleman's conduct, it would be a matter of importance to us, which is to be arrived at by showing what his conduct was.

Mr. Fullerton—We ought to enjoy the same privilege that Mr. Beecher did when he was upon the stand. He said that Mr. Beecher grew more and more friendly; he spoke in general terms; we ought to employ the same language in putting the question to the witness, whether he did grow more and more friendly.

Judge Neilson—One witness might understand that one way, and another might not understand it. It is a mere inference. I don't think I would pursue it.

Mr Fullerton—Well, Sir, inasmuch as Mr. Beecher employed that language, surely we ought to be permitted to negative it, if the witness can do so.

Judge Neilson—If it is important.

Mr. Beach—Why, if your Honor please, I cannot conceive upon what principle this question should be rejected. Even if it was an opinion founded upon the demeanor or action of a given party, it is admissible to prove it. Mr. Beecher swears that during that interview Mr. Bowen grew more and more friendly to him. Well, if that depended upon anything that was said, why, we have exhausted that, Sir. If it was an opinion derived by Mr. Beecher from the manner, the action, facial expressions of the witness, his appearance, his demeanor, why, then, it was a proper opinion, a proper subject upon which he might express an opinion, and one which can be rebutted and repelled by this witness if it is untrue. It is a matter, in that aspect, which depends upon the indefinable and inexpressible characteristics and manifestations of the human countenance, if you please, or of actions which cannot be described in terms. For instance, it becomes important to show whether a man was intoxicated upon a certain occasion. The Court of Appeals have ruled that you may take the opinion of a witness upon that subject, that you are not bound to confine your answer to the question whether you saw him drink, or whether he staggered, or whether his breath smelt of liquor; because it depends upon those manifestations of human action which are not the subject of precise description, Now, I repeat, Sir, that so far as the conversation is referred to, or depended upon as manifesting friendliness upon the part of Mr. Bowen, we have exhausted Mr. Bowen's recollection upon that subject, and that answers the declaration of Mr. Beecher in the reply to this question, that Mr. Bowen promised to be a friend to him in that matter which was then under consideration. Mr. Beecher further says that in that interview, "Mr. Bowen grew more and more friendly to me." Now, so far as it depends upon any of these manifestations, aside from declarations, so far as that opinion of Mr. Beecher depends upon them, I submit to you Honor it is competent for Mr. Bowen to answer that question.

Judge Neilson—The trouble all the time being that it is a mere matter of inference or opinion, which Mr. Beecher might understand one way and Mr. Bowen another way, about which perhaps no two persons would agree. It is a casual thing of no real value.

Mr. Beach—Well, I think otherwise, your Honor. I think it is of some consequence in view of the testimony—the other general testimony of Mr. Beecher.

Judge Neilson—It is one of those peculiar things that might mislead the jury; they might adopt the opinion of the witness who was least correct in his opinion.

Mr. Beach—Well, Sir, then look at it in that aspect if you please, that the opinion of Mr. Beecher goes to this jury that Mr. Bowen in that interview grew more and

more friendly to him. They brought it out, Sir, upon the examination of Mr. Beecher. We say it is an error, it is untrue that he formed a misjudgment; and is that to be permitted to go to the jury without contradiction if it is wrong?

Judge Neilson—If you had objected at the time I should have struck it out, for it called for a mere opinion.

Mr. Beach—I suppose, your Honor, that under the principle which was expressed in the case in the Court of Appeals, to which I have directed your attention, that it could not be struck out or could not be ruled out as an improper question; therefore, if your Honor will permit me again to draw your mind to the distinction of the basis upon which such expressions of judgment or of fact might be given, that so far as it depended upon avowals of friendliness upon the part of Mr. Bowen, we have exhausted that subject. But the gentlemen may say, why, friendliness may be expressed in other forms than by language; it is by manner, tokens, that it is sometimes communicated from friend to friend, and they may say that it was upon these expressions, indefinable, if you please, in their character and nature, upon which Mr. Beecher predicated the judgment, the declaration, that Mr. Bowen grew more and more friendly to him during the conversation.

Judge Neilson—This would be more deserving of your attention if it were the only way of getting at the fact, but it is not, it seems to me. You asked him the bold question whether he did in that interview grow more and more friendly, as stated by Mr. Beecher. It is easy to ask the witness whether anything occurred in the conversation, the demeanor, or manner which indicated——

Mr. Evarts—We don't object to the exhibition of the fact.

Judge Neilson—Yes—which indicated that he became more friendly.

Mr. Beach—Well, Sir, I then propose this question: In this interview did you say or do anything indicating friendliness toward Mr. Beecher more than you have expressed by your testimony?

Judge Neilson—Well, that is proper.

Mr. Beach—Very well, Sir. [To the witness.] Please answer that question.

Judge Neilson—How do you answer, Mr. Bowen?

The Witness—Shall I answer?

Judge Neilson—Yes.

The Witness—I made the call with friendly feelings; those feelings existed during the whole interview, and remained when I left, without any change.

Mr. Fullerton—The question is whether you manifested those feelings?

The Witness—I manifested no change, that I am aware of.

Q. Did you manifest those feelings in any other forms of expression than you have given us here in your testimony? A. Not that I recollect

Mr. Fullerton—That is all, Mr. Evarts.

CROSS-EXAMINATION OF MR. BOWEN.

Mr. Evarts—Please to give us Exhibit No. 4.

[Paper produced by plaintiff's counsel and given to Mr. Evarts, who handed it to the witness.]

Mr. Evarts—Mr. Bowen, please look at that, and say if that is the letter and the envelope which you took to Mr. Beecher? A. I cannot swear positively, but I believe it is.

Q. Have you looked at the envelope? A. I have.

Q. Do you observe it bears marks of having been closed and opened? A. I do.

Q. What is your opinion as to its having been closed when you handed it to Mr. Beecher?

Mr. Beach—I object to his opinion.

Mr. Evarts—What is your recollection? A. I stated yesterday—

Mr. Evarts—No matter what you stated yesterday.

The Witness [continuing]——and state again to-day that I have no recollection whether it was or was not.

Q. Have you any recollection as to whether Mr. Beecher opened it by breaking the envelope or not? A. I have not.

Q. You did not observe that? A. I have no recollection of observing it

Q. Have you any recollection of Mr. Beecher observing that it was an open letter, and asking you if you knew what was in it? A. I have no recollection of his asking me any such question.

Q. Nor of his observing upon its being an open letter? A. I have not.

A CONFERENCE PREVIOUS TO THE DELIVERY OF MR. TILTON'S LETTER.

Q. How long had that letter been in your possession before you handed it to Mr. Beecher? A. I should think two or three hours.

Q. Where did it first come into your possession? A. At my house.

Q. Who were present? A. When it was delivered to me?

Q. Yes. A. I am not sure that any one was present beside Mr. Tilton.

Q. Had there been a conference or appointment at your house that afternoon? A. That morning.

Q. Well, that morning had there been? A. There had.

Q. When was that made, and how—that appointment? A. That appointment was made, I think, on the previous Saturday evening.

Q. Now, how? A. I think Mr. Tilton and Mr. Johnson called at my house to see me, and I was engaged; could not see them, and suggested if they desired to see me, that I should be disengaged on Tuesday, as that was a holiday, and would see them in the morning.

Q. Did you name an hour? A. I do not recollect.

Mr. Beach—On Tuesday, did you say? A. On Monday.

Mr. Evarts—Monday—You don't recollect whether you

named the hour? A. I said I should be at home all day; I do not recollect that I named the hour.

Q. Well, you do remember that you said that you would be at home all day there? A. I stated it would be a holiday, and I would be at leisure, and if they would come, I would see them in the morning, or something like that.

Q. Did you say that you would be at home all day? A. I think I did.

Q. And ready to see them whenever they came? A. I think I did; I am not positive about that, however.

Q. Now, Sir, was there any other appointment of hour or time for that day, except that you would be at home all day, and would see them whenever they came? A. I understood from them that they would come in the morning, and I said I would be at leisure as long as they wished to see me.

Q. You remember, do you, that they said they would come in the morning? A. I do, some time in the morning.

Q. You remember that? A. I do.

Q. Do you remember whether they named the hour that they would come? A. I do not.

Q. Do you remember that they did not name the hour? A. I do not.

Q. Now, Sir, when did these two persons come to your house that day—Monday? A. Early in the forenoon; I do not remember the precise hour.

Q. How long did they remain there? Did they come early in the forenoon, before 11 o'clock? A. I should think it was before 11.

Q. It may have been after 11? A. No, Sir; it was before 11, I am quite sure.

Q. Before 11, according to your memory—how long did they remain at your house? A. I should think two hours or more, probably.

Q. And the topic of conversation between you was wholly that for which the appointment was made, was it? A. Almost entirely, so far as I recollect.

Q. Now, Sir, what hour did those gentlemen leave your house? A. Mr. Johnson left earlier than Mr. Tilton; I think about 12 o'clock; he said he had an engagement. Mr. Tilton left soon after; I cannot state the precise time.

Q. A few moments after Mr. Johnson? A. Well, perhaps 15 minutes, perhaps half an hour; I do not remember precisely.

Q. The prolonged interview was with the three? A. With the two.

Q. Yourself was one—well, among the three? A. Yes, Sir.

THE APPOINTMENT TO MEET MR. BEECHER.

Q. Now, Sir, did you write to Deacon Freeland a note that day? A. I did.

Q. Have you any copy of that note? A. I have not.

Q. Is there any copy in existence? A. Not that I know of.

Q. Have you searched to find? A. I have.

Q. Isn't it your habit to preserve——? A. Not an informal note written with a pencil as I wrote that, as I believe, in pencil.

Q. Then your opinion is that you did not preserve it? A. That is my opinion.

Q. That you did not keep a copy of it? A. It is.

Q. Didn't make a copy of it? A. I did not.

Q. Or keep it—do you remember at what hour you sent that to Deacon Freeland? A. It was immediately after the gentlemen left; I do not remember the precise time.

Q. Can you give us any idea what hour of the day it was, by memory, that you sent that to Deacon Freeland? A. It was between 12 and 2.

Q. Twelve and 2? A. Yes, Sir, I should think.

Q. It might have been just before 2 then? A. I do not remember; it might have been, but I do not remember.

Q. Well, your memory, then, would be satisfied if it was just before 2? A. Yes, Sir.

Q. Did you receive an answer? A. Verbal.

Q. And at what hour did you receive that answer? A. I do not remember at the time; it was within a few moments after the messenger returned.

Q. You mean the messenger brought you a verbal answer? A. Yes.

Q. You didn't see Deacon Freeland? A. I didn't see him at all.

Q. Nor Mr. Beecher? A. Nor Mr. Beecher.

Q. Nor anybody but your messenger? A. Nor any other person but the messenger.

Q. Who was your messenger? A. My son.

Q. What is his name? A. John Eliot Bowen.

Q. Is he still a resident here? A. He is.

THE MEETING AT DEACON FREELAND'S.

Q. Now, how soon after you got this return message did you go to see Mr. Beecher? A. I went at the time I named in the note?

Q. Well, I didn't ask you that. I didn't ask you the contents of your note. I ask to have that stricken out. I ask you at what hour you went, by your memory? A. I am not able to state positively; it was 4 or 5 o'clock in the afternoon, I think.

Q. Well, are you quite sure about that? A. I think it was about that time.

Q. Yes. A. It was at that time, or early in the evening; it was late in the afternoon.

Q. Well, that is your best recollection? A. That is my best recollection.

Q. Four or five o'clock that afternoon—now, Sir, did you see anybody at Deacon Freeland's house except Mr. Beecher? A. I don't recollect whether I saw any one except the servant who opened the door; possibly I might have seen Mr. Freeland, but I have no recollection of it.

Q. Have you any recollection of seeing the servant that opened the door? A. I have none.

Q. None? A. I have no recollection, any further than this, that I was admitted to the house by some one.

Q. That is all you know on that subject? A. That is all I know.

Q. Now, do you remember whether your interview with Mr. Beecher was by gas-light or the light of day? A. I am not positive, Mr. Evarts, in regard to it.

Q. What is your recollection? A. I have no recollection.

Q. None. What room in Deacon Freeland's house did you occupy? A. The front parlor, nearest the street.

Q. Were you then familiar with that house? A. Tolerably so; I had been frequently there.

Q. And of whom did that family consist at that time? A. Mr. Freeland and his wife and some other members—I am not positive; I think his daughter.

Q. Wasn't there a considerable family? A. How many lived at the time in the house I am not sure; considerable family.

Q. Yes; well, it was Christmas Day—did you see anybody about? A. I did not.

Q. Was anybody sent away or shut out from the room that you occupied? A. The folding doors were closed, if I recollect aright.

Q. Yes, when you went in? A. When I went in.

Q. Well, now, was any one sent away from the room or any one excluded that offered to enter during your visit there? A. The room was empty when I went there, and there was no one came into the room that I remember.

Q. Or offered to? A. Or offered to.

Q. Offered to come in. Now, how long did you stay there? A. I do n't recollect precisely, but I think half an hour; it may have been less or a little more.

Q. And you have no recollection upon leaving whether the gas was lit or not. A. I have not.

Q. Nor whether it was lit in the street? A. I have not.

Q. Nor whether it was lit at your house when you got home? A. I have not.

Q. Do you remember when you got to your house whom you saw there awaiting you? A. I do not.

Q. Do you remember anybody's being there awaiting you? A. I have no recollection now of any one's waiting for me.

Q. No gentleman there? A. I have no recollection of it.

Q. Have you any recollection of any conversation with a gentleman who was awaiting you as to what had passed between you and Mr. Beecher? A. I have not.

Q. Is it entirely a blank in your mind? A. I have no recollection of it, Sir, to-day and now.

Q. And no impression in regard to it? A. No impression whatever, Sir.

Q. Do you remember seeing a gentleman just before you left your house to go and see Mr. Beecher? A. I do not, Sir, at this moment.

Q. Do you remember a conversation with any gentleman just before you left your house to go to Mr. Beecher on this subject? A. I do not.

Q. That is all a blank, is it? A. I have no recollection of it, Sir.

Q. No impression? A. No impression whatever; it might have been so, but I do not recollect it.

Q. Let me ask you if you remember seeing Mr. Eggleston? A. I have not.

Q. [Continuing]—just before you went, and awaiting you on your return? A. I have no recollection of it; it might have been so; he frequently called upon me.

Q. Who was Mr. Eggleston, and what his relation to you at that time? A. He was one of the corps of editors of *The Independent*.

Q. A gentleman who has been on the stand here, I think? A. Yes, Sir.

Q. Now, Mr. Bowen, when you received that letter of the 2d of January from Mr. Beecher, did you read it? A. I did.

Q. And have preserved it ever since? A. I have.

Q. On reading that letter, did it strike you that its reference to your interview presented a different view of what occurred from what had really occurred? A. It did.

Q. In what respect? A. I don't know what the particulars were; I read the note, and interpreted it as any one would, I think.

Q. Yes, perhaps you did not understand my question; my question was whether, when you read that note, on the 2d day of January, it occurred to you that the note presented a different view from what had passed between you and Mr. Beecher on the 26th, from what had really passed? A. I did not have such an——

Q. Impression? A. Impression—no, Sir.

Q. You considered it as presenting the matter as you remembered it? A. I do not remember what I did consider it to be; I read the letter and laid it aside.

Q. It did not surprise you in respect to its reference to the interviews? A. I do not remember what my impressions were.

MR. TILTON TOLD OF HIS REMOVAL.

Q. Now, Sir, did you convey your removal of Mr. Tilton on Saturday to him in writing? A. First personally, and afterward in writing, the same day.

Q. At what hour did you inform him of his removal? A. In the morning.

Q. What hour in the morning? A. I think in the forepart of the day.

Q. Well, first thing? About 10 o'clock—10 o'clock; in that neighborhood.

Q. Yes: about the first thing on meeting that morning? A. Yes, Sir.

Q. In what language did you convey that decision of

yours to him? A. I do not remember the precise language. I gave him to understand that his connection with the papers would cease.

Q. Well, you told him? A. I told him so.

Q. Yes; did you say to him that you had finally concluded to terminate his connection? A. I did.

Q. Had you said before to him on previous days that week that you intended to terminate his connection? A. I had not.

Q. That you were thinking of it? A. At the interview at my house I gave him to understand that that was my intention.

Q. To terminate entirely? A. I did.

Q. This connection with your paper? A. That was my intention.

Q. Yes? A. Although not positively decided, I was considering seriously.

Q. Well, you told him that? A. Yes, Sir.

Q. And you parted that day, so far as that subject was concerned, with that announcement? A. On Saturday?

Q. On Monday. A. On Saturday—on Saturday morning, the 31st.

Q. Oh, well, I am talking about Monday at your house. A. I gave him to understand that I was dissatisfied with him, and that the engagement would probably be terminated; it was not settled positively.

Q. Yes, exactly; you announced to him, then, on Monday that you were not satisfied, and should probably terminate all relations? A. In substance.

Q. In substance? A. In substance.

Q. And you parted without any qualification of that? A. I did.

Q. Now, between that time and your announcement to him on the morning of the Saturday that you did terminate your relations, did any qualification of that purpose form the subject of an interview between you and him? A. Not that I recollect.

Q. Did you have interviews with him that week? A. I have no recollection of any interview in regard to his leaving the paper; there might have been, but I have no recollection of it.

Q. So far, then, as you understand the matter, your announcement on Monday of your dissatisfaction and probable removal of him remained, as between you and him, at that point until on Saturday you announced to him that you had removed him or did remove him? A. Perhaps not entirely between him and me; but I had not decided to remove him positively until Saturday.

Q. Well, had anything passed between you and him? A. I have no recollection of anything.

Q. No recollection of anything. Now, later in the day on Saturday—oh, where did that announcement take place; at *The Independent* office? A. At *The Union* office.

Q. In Brooklyn? A. In Brooklyn.

Q. Was it upon his coming to the office? A. Upon my going to the office he was there.

Q. He was there first? A. He was there first.

Q. And you announced it? A. I announced it to him.

Q. Did he immediately leave the office on Saturday morning? A. I made the announcement to him, and left myself.

Q. Did he leave the office? A. I understood that he did; I did not see him leave.

Q. He did not leave before you? A. Not before I did.

Q. Did you ever see him there again? A. I have no recollection of it.

THE FORMAL ANNOUNCEMENTS OF REMOVAL.

Q. Now, later on the day of Saturday you gave him some written announcement? A. I sent him a formal notice.

Q. Have you a copy of that? A. I have.

Mr. Evarts—That original, I think, has been applied for. Yes, it is admitted to be lost. [To the witness.] Have you that copy? A. Here the two notices, or copies of the two notices, which are—one is from *The Independent* and the other from *The Daily Union.*

Mr. Evarts—I propose to read those. [Reading:]

THE INDEPENDENT, PUBLISHER'S OFFICE,
No. 3 PARK-PLACE, NEW-YORK, Dec. 31, 1870.

Mr. THEODORE TILTON—*Sir:* This is to give you written notice in accordance with the provisions of a recent contract made with you as contributor and writer for *The Independent,* that your services as said writer and contributor will cease and terminate this day; and that no further contributions or writings will be received or published from you in said *Independent.*

I also give you notice that I am ready to make a prompt settlement with you of all claims and demands you have against me, growing out of said contract, as soon as the amount, if any, is fixed and awarded by arbitration, as provided in said contract.

Please name at your earliest convenience the time and place to meet and select the names of said arbitrators and make any further arrangements necessary and proper in the premises. Respectfully, HENRY C. BOWEN.

[Marked Exhibit D, 142.]

BROOKLYN DAILY UNION,
BROOKLYN, Dec. 31, 1870.

Mr. THEODORE TILTON—*Sir:* This is to give you due notice, in accordance with the provisions of a contract made with you to act as editor of *The Brooklyn Daily Union* from the 1st day of May last, that your services as said editor will cease from the time of the delivery of this written note. You are therefore required to discontinue immediately from further editorial labor and service on said paper.

I give you further notice that I am now ready to make settlement with you according to the provisions of the before-mentioned contract, and that if you have any claims or demands whatever against *The Brooklyn Daily Union,* I am ready, in behalf of said corporation, to meet them promptly as soon as the amount, if any, is fixed and awarded by arbitration, as provided in said contract.

Please name, at your convenience, the time and place to meet and select the names of the said arbitrators, and make any further arrangements necessary and proper in the premises. HENRY C. BOWEN,

President *Brooklyn Daily Union.*

Q. That was a corporation? A. Yes, Sir.

[Marked Exhibit D, 143.]

Q. Did you receive any answer from Mr. Tilton to either of those notes? A. I believe I did, but I am not positive. I don't recollect, Mr. Evarts, about that.

Q. You do not find such a paper? A. No, Sir, I do not.

Q. And I imagine that you have supplied yourself, by search, with all the papers that you supposed would come in question? A. Yes, Sir.

Q. So far as you know, then, you have not any such paper? A. I have no recollection.

Q. Of receiving it? A. Still I have an impression that I received some reply.

Q. In writing? A. In writing—I think I did, but it may not be so, however.

Q. Now, Sir, did you think that you were indebted to Mr. Tilton upon your termination of that contract, for damages——

Mr. Fullerton—One moment.

Mr. Evarts—[Continuing]—for damages for breaking it, according to its terms.

Mr. Fullerton—One moment.

Mr. Beach—We object to what he thought.

Mr. Evarts—His attitude on that subject, Sir, is, I suppose, part of the transaction.

Judge Neilson—Yes, his attitude; but this question is whether he *thought* he was indebted.

Mr. Evarts—Yes; whether his view of the matter was that he was indebted to him at all.

Mr. Fullerton—He certainly thought that he *might be* indebted, because he courted investigation according to the provisions of the contract, and expressed his willingness to pay any amount that might be found against him.

Mr. Evarts—If any.

Mr. Fullerton—Yes, if any.

Mr. Evarts—I want to know whether, in his view, he was indebted to Mr. Tilton for the termination of those contracts.

Mr. Fullerton—Well, he certainly didn't suppose he was indebted, unless Mr. Tilton made some demand, and pursued the course pointed out by the contract. Now, certainly they cannot give what Mr. Bowen *thought* at that time as to the particular claim that might be made against him by Mr. Tilton.

Judge Neilson—I cannot see that it is material what he thought. If you had the contract before you you could tell perhaps better than he could.

Mr. Evarts—Ah! my telling is of no consequence.

Judge Neilson—I don't see that what he thought is material.

Mr. Evarts—The question is this. The gentleman did not pay anything for a year and four months, though he expressed this readiness to pay——

Judge Neilson—But he was not willing to pay, except as something might be found due and fixed by arbitration.

Mr. Evarts—Of course all the materials therein would be the subject of consideration; but I submit, your Honor, that I have a right to the position of this litigant or adverse party to the claims—to know whether he admitted a claim.

Judge Neilson—Yes, whether he admitted a claim; but I cannot receive what he *thought*.

Mr. Evarts—Well, Mr. Tilton has said that Mr. Bowen had no defense.

Mr. Fullerton—That was Mr. Tilton's view.

Mr. Evarts—I know it was; and now I want to know Mr. Bowen's view.

Mr. Fullerton—That was struck out—what Mr. Tilton said upon that subject.

Judge Neilson—I won't allow you to prove what he thought.

Mr. Fullerton—This delay that the gentleman speaks about was occasioned by the fact that the adverse party to Mr. Bowen did not pursue his remedy in the way provided for by the written agreement. Mr. Bowen expressed his willingness to pay whenever the amount was ascertained in that particular mode, and invited the appointment of arbitrators.

Mr. Evarts—Well, we will argue the matter whenever it becomes necessary or material. I am now seeking what the law allows in the shape of evidence.

Mr. Fullerton—It is necessary now, so far as I have gone.

Mr. Evarts—Mr. Bowen, you were entirely solvent and responsible at that time, and have so continued ever since? A. I have been and was.

Q. And so understood to be? A. Yes, Sir.

NO ADMISSION OF INDEBTEDNESS TO MR. TILTON BY MR. BOWEN.

Q. Now, Sir, did you at any time admit that you were indebted to Mr. Tilton in any sum of money for the breach of—for the termination of those contracts?

Mr. Fullerton—That is objected to.

Judge Neilson—We will take it.

Mr. Fullerton—"At any time admit!"

Judge Neilson—Yes, we will take it.

Mr. Fullerton—It seems to me, your Honor, that that is more objectionable than the other.

Judge Neilson—I understand him to mean, admit to Mr. Tilton.

Mr. Fullerton—I do not so understand it.

Judge Neilson—I think that is implied.

Mr. Beach—Admit to anybody, Sir, anywhere!

Judge Neilson—Yes, I think we will take that, even.

Mr. Fullerton—Your Honor will perceive that that is giving a construction to language. One person might suppose that what he stated was an admission, and another would construe it differently. Lawyers sometimes disagree in regard to the import of language.

Judge Neilson—Yes, *sometimes*. [Laughter.]

Mr. Fullerton—Yes, Sir.

Judge Neilson—I think we will take the answer.

Mr. Beach—We except.

Mr. Evarts—Now, Mr. Bowen?

The Witness—Will the stenographer please read the question.

The Tribune stenographer read the question as follows:

"Now, Sir; did you at any time admit that you were ndebted to Mr Tilton in any sum of money for the breach of—for the termination of those contracts?" A. I have no recollection on that subject.

Q. At the time of the termination of those contracts did you understand that you had a justifying cause for terminating them.

Mr. Fullerton—That is objected to.

Judge Neilson—We cannot take that, Sir.

Mr. Evarts—You r Honor will be so good as to note our exception.

Judge Neilson—Yes.

MR. BOWEN'S THOUGHTS ON THE ARBITRATION.

Mr. Evarts—Now, Sir, when first did you hear of a proposal to have the arbitration which actually took place in April, '72? A. I have no better recollection than this, that it was within a few days—perhaps two weeks from the time.

Q. And from whom did you first hear it? A. I am not positive in regard to that. I had frequently made proposals myself to settle in that way, according to agreement.

Q. To whom? A. To different parties.

Q. To whom? A. To Mr. Storrs and to Mr. Claflin, and to other friends who introduced the subject—to anybody. I said I was ready to settle at any time.

Q. At any time? A. At any time.

Q. And did you accompany those statements with the further statement that you did not owe him anything?

Mr. Fullerton—That is objected to.

Judge Neilson—We will take it.

The Witness [emphatically]—I did not.

Mr. Fullerton—We withdraw the objection, Sir. [Laughter.]

Mr. Beach—No, we don't.

Q. In any form—you settled certain admitted debts or obligations promptly, did you not, after the termination of the contracts? A. No, Sir; there were——

Q. Didn't you pay some notes? A. I paid some obligations, but there were certain—one or two admitted in my own mind, small amounts, but I wanted the whole thing adjusted.

Q. I am only asking you about a matter of fact. You did pay promptly some obligations that were not in dispute? A. *Some* obligations, I did.

Q. Immediately after this termination? A. Yes, Sir.

Q. What was the amount of that payment, and when was it made? A. The amount was two or three thousand dollars, according to my recollection, perhaps not so much; but it was settled within a few days.

Q. And was that payment of all that was in dispute? A. No, Sir; there were one or two small amounts that I felt, myself, ought to be paid; for instance, the week's salary terminating on Saturday night.

Q. Beyond what was paid in this two or three thousand dollars? A. Yes, Sir.

Q. Well, you thought he ought to have a week's salary? A. I didn't think he *ought* to have it; I thought it was——

Q. But you thought it might be due?

Mr. Beach—Your Honor will understand us as objecting to what he says as to his thoughts.

Q. What else was there not included in your actual payment that you did not consider in dispute?

Mr. Beach—We object.

The Witness—I have no recollection.

Mr. Beach—It will be understood that we stand as protesting against these declarations of thoughts, opinions, and considerations.

Mr. Evarts—This is the transaction. He paid all that was due, except——

Judge Neilson—He does not object to the fact.

Mr. Beach [to Mr. Evarts]—You could not have understood what I said, or you would not have made that reply to it.

Mr. Evarts—With whom did you make this settlement, or to whom personally this payment that you did make? A. I think it was to Mr. Moulton, or to some messenger sent by him to me. I am not positively sure about that.

Q. Did Mr. Moulton bring you an authority from Mr. Tilton? A. He did present one.

Q. Did he leave it with you? A. think not.

Q. Have you searched for it? A. I have searched for *all* papers, but I find nothing of that kind.

Q. Your search would have covered it, if it had been in existence? A. Yes, Sir.

Q. What is your recollection as to its having been left or not? A. I don't think there ever was such a paper left with me.

Q. Now, this week's salary that you had in your mind, was it salary as editor, or salary, under the new contracts, as contributor?

Mr. Beach—He was editor all the time.

The Witness—It was the——

Q. Was it the salary under the previous engagement? A. Under the last engagement,

Q. And not under the new contract? A. Under the *last* contract.

Q. That is to say, the contracts by their terms began to draw from the 1st of January? A. From their date—or from the time specified.

Mr. Evarts—I know they were made on the 27th, but I thought they began on the 1st of January. [To the wit

ness.] Have you got those contracts? The Witness—I have.

Mr. Evarts—Oh, well, then, they will speak for themselves. We will look at them if you please.

The witness produced the contracts.

Q. In whose handwriting is this *Daily Union* contract? A. I can tell, Sir, if you show it to me, perhaps.

Mr. Fullerton—It is Mr. Tilton's.

Mr. Evarts—It is Mr. Tilton's; there is no doubt about it. The other one does not seem to be in the same handwriting. Is this other one in your handwriting [handing paper to witness]? A. It is not in my writing. I am not able to ——

Q. Well, is it not Mr. Tilton's? A. It is not Mr. Tilton's. Probably a clerk's.

Q. Now, Sir, were these contracts before the arbitration? A. They were.

Q. These papers? Those very identical papers.

Q. That is my question, these very papers? A. Yes, Sir.

Q. And were these receipts given upon them? A. They were; at that time.

Q. At that time? A. At that time, together with another receipt, which is here [producing it].

Q. A duplicate? A. No, Sir.

[The contracts were marked exhibits D, 144 and 145, and the receipt exhibit D, 146.]

Mr. Evarts—I read this receipt. [Reading.]

BROOKLYN, April 3, 1872.

Received of Henry C. Bowen, publisher and proprietor of *The Independent*, and Henry C. Bowen, President of *The Brooklyn Daily Union*, $7,000, in full of claims, demands, and dues, of every name and description, growing out of contracts, heretofore existing, and now terminated, with *The Independent* and with *The Daily Union*, in full of claims and demands against said Bowen individually, and also of claims and demands against the publisher or trustees of said *Daily Union*.

This was given you at the time of the payment? A. On the evening of the——on that occasion.

Judge Neilson—When you gave your check? A. At the time I gave the check.

By Mr. Evarts—Now, you say you cannot tell us who first brought to your attention the prospect, or the purpose, of an immediate arbitration? A. I am not positive.

Q. Well, Sir, what is your best impression? A. My impression is that it was Mr. Claflin or Mr. Charles Storrs; possibly some other individual, but I am not certain.

THE GOLDEN AGE ARTICLE SHOWN MR. BOWEN.

Q. One or the other. Well, Sir, do you remember whether that person, whether it was Mr. Claflin or Mr. Storrs, exhibited to you a galley-proof of a proposed publication in *The Golden Age*? A. At that time, or about that time, I saw it. Whether the individual who proposed the arbitration presented it at that time, I am not positive.

Q. How did it come to your observation—you say you saw it? A. In the course of the arrangement for the arbitration that was shown to me.

Q. Do you remember whether you had seen it before Mr. Storrs or Mr. Claflin spoke to you? A. I had never seen it until it was presented to me at that time, during the progress of the arrangement.

Q. In connection with the subject of the arbitration? A. *In connection* with that.

Q. And from the same person that approached you on the subject of that immediate arbitration? A. I am not certain who presented it.

Q. Well, I say, you are not certain who, but this galley-proof business was brought to your attention by the same person that brought to your attention the immediate prospect or purpose of an arbitration? A. I think so; I am not certain.

Q. And at the same time? A. I am not positive, Sir, but it was at the same time; about the same time; it was during the previous two or three weeks to the arbitration, according to my recollection.

THE NAMING OF THE ARBITRATORS.

Q. Now, Mr. Bowen, when did the naming of the arbitrators first arise? A. It first arose when I gave Mr. Tilton the notice to quit, and that I was ready to settle.

Q. I mean this very arbitration that went through—the naming of those particular men? A. I don't remember, Sir.

Q. You don't remember? A. I don't remember. I stated that I was ready to leave it to any three disinterested parties. I said that from the beginning down to the day it was settled.

Q. I don't care anything about beginning, but you told the person who brought the matter to your attention, as you were approaching the period when there was an actual arbitration—you told that person that you were ready to arbitrate? A. Ready to arbitrate. Always had been.

Q. How soon after did the question come up as to who were to be the arbitrators? A. I am not able to say the date.

Q. Do you remember whom you named? A. I have failed entirely to remember what person I named, but I think it was Mr. Claflin; I am not positive; either Mr. Claflin or Mr. Storrs; one of those.

Q. Are you sure it was not Mr. Freeland? A. I would not say that it is impossible. I was willing to leave it to those three men.

Q. Well, you named some person, did you not? A. I am not positive that I did.

Q. You don't know but all three were named by somebody else? A. They were all acceptable men I did not object to any of them.

Q. Did you understand whom Mr. Tilton named? A. I did not.

Q. And did you understand, if he named one and you one, how the third was appointed? A. I did not.

Q. When did you first know who the three were to be? A. I don't remember, Sir; it was within a few days before it was adjusted.

Q. Was it not the very day of the arbitration? A. I think not.

Q. But you are not positive of that? A. I am not positive, but I think not; I think it was two or three days before.

Q. Now, Sir, how long before the actual arbitration (which was begun and ended, I understand, in one evening,)—how long before that evening did you see the text, or proposed text, of what has since been called the Tripartite Agreement? A. How long before that evening?

Q. Yes. A. Never.

Q. You never saw—— A. [Interrupting] No, Sir.

Q. [Continuing] The proposed Tripartite Agreement? A. No, Sir.

Q. When did you first see the proposed text of the proposed Tripartite Agreement? A. Afterwards—some days; I don't remember.

Q. You never saw either the complete text or the proposed text? A. Nor any text, nor any writing on the subject, before the settlement.

Q. Do you remember that you received at any time about that period—that there was delivered to you what has been called the Woodstock letter? A. I remember it, Sir.

THE WOODSTOCK LETTER RETURNED.

Q. When did you receive the Woodstock letter from Mr. Tilton? A. That was two or three days after the settlement.

Q. Two or three days after the arbitration? A. Possibly longer, but it was very soon after.

Q. Very soon after you received the actual letter? A. Very soon after I had made the settlement with Mr. Tilton.

Q. Yes. How old a letter was that? A. Some years old.

Q. Well was it not—— A. If you wish to know, Sir, I can tell you.

Q. Yes, I want to know, of course. I don't care anything about the letter; I only want to know how old it was. A. [Referring to a paper] It is dated Woodstock, June 16, 1863.

Q. Very well. And that letter was returned to you. A. That letter was returned to me.

Q. Immediately after this settlement? A. Immediately after this settlement.

Q. When did you first know it was to be returned to you? A. I think not before its delivery, but possibly the same day, before—the same day, during the day.

Q. When had you first asked or suggested its return to you? A. [Emphatically.] I never asked for its return.

Q. The whole matter, then, was a voluntary one? A. I am not certain about that; I think Mr. Storrs asked for it; he told me so.

Q. Well, we won't go into third persons. It was voluntary so far as you were concerned? A. I didn't ask for it.

Q. Nor expect it? A. Nor expect it; it was a surprise to me when I received it.

Q. Very well; now can you say who first brought you the Tripartite Agreement? A. I think Mr. Claflin, Sir.

Q. Have you any doubt upon that subject? A. I have not.

MR. BOWEN'S SIGNING OF THE COVENANT.

Q. And as you have stated, it was left with you? A. It was left with me over night.

Q. And was not immediately signed. Now, how long after it was first left with you did you finally sign the paper, as you did sign it? A. It was left with me in my office in New-York, and signed at the same office, I think the next day, during the day.

Q. That is your signature? [Handing the paper to witness]. A. That is my signature.

Q. Is there any mode in which you can fix the day on which this was left with you, and so, the day on which you signed it? A. I am not able to fix the date.

Q. Have you no memorandum or record of it? A. None whatever.

Q. Were the other signatures on it when you signed it? A. I am not able to say positively.

Q. What is your impression about that? A. I have failed to recollect. I could not say that there were none, and yet it is possible.

Q. What is your best impression as to whether you signed it first or afterward? A. I have no impression.

Q. None? A. No, Sir.

Q. And the paper, when it was left with you, was complete, as it now is? A. I am not able to say that. The paper which was left with me was changed—altered, and after it was changed I signed it.

Q. Well, was more than one paper left with you? A. The paper which was left with me was changed by myself; that part of it which referred to myself; whether it was taken away—I think it was, and brought back with those alterations made.

Q. Do you mean to say that the paper which you have now spoken of as having been left with you and signed by you the next was taken away in the interval? A. I think it was, to make the change; I declined to sign it as it was left with me.

Mr. Evarts—Well, we will see about that. [To the witness.] Is that the paper that was left with you the first day [handing a paper to the witness]? A. Without reading it I should say it is not, because the frequent interlineations which I made are not here.

Q. That paper has no interlineations, has it? A. No, not as I see.

Q. Is that the paper that was left with you, as you have said, one day and signed by you the next? A. I say it is not.

Judge Neilson—That is, it was not the first paper that was left with you? A. No, Sir.

Q. It is not the paper that was left one day and signed the next? A. No, Sir, it was not.

Mr. Beach—He does not say the paper was left with him one day and signed the next.

Mr. Evarts—He has said so.

The Witness—It is a mistake if I said that.

Mr. Evarts—I don't mean to say you contradict yourself. I only want to get at the fact. I understood you to have said a paper was left one day and signed the next.

The Witness—Not the same paper signed the next day.

Mr. Evarts—Very well; we will get at it as it is. [To the witness.] This is not the paper that was left with you the day before you signed it? A. No, Sir.

Mr. Beach—The paper he signed was not left with him the day before. You misstate his answer in your question.

Mr. Evarts—I don't misstate.

Mr. Beach—You very clearly do.

By Mr. Evarts—This very paper that you signed is not the paper that was left with you the day before? A. No, Sir; it was not.

Q. Now, before that had any paper purporting to be a Tripartite Agreement been left with you? A. There was a paper left with me the day or day but one before I signed it.

Q. Very well. And only one such paper was left with you before the day you signed it? A. I think not.

Q. Very well. And that was the day before you signed it? A. I think so, but possibly two days might have intervened.

Q. Well, your best recollection? A. My best recollection.

Q. So that there was but one paper laid before you until the paper came that you actually did sign? A. Only one, according to my recollection.

Q. The best of your knowledge is that there was an interval of a day between the presentation of the first paper and the signing of the actual paper? A. There was actually one day, and possibly more.

Q. Possibly more? A. Yes, Sir.

Q. Now, Sir, who brought you this paper the day that you signed it? A. Mr. Claflin, I believe.

Q. And he had brought up the other paper the day before? A. Yes, Sir; if it was the day before.

Q. Well, that day, or the previous day? A. Yes, Sir.

Q. One of the two days? A. Yes, Sir.

Q. Have you any idea that there was more than one day between? A. I have no recollection; I think but one day, but there might possibly have been more.

Q. Now, where were these papers—the two papers successively brought to you—at your house, or at your office? A. At my office in New-York.

Q. At *The Independent* office? A. Yes, Sir; No. 3 Park-place.

Q. And you remember that distinctly? A. I do, distinctly.

Q. And that it was Mr. Claflin? A. I do remember he brought them.

Q. Both. Now, how soon did you know that after you had signed this paper that the other parties had signed it? A. I am not able to state. I understood that all had assented to it, if their names were not on it.

Q. When you signed? A. When I signed.

Q. You understood all were ready to sign? A. If they were not on already. It was a paper which had been assented to by all parties.

Q. And you so signed it yourself? A. I so signed it.

Q. And when you first knew the actual signatures had been appended? A. I am not able to say.

Q. You are not able to state? A. But very soon.

Q. Did you retain any copy of it? A. I did not, nor memorandum.

Q. And have no memorandum concerning the dates or places where this was presented? A. I have no memorandum whatever in regard to the paper, or to the occasion.

Q. None. Now, when were you first advised that there was to be a meeting of the arbitrators? A. I am not able to state; within a very few days before it occurred; possibly two or three.

Q. And what advice did you receive—what information, and what notice? A. It was a verbal notice.

Q. At a particular hour and place that they were to meet? A. It was stated to me that the arbitrators agreed they should meet at Mr. Moulton's at a certain hour.

Q. When? A. On a certain evening.

Q. When would they meet? A. I can tell by referring to——

Q. Was it the evening they actually did meet? A. According to my recollection.

Q. According to your recollection? A. Yes, Sir.

Q. That was the 3d of April, as I understand it? A. It was on the date mentioned in the paper which I gave you yesterday.

Q. April 3; the evening of April 3? A. The evening of April 3.

Q. Now, did you receive that notice earlier than that evening? A. I am not able to state.

Q. You cannot say about that? A. I cannot say.

Q. From whom did you receive the notice? A. I am not able to state.

Q. You have no recollection? A. No, Sir.

Q Whatever? I think it was from some of the arbitrators—either Mr. Claflin or Mr. Storrs.

Q. You have no recollection of it? A. I have no recollection who I received it from.

Q. Do you remember whether that was the first notice of the actual time and place of meeting? A. I have stated I have no recollection on that subject, and I say it again.

Q. So far as your memory goes? A. It may be so, and it may not.

THE MEETING OF THE ARBITRATORS.

Q. When you got there whom did you meet? A. I found the arbitrators there in the course of the evening; I don't know whether they were there when I got there or not—all of them.

Q. Whom did you find there when you got there? A. I don't remember which one was the first.

Q. I didn't ask you that. There were other people. Whom did you find when you got there? A. I don't remember.

Q. Did you find Mr. Tilton? A. I don't remember.

Q. Did you find Mr. Moulton? A. I don't remember whether he was in the room when I got there.

Q. Did you find Mr. Claflin? A. I don't remember that.

Q. Did you find Mr. Freeland? A. I have stated I don't remember in regard to any one.

Q. Then, for aught you know, when you and Mr. Storrs went there, there was not any one there? A. For aught I know, there were no other persons there, and they might have been all there.

Q. Exactly; so I understood. You have no recollection about it? A. I have no distinct recollection.

Q. Indistinct recollection? A. No indistinct recollection.

Q. Now, what hour did you go there? A. In the evening; I should think about half-past seven or eight o'clock; I am not positive.

Q. And what was the first thing that occurred after you got there that you do remember? A. Shook hands all round.

Q. You remember that? A. Yes, Sir.

Q. And did that include the whole—Mr. Tilton, Mr. Moulton, and the three arbitrators? A. Yes, Sir; all round.

Q. Well, what was the next thing that was said—that was done? A. I am not able to state consecutively the movements of the evening.

Q. You were all together in the room and shook hands all round? A. We came together ultimately at the time.

Q. You were together when you shook hands? A. We were, Sir, of course.

Q. It was not any chasm you shook hands across? A. No, Sir—bloody.

Q. What room was that? A. It was the back room, or dining-room.

Q. On the parlor floor? A. On the parlor floor.

Q. Now, when you were there all together, and before the formal commencement of the arbitration proceedings, what was said and done? Can you repeat it? A. I cannot.

Q. No part of it? A. No, Sir; it was casual remarks.

Q. Nothing that impressed itself on your mind? A. Nothing important; no, Sir.

Q. Are you able to say that you remember affirmatively that nothing important, as you call it, was said? A. I have no recollection of any such thing.

Q. Ah! Then how did the arbitration court organize and commence its sittings? A. They gathered about the table, and were about to proceed, when I interrupted them by saying: "Gentlemen, what are we to submit?" And they said: "The matters between Mr. Tilton and yourself?" I said that I should decline taking one step until it was put in writing, what we were to submit, and suggested that one of the arbitrators draw that submission, and, finally, I think Mr. Moulton took his pen and said: "Gentlemen, what do you submit?" And at our suggestion—whether this is the first one or the second draft, I am not able to say—but, in a few moments, we agreed upon that document which is presented, without question or debate.

Q. That is in Mr. Moulton's handwriting? A. In Mr. Moulton's handwriting, yes, Sir; to my recollection.

Q. Well, then, about the proceedings before the arbitrators; did Mr. Moulton remain? A. I am not able positively to state whether he was present.

Q. What is your impression? A. I had the impression that he did, but I am not positive; I certainly didn't object to it.

Q. I didn't ask you that. For aught you know Mr. Tilton, yourself, and the three arbitrators may have been the only persons present? A. For aught I know, and Mr. Moulton.

Q. Mr. Moulton may have been there and may not? A. He may have been there.

Q. What witnesses were introduced? A. None whatever.

Q. What papers were introduced? A. The documents which I presented to you.

Q. That is, the agreement? A. The two agreements.

Q. And the letter of determination? A. No, Sir.

Q. Nothing but the two agreements? A. Nothing but the two agreements.

Q. Who commenced then giving further information to the arbitrators? A. I think it was Mr. Tilton.

Q. Do you remember what he said? A. I do not, distinctly.

Q. Well? A. He presented his case briefly.

Q. What did he say? A. I am not able to remember, Sir, what he said.

Q. Can you not give us a word of what he said? A. He said that the object of the interview was to arrange amicably the matters between us in dispute, and that he claimed such an amount.

Q. What amount did he name? A. I do not think he named the amount; he claimed about the amount that was awarded.

Q. Well what did he say about the amount he claimed? A. I have said I don't recollect what he claimed.

Q. You began to say "he claimed?" A. He claimed about that amount—the amount that was awarded.

Q. You said he claimed about something? A. What is it?

Q. You said he claimed—

Mr. Beach—The witness says he claimed a certain amount; the amount he don't remember, but it was about the amount awarded.

Mr. Evarts—The witness is in my hands.

Mr. Beach—He is in my hands to interrupt you to speak to the suit.

Mr. Evarts—Not exactly.

Mr. Beach—Yes, he is.

By Mr. Evarts—Mr. Bowen, what did Mr. Tilton say in respect to the amount he claimed? A. I have told you that I don't recollect exactly the phraseology; he claimed about that amount, according to my recollection; and what he said I don't remember.

Q. Do you mean to say Mr. Tilton said to these arbitrators, "I claim about $7,000?" A. In substance that was what he said.

Q. Then did he give his reasons? A. He did.

Q. What were the reasons he gave? A. I don't remember. He stated the case briefly.

Q. The case! I want to know what he said? A. I am not able to remember the language, if that is your question.

Q. The language, or the substance? A. The substance of it was that he knew the contract claimed such an amount, and he so stated it.

Q. And he named the amount, did n't he? A. About the amount. He said he claimed about so much, and specified about the amount.

Q. About $7,000? A. About $7,000.

Q. Well, now, did he say anything else? A. I am not able to remember.

Q. Did he say one single thing on the subject of that arbitration, or the dispute between you and him, except that he claimed about $7,000? A. He may have said——

Q. Ah! did he? Q. I don't recollect.

Q. Anything? A. Anything important, certainly.

Q. And you don't recollect that he did say anything else, do you? A. At this moment I don't.

Q. Very well. This is the moment that I am examining you. Now, Sir, after he got through with that statement, what did you say? A. I said to the arbitrators that in my judgment there was no claim on *The Independent* or *The Brooklyn Union*—any legal claim for the amount stated, but that I should leave the whole question to the arbitrators. I made but a very few remarks.

Q. Won't you give us those few remarks? A. I have given them to you, in substance.

Q. That is about the whole? A. About the whole.

Q. About the whole you said? A. Yes, Sir.

Q. Now, Sir, was your statement to them that you didn't [To the Tribune stenographer]—Please read the last answer.

The Tribune stenographer read the answer as follows: "I said to the arbitrators that, in my judgment, there was no claim on *The Independent* or *The Brooklyn Union* —no legal claim for the amount stated; but that I should leave the whole question to the arbitrators. I made but a very few remarks."

By Mr. Evarts—Didn't you say to them that there was no claim for any amount? A. I have no recollection.

Q. What is your best impression? A. I might have said there was no legal claim.

Q. No legal claim for any amount? A. I might have so stated, in my judgment.

Q. I don't know but you were right. And then on those statements the case was closed? A. The case was closed.

Q. That included evidence and argument—all? A. The whole.

Q. And you retired then? A. No, Sir, not immediately.

Q. When? A. After the award was made.

Q. I don't mean from the room, but didn't you leave the arbitrators alone? A. We did, and entered the adjoining room.

Q. You and Mr. Tilton and Mr. Moulton, if he was with you? A. Yes, Sir.

Q. Retired from the room? A. Yes, Sir.

Q. And where did you go? A. Into the front parlor.

Q. Folding doors open? A. Shut.

Q. Shut then, or had they been always shut? A. They had been shut.

Q. Well, Sir, who were with you in the room that you went into? A. Mr. Tilton.

Q. And Mr. Moulton? A. I think not; I think he went up stairs, if he went with us. He might have been with us a part of the time, but I know we were alone some minutes.

THE ANNOUNCEMENT OF THE AWARD.

Q. Now, how long were you and Mr. Tilton together before the arbitrators' board was ready to announce their decision? A. Half an hour perhaps.

Q. Is that your recollection? A. According to my recollection.

Q. It was as long as that? A. I think it was about an hour; it might be a little less time, or a little longer.

Q. Well, what notice did you have to appear before them and receive their judgment? A. The folding doors opened, and we were invited to come back.

Q. Who invited you? A. I don't remember.

Q. Well, you went back? A. We went back.

Q. Was Mr. Moulton there? A. I don't remember.

Q. Or did he come there? A. I think he was present.

Q. You don't know where he came from? A. I do not.

Q. Well, what then happened? A. We heard the award.

Q. Well, what was said? A. I don't remember what was said; the award was said to be so much; that was their conclusion; I don't recollect the language—the phraseology; it was not put in writing.

Q. There was no written award? A. No, Sir.

Q. Who announced what the award was? A. I don't remember.

Q. Now, you cannot give us the words in which the award was announced? A. I cannot.

Q. At all? A. I cannot.

Q. But you recollect the amount, so far as it related to the money? A. Yes, Sir.

NO STIPULATION MADE ABOUT BURNING PAPERS.

Q. Let me see if I cannot refresh your recollection. Mr. Claflin says that he made the award—the announcement. Mr. Claflin says this:

I said that we had made up our minds that they should first burn up all the papers connected with the scandal, and that Mr. Bowen should pay Mr. Tilton $7,000, and that they should sign the Covenant—the "Tripartite Agreement," as we called it.

Did Mr. Claflin say that? A. I say not, most positively.

Q. Did he say any part of it? A. No part of it whatever.

Q. Do you mean it is an entire fabrication? A. No, Sir, I do not.

Q. Well, what do you mean? A. I mean that I have no recollection of any such statement being made.

Q. Ah! that is what you mean? A. I mean that no such statement was made to me?

Q. Do you mean anything more than that you do not recollect of any such statement? I mean that it would be impossible not to recollect it if there had been.

Q. That is matter of judgment. A. Well, that is my judgment, then.

Q. It is your judgment that it would be impossible for you not to recollect it if it happened? A. I say that no such statement was made to me; I say that most positively.

Q. Then it is made out of whole cloth?

Mr. Fullerton—That is no way to examine a witness.

The Witness—I will not say that.

By Mr. Evarts—So far as the fact goes, then, your recollection is that nothing to justify that statement occurred? A. I am not the judge, Sir, in this case. I decline——

Q. Your recollection? A. No such statement was made to me; that is my statement.

Q. And nothing of that kind? A. I have no recollection of ever hearing anything of the kind.

Q. Very well. Now, have you a recollection that nothing of that kind was said? A. I have a recollection that nothing of the kind was said.

Q. Very well. Then, so far as you know and recollect, nothing occurred out of which that statement could be made? A. Nothing whatever.

Q. Nothing whatever? A. No, Sir.

Q. Now, Sir, will you be so good as to state to us what you do remember Mr. Claflin said? A. I may qualify my last statement by saying that there was conversation in knots about the room after the award was made, and I have thought this matter over, and thought perhaps there might have been a remark, "Now you must be good friends," &c., around in knots. Whether Mr. Claflin made that statement there I am unable to say, but certainly it was never made before the arbitrators as such, according to my recollection. It is entire news to me.

Q. For aught you know, then, it might have been said in that room, while you were altogether? A. It might have been whispered or said in knots, and I not have heard it, but not addressed to the arbitrators.

Q. But the whole of it might have been said in that room, for aught you know, that night? A. That night it might have been.

Q. Now, how many knots could you make out of five people? A. Three, at least.

Q. Well, what was the first knot? A. I have no recollection.

Q. Do you remember any knots? A. I have told you, Sir, that I did not remember.

Q. A knot? A. I did not remember anything about it. That there might have been, I said.

Q. There might have been knots. Now, do you remember any knots, as you call it? A. I remember there were conversations—friendly conversations about the room.

Q. Was it not a conversation between the whole group? A. No, Sir.

Q. Between whom was it? A. I don't remember, Sir. I didn't say there were any such conversations.

Q. Do you remember there having been any separation into knots? A. I don't remember, Sir.

Q. And you do remember that at one time they were in groups? A. No, Sir; I said I did not remember; but there might have been.

Q. But, they were in a group. I don't say what was said? A. They were all present that evening.

Q. Now, it is not a very large room, is it? A. Pretty good sized room.

Q. How big? A. Fifteen feet by 17 or 18, I should think.

Q. And the table of the arbitrators' board, how much room did that take up—was that a dining table? A. Yes, Sir.

Q. The usual dining table? A. Yes, Sir.

Mr. Evarts—It is suggested, if your Honor please, that we have reached our usual hour of adjourning.

Judge Neilson—Get ready to retire, gentlemen. Will the jury please return at 2 o'clock.

Mr. Mallison—[Clerk]—The Court will now take a recess until 2 o'clock.

The Court then took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Judge Neilson—Mr. Bowen, will you take the stand, please?

Mr. Fullerton—One moment, please Mr. Bowen, with your Honor's permission. I want to ask, with the consent of my learned adversaries, a question of Mr. Andrews.

Judge Neilson—Stand up there, Mr. Andrews.

Stephen Pearl Andrews recalled.

Mr. Fullerton—What Gen. Hammond was it whom you mentioned yesterday as being present at Mrs. Woodhull's? A. Gen. Hammond of St. Louis, Mo.

Q. Not Surgeon-General Hammond? A. No, Sir.

Mr. Fullerton—That is all.

THE COVENANT NOT MENTIONED AT THE ARBITRATION.

Henry C. Bowen was then recalled and his cross-examination resumed.

By Mr. Evarts—Page 674, I read—Mr. Charles Storrs. Mr. Storrs being asked:

After they came in what was done? A Mr. Claflin made known to them the award.

Q. State what was said? A. He stated that the award was that the three parties, Mr. Bowen, Mr. Tilton, and Mr. Beecher, were to sign a paper, called the Tripartite Agreement, and that all the papers were to be burned that the three parties had, that were likely to make any trouble hereafter, and that Mr. Bowen was to pay Mr. Tilton $7,000.

Upon having your attention called to this testimony of Mr. Storrs, what do you say, Mr. Bowen, now, in regard to the award? A. The same as before, Sir.

Q. Yes; that it may have occurred in knots about, and not as an announced award? A. No, Sir.

Q. That is your idea? A. That is my idea.

Q. Now, I will ask your attention to what the other arbitrator, Mr. Freeland, says, page 703, at the foot of the first column:

Q. Mr. Claflin announced the award? A. He did.

Q. What did he say the award was? A. Well, in substance he said, first, that the papers were all to be burned relating to the scandal.

Q. Well? A. The next was—let me see, I don't exactly—that was the first, I remember, that was spoken of. Then the award, I think, came.

Q. What was the award? A. $7,000.

Q. Well, what next? Was there anything said about signing any paper? A. Yes, Sir.

Q. What was said about signing a paper? A. The Tripartite—that hard name that I cannot pronounce very well.

Q. Very well; we know what you refer to. A. That was to be signed.

Q. By whom? A. Henry Ward Beecher, and Mr. Tilton, and Mr. Bowen, I think.

Q. Bowen? A. Yes.

Q. Now, Mr. Bowen, upon hearing this statement of Mr. Freeland's are you still of the same opinion? A. I state most positively that nothing of the kind was said in my hearing. I have some recollections, since I left this morning, without conference with any one, however, in regard to the "Tripartite Agreement," which I should like to state.

Q. Very well. A. When Mr. Claflin, I think it was, talked to me about signing it, I made this reply: "Why do you"——

Q. Well, don't go into the conversation between you and Mr. Claflin. A. You asked me, I believe, what occurred between Mr. Claflin and myself—what was said, did you not?

Q. No, I did not? A. Excuse me.

Q. That we excluded when the other side attempted it, and that they excluded when Mr. Claflin was on the stand, and it was inquired into. Now, Sir, in regard to your own action, if you wish to correct a date or anything of that kind? A. I say that nothing was said to me in regard to the "Tripartite Agreement" until after the settlement, nothing was said about any paper; no paper was shown to me.

Judge Neilson—Until after the arbitration.

The Witness—Until after the arbitration.

Mr. Evarts—That you said this morning.

The Witness—Yes, Sir. I say it again.

Q. Well, that is not necessary; that is not a correction. That, if your Honor please, may be stricken out.

Judge Neilson—I think we will let it stand.

CONTRADICTIONS OF MESSRS. STORRS AND CLAFLIN.

Mr. Evarts—Of course I was ready that the witness should make any correction or modification of his testimony. Of course it is not very material. Now, Sir, see if this statement of Mr. Storrs's on another point will recall to your mind what happened there:

Mr. Bowen said he wanted what is termed the Woodstock letter, which, I think, was in June, 1863, he wanted that returned to him, and the arbitrators assented to that.

A. No allusion was made to that, whatever, in my presence.

Q. You think Mr. Storrs is wholly wrong about that? A. I think he is.

Q. Now, I will read what Mr. Claflin says:

As to burning the papers, Mr. Bowen said he had no papers, but he would like the return of the Woodstock letter, which was agreed to.

A. My answer is the same.

Q. Mr. Freeland says:

I remember Woodstock was mentioned and about a letter, and I think that Mr. Bowen wanted to have that returned to him and not burned.

A. I neither asked for it nor was it announced that it would be returned.

Q. But you got it soon afterward? A. I got it, and in the way I stated this morning.

Q. Yes, exactly. A. Mr. Storrs came and——

SOME THINGS MR. BOWEN DOES NOT REMEMBER TELLING DR. EGGLESTON.

Q. Well, no matter, no matter! We don't want it twice. Now, Mr. Bowen, whom were you in conference with on Saturday night, when you made that engagement a reason for making the appointment for Monday with Mr. Johnson and Mr. Tilton? A. I think, according to my recollection, some of the editors of *The Independent* were there.

Q. Do you remember which ones? A. I think Dr. Spear, Mr. Gladden, and Dr. Eggleston; I am not positive, though.

Q. That is your impression? A. Perhaps one or two others; I don't remember.

Q. Now, do you remember Dr. Eggleston being at your house at all on the 26th of December? A. Have n't I answered that question once?

Q. Now, you have answered as to his being there just before you left to go to Mr. Beecher, and just after your return. I now ask you if you remember his being at your house at all on the 26th? A. I have no recollection of it; he may have been there; he frequently called, but I have no distinct recollection.

Q. Don't you remember that an appointment was made on Saturday for him to see you again on Monday? A. Very likely, but I don't remember it; it was usual.

Q. Your memory is an entire blank upon that subject? A. I have no recollection.

Q. No recollection one way or the other? A. No, Sir.

Q. Is your memory in general good? A. I think so, Sir.

Q. So when you don't remember a thing you feel some assurance it did not take place? A. No, Sir; I don't say that.

Q. You do not? A. No, Sir.

Q. You don't go so far as that? A. No, Sir.

Q. Now, I will ask you whether Mr. Eggleston did not come to your house on the afternoon of Dec. 26, by appointment, and whether he did not find Mr. Tilton and Mr. Oliver Johnson there? A. I think I have answered that question, that I have no recollection of any such.

Q. Will you say that that did not happen? A. I have not said so. I have no recollection of it.

Q. You have not said so, and you will not say so? A. No, Sir.

Q. That it did not happen. Do you remember that Mr. Eggleston went away and returned, and these visitors of yours had then gone? A. I have stated that I have no recollection of Mr. Eggleston being there or going away.

Q. And this don't refresh you at all? A. No, Sir.

Q. Do you remember Mr. Eggleston finding you putting on your boots to go out—— A. The same answer.

Q. Just hear me now. And that you said to him then: "If Tilton is as bad as we think he is, he talks exceedingly well?" A. I have no recollection of it, Sir.

Q. That does not refresh your mind at all? A. No, Sir.

Q. Nothing to that effect? A. No, Sir; I have no recollection.

Q. Do you remember asking Mr. Eggleston then, that afternoon, to go down and see a certain lady whom you named, and to report to you the result? A. I do not.

Q. May that have happened? A. It is not impossible.

Q. Now, Sir, do you remember at that interview, or on that occasion, that you said to Mr. Eggleston (tapping your pocket,) you said you had a letter from Tilton to Beecher? A. I think I have answered that.

Q. You don't remember that? A. No, Sir.

Q. Nothing of that kind? A. No, Sir.

Q. Will you say that that did not happen? A. No, Sir.

Q. Well, or a letter for Mr. Beecher, or anything that is equivalent to that? A. I have no recollection of it.

Q. No recollection whatever? Do you remember that Dr. Eggleston returned that evening after dark with a message from the lady to whom you had sent him? A. I don't recollect it, Sir.

Q. Nothing about it? A. Nothing about it whatever.

Q. And do you remember saying to him then, or that evening: "I have just been to Mr. Beecher's"—or 'to see Mr. Beecher?" Do you remember that? A. No, Sir.

Q. [Reading]:

He is a good friend of mine and of yours; he is delighted that Mr. Tilton is removed; he says he is the worst man in the world, and that Mrs. Tilton is a saint, going to heaven before her time.

A. I have no recollection of anything of the kind.

Q. Nothing like that? A. No, Sir.

Q. No part of that? A. No, Sir; not a part of it.

Q. Do you say that it did not happen? A. No, Sir.

Q. You won't say that? A. No, Sir; there was a great deal said on the subject all the time, and I do n't know whether that occurred or not.

Q. Yes; at that time? A. No, Sir. Well, it is not impossible; I do n't recollect it at all.

Q. Did you then say to him that Mr. Beecher had told you horrible things about Tilton? A. The same answer; I don't recollect it.

Q. You don't recollect? A. No, Sir.

Q. This does not revive any faded image in your memory? A. No, Sir; my impression is that I did not, but I won't say that.

Q. Won't say? A. I won't say positively, no.

THE CONVERSATION WHEN MR. TILTON'S LETTER WAS DELIVERED.

Q. Now, Mr. Bowen, won't you be so good as to tell us what did pass between you and Mr. Beecher on that day? Was he at Mr. Freeland's when you went there? A. I believe he was; I am not positive, but I think he was in the room.

Q. No memory about that? A. Not distinct enough to say positively; I think he was in the room when I got there, but he may have come in a moment after.

Q. Just as likely one way as the other, I suppose? A. I think not as likely the one way as the other; I think he was there.

Q. What was the answer that your messenger brought you from Mr. Freeland? A. He said, "Yes."

Q. Said "Yes?" A. I simply requested him to make an appointment at a certain hour, and let me know, if it could not be filled, to the contrary; and he read the note and said "Yes."

Q. And that is the message your messenger brought back? A. Yes, Sir; nothing definite. I was not sure of meeting him; I expected to, because I requested him to make the appointment and let me know if it could not be made.

Q. Very well. A. I expected to hear from him if I did not go; but not hearing, I went.

Q. Then "Yes" was the only appointment you had?

Mr. Beach—Well, that does not follow.

Mr. Evarts—Yes, it does.

Mr. Beach—No, it does not.

Mr. Evarts—As it now stands.

Mr. Fullerton—Oh, no!

Mr. Evarts—Well, let us know what other appointment you had beyond the word "Yes."

Mr. Beach—Why, the witness has said, Sir, that he wrote to Mr. Freeland a note asking him if he could have an appointment, or a meeting, at a certain hour, and the answer was "Yes;" and the whole of it is a portion of the appointment, the note as well as the reply.

The Witness—To let me know if an appointment could not be made.

Mr. Evarts—Yes. Very well.

The Witness—And not hearing from it, I took it that that was agreeable—that hour.

Q. What hour? A. The hour named; I don't recollect the precise hour; it was in the afternoon; I have stated all I knew about that.

Q. You don't remember what the hour was? A. I have stated all I knew about that.

Q. Well, won't you give us, as near as you can, what you said about the hour? A. I said it was in the afternoon; 4 or 5 o'clock, or early in the evening; it might have been as late as 6, but I think not; I think it was 4 or 5 o'clock.

Q. But I am not talking about when you went; I am talking about the message that you sent to Mr. Freeland? A. The message that I sent, I think, said 4 or 5 o'clock, or any other hour that might suit his convenience—something like that.

Q. And the only answer you got to that was "Yes?" A. "Yes;" or he would attend to it, or something like that.

Q. But no selection or naming of an hour? A. No, Sir; I selected the hour myself.

Q. Well, how did you know which hour to go? A. I went at the time I specified.

Q. You say, either then or in the evening? A. I beg your pardon; I named the hour; and I think it was 4 or 5 o'clock, but I stated in my note that any other hour would suit me—if I recollect.

Q. And your answer was to make an arrangement—your request? A. My answer was to make an arrangement at the time specified.

Q. Your request was to make an arrangement; and you got an answer, "Yes?" A. I got no answer to the note.

Q. No; but a message? A. A message that he would attend to the request which I made; that is as I understood it.

Q. Yes, but it was the word "yes," wasn't it? I think you said "yes." A. "Yes" or "all right," or something.

Q. Or that he would attend to it? A. That he would see to it.

Q. Then you went at a certain hour? A. I went at a certain hour.

Q. Now, you are quite sure that Mr. Beecher was not sent for after you got there? A. No, Sir; he was not sent for; I am sure of that.

Q. And you are not certain whether you waited for him, or he was there? A. I think I waited, if he was not there, a minute or two minutes; I think he was there, Sir.

Q. Well, that you say. A. I won't be positive.

Q. Now, what passed between you? A. I shook hands with him when I entered the room, and said that I was the bearer of a letter from Mr. Tilton to him; and he sat down, and read the letter, and, as I stated before, put it in his pocket, and made no reply for the moment. I asked him what reply he had to make to the letter; he stated, with a moment's hesitation, "The man is crazy," or "I think he is crazy;" something like that.

Q. Well, did you pursue the subject any further? A. The subject was talked over.

Q. Did *you* pursue the subject? He had given you an answer that the man was crazy; now did you say anything more about it? A. I asked him what he had to say, and his reply at first was, "Are you friendly with me, Mr. Bowen?" I said, "I am; we have settled all our difference; I come as a friend, and desire a friendly interview; I come in no other way than as a friend."

Q. Well, did your manner indicate your sincerity? A. It did, most assuredly; I intended it should.

Q. And you felt it sincerely? A. I felt it sincerely.

Q. And showed it; did you show it sincerely? A. I don't think I did; I was courteous and polite, but not——

Q. No, but on this matter of your friendship; did you show it decidedly that you were his friend? A. I am not able to remember, Sir.

Q. Well, you meant to be understood that you were really his friend? A. I went with a friendly spirit.

Q. Yes, and so told him? A. And so told him; he asked me that question, however; I did not tell him that unasked.

Q. Well, of course. Go on, now; how did you get on further in the conversation? A. After he asked me that question, and I answered it, he said he was happy to hear it; and then he asked me if I knew anything in regard to the troubles in Mr. Tilton's family.

Q. What did you say to that? A. I said that I did not specially; I knew there were certain troubles, but I had heard nothing particularly; I had heard some things about him, but in the family I did not know anything about it.

Q. That is, about Mr. Tilton? A. Mr. Tilton and Mrs. Tilton; I had not heard particularly; I had heard some things that day.

Q. Well, I am only asking what you told Mr. Beecher—what you said to Mr. Beecher? A. I told Mr. Beecher that I knew nothing particularly; some general things I did know, but not to go into details; that was my first reply, not desiring to——

Q. Well, no matter about desires, but the facts, now, as they occurred. Well, how did you get on after that? A. Mr. Beecher said that he had received some letters; he or his wife, I am not sure which, had received some letters from Mrs. Tilton, from the West, which he desired very much to have me see.

Q. Well, what did you say to that? A. I asked him then if the letters were present, and he said, "No; I would like to have you call at my house and see them." And he further said that he would ask me that evening, but he was to have company, or was going out, or some engagement prevented, either himself or his wife; that the next morning he would like to have me call there.

Q. And see him or his wife? A. Do you wish what I said?

Q. No; I ask you whether he said anything about your going to see him or his wife? A. His wife.

Q. His wife? A. His wife, not him.

Q. Not him, the next morning? A. No, Sir.

Q. What did you say to that? A. I did not care to call there myself; that I had special reasons for not calling, which perhaps he understood.

Q. You meant matters between yourself and Mrs. Beecher, I suppose? A. I did, and I desired not to call; and he said, "I will make that all right; I wish you to come." I asked him, I think, if he was to be present. I think he said he had an engagement; was to go out of town, or was not to be there, but that it would all be arranged. I then hesitated about giving him a reply, but at his urgent request I said that I would go there, and I did call the next morning.

Q. Now, what else occurred after you made that appointment; what further was said on either side? A. There was considerable said in regard to Mr. Tilton, but in a general way. He made some statements which I cannot recall, because he mentioned facts and names which I knew nothing about. It was all, or mostly all, new to me. Some things I did know about.

Q. Well, were these facts and these names connected with ladies, or women? A. They were.

Q. Entirely? A. Entirely.

Q. And were there several instances mentioned? A. There were, I should think, two or three, but I am not positive about that; I should think two or three.

Q. And were all the names mentioned strange to you? A. I knew them by reputation—knew the parties by name and reputation—standing.

Q. So that when the names were mentioned they conveyed some personality to your mind? A. Yes, Sir.

Q. Well, what did you say to all that? A. I don't remember what I said, particularly, except that I was aware that there were damaging reports in regard to Mr. Tilton.

Q. In that relation—in that connection? A. I don't remember.

Q. I don't mean the persons? A. Yes, Sir.

Q. But of that nature? A. Yes, Sir.

Q. Well, Sir, did you inform Mr. Beecher what those were that you knew of? A. I said they were of a similar character.

Q. Did you enumerate or describe them at all? A. Not particularly; no, Sir.

Q. Well, but so that——? A. Only in a general way.

Q. You did not individualize what the story about each of the persons was? A. I named some things that I had heard, but not everything.

Q. Oh! A. (Continuing.) That I knew; I spoke generally.

Q. Well, did you say anything to him as to the period or recency of these matters coming to your knowledge? A. I did.

Q. What did you say about that? A. I said that when I severed the relations of Mr. Tilton with *The Independent* that I had not ——

Q. As editor, you mean? A. As editor?

Q. Yes? A. I had reasons for that step, and additional reasons that would induce me, in my judgment, to sever his connection entirely, and that that information had come to me since the relation as editor had been severed.

Q. Yes, and that you were surprised to hear these things? A. I was certainly surprised.

Q. Well, you said so, I mean? A. Yes, Sir; it was news to me.

Q. Yes, it was news to you, after the severance—these stories to his prejudice were news to you? A. Yes, Sir; were news.

Q. Had sprung up only since the editorial connection was severed? A. Was severed; yes, Sir.

Q. Did you say anything as to the number or quantity, variety of these imputations that had come to your knowledge? A. I don't think I did; I spoke of them as a whole; said that I had heard from various sources things which satisfied me that it was my duty to end his relations with the two papers.

Q. Yes, and did you inform Mr. Beecher that you had determined so to do? A. I did not; I simply——

Q. What did you say to him in that regard beyond saying that you thought it was your duty to terminate? A. Well, that was all I stated; I don't——

Q. Well, that was all. I only want what you told to him. Now, when you told him that, what did he reply? A. I do not remember any reply that he made to it.

Q. Don't you remember whether his reply was in the way of approval or dissent from that determination? A. I don't think he made any remark when I told him what I had decided to do.

Q. Well, previous to that, previous to your announcement of what you had decided to do, had he given any expression to either dissuasion or confirmation of your purpose? A. He had given me no advice in regard to the matter whatever.

Q. No opinion? A. No opinion, for I told him that I had decided to do it.

Q. Yes? A. That I had done the first thing and decided to do the second.

Q. Yes, and you had, hadn't you? A. What do you say?

Q. You had decided? A. I had decided, but I had not done it.

Q. I understand that, but you had decided? A. I had made up my mind to do it.

Q. Yes, you had made up your mind to do it? A. Yes, Sir.

Q. You did not need any persuasion from him? A. Not a bit.

Q. And you are quite sure he did not dissuade you? A. I do not think he made any remark to dissuade me or to persuade me.

Q. Well, in Mr. Beecher's production of the items or instances in the same direction, of imputation, did you understand them as concurring with your view, or as to dissuade you from it?

Mr. Beach—Wait one moment; that is objected to.

Mr. Evarts—What impression did what Mr. Beecher told you, in instances or circumstances that he brought into the conversation, make upon your purpose as to dismissing Mr. Tilton? A. My mind was made up without him, and it did not change it, of course.

Q. No, did not change it of course? A. What he said.

Q. Well, Sir, after you had announced to Mr. Beecher that you had made up your mind to dismiss—terminate your relations with Mr. Tilton, what further passed? A. He urged me to come to his house the next morning, and hear the contents of those letters, or letter—letters I think he said.

Q. Do you mean he repeated that? A. He did; urged it.

Q. Very well, and was that all—you parted then? A. I think that was all—in substance all.

Mr. Evarts—Now, will you give us Exhibit 41/2?

[Exhibit 41/2 produced by plaintiff's counsel and handed to Mr. Evarts.]

Mr. Evarts—I will read this letter of January 2, 1871, which I wish to ask you some questions about: [Reading.]

MY DEAR MR. BOWEN: Since I saw you last Tuesday I have reason to think that the only cases of which I spoke to you in regard to Mr. Tilton were exaggerated in being reported to me, and I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare. I am informed by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us, that he knows the whole matter about Mrs. B., and that the stories are not true, and that the same is the case with other stories. I do not wish any reply to this. I thought it only due to justice that I should say so much.

Q. Now, when you received that letter, did your mind recur to what he had told you? A. I have no recollection what my mind was when I received it; of course I noticed the contents of the letter.

Q. Noticed the contents. Well, do you remember whether, at the time, you thought this note did accord with what you remember as having occurred between you and Mr. Beecher? A. I do not remember, Sir.

MR. BOWEN'S CALL ON MRS. BEECHER.

Q. Do not remember that? Now, Mr. Bowen, you saw Mrs. Beecher the next day? A. I did.

Q. I do not remember whether you stated how long a conference you had with her. A. I do not remember.

Q. Well, about how long? A. I should think a half an hour.

Q. And you did not see Mr. Beecher? A. I have no recollection of seeing him whatever.

Q. And had no subsequent interview with Mr. Beecher that week you have stated? A. No, Sir.

Q. Well, now, on New-Year's day, or what was kept as New-Year's day, the succeeding Monday, you made an ordinary friendly call? A. Yes, Sir.

Q. Was it your usual habit to do so at Mr. Beecher's? A. It was.

Q. And this call was in the same spirit and manner as ordinarily? A. As usual.

Q. As usual? A. Yes, Sir.

Q. Now, you think you said something to him, I believe? A. I did.

Q. At that time? A. I did.

Q. And what was it? A. I simply announced to him that the previous Saturday (this was on Monday) I had severed the relations of Mr. Tilton as contributor of *The Independent* and as editor of *The Union*.

Q. That simple—? A. Simple announcement.

Q. Were there many people there at that time? A. None that heard that.

Q. No, I am not speaking of a public announcement, but do you know whether it was while the calls were going on? A. My impression is it was during the—; I know it was during the hours of reception.

Q. But whether there was a concourse or not you do not—? A. There were other parties in the room.

Q. There were—now do you remember whether or not, in the interview of the 26th of December, Mr. Beecher said anything to you in regard to what he had heard or learned that month of December in respect to a meditated separation between Mr. and Mrs. Tilton; do you remember whether that was in the conversation or not? A. That was in the conversation that afternoon or the next morning; my impression is that it was the next morning with Mrs. Beecher.

Q. With Mrs. Beecher? A. I think that she gave that as her——

Mr. Beach—I move to strike that out.

Judge Neilson—Yes, Sir.

Mr. Evarts—I do not of course propose to go into Mrs. Beecher's conversation. [To the witness.] You cannot say then? A. I cannot say.

Q. Whether it occurred that afternoon or the next morning? A. Or the next morning.

Q. But, either in the afternoon or in the morning, there was something said? A. There was something said.

Q. On that subject? A. On that subject.

Q. And you have no means of determining in your recollection whether or no it was afternoon or morning? A. I have none.

Q. As likely to have been one as the other so far as any memory of yours? A. I have no memory on the subject.

Q. No memory on the subject. Do you remember, Mr. Bowen, at what time the sale of pews that year took place at Plymouth Church? A. My impression is that it —I think it is the first Tuesday following the first Monday.

Q. In January? A. Yes, Sir.

Q. If so, it would have been the next day after you—— A. Yes, Sir.

Q. After your New Year's—what you call your New Year's call? A. Yes, Sir; my impression—I don't recollect in regard to that year.

Q. Well, Mr. Bowen, you were among the first planners and founders of Plymouth Church, were you not? A. I had something to do with it; yes, Sir.

Q. Well, you were among the first? A. Among the first.

Q. Among the first founders, and have remained connected with that church ever since? A. I have.

Q. And are still? A. I am still.

Q. Mr. Bowen, please look at *these* two letters and say if they are letters of yours to Mr. Beecher? [Papers handed to witness.] A. They are.

Q. And have you—we requested you, I think, to find the originals of those letters of February 6, 1870, letters to you—during the recess you were asked. A. I am not certain whether I have those letters, the originals of those; I haven't them here.

Q. By looking at them do you remember—do you suppose——? A I may have both.

Q. Yes; you may have both? A. I may have both.

Q. And was your habit to keep letters? A. It was my habit.

Q. So that you probably have them? A. I think I have them.

Q. But they are not among the papers? A. They are not among the papers I have here.

Mr. Evarts—These two that you identify I will have marked for identification only, if your Honor please.

[Letters marked for identification, "Ex. D, 147," and "D, 148."]

By Mr. Evarts—I wish you would look, Mr. Bowen, if you please, for the orginals of these two letters of Mr. Beecher? A. You will have to give me these to take with me, Sir, or——

Q. Give you the dates? A. Give me the dates on a piece of paper.

Mr. Evarts—We will give you a memorandum of the dates.

Mr. Beach—You can use these in the mean time, if you want.

Mr. Evarts—That is all, Mr. Fullerton.

RE-DIRECT EXAMINATION OF MR. BOWEN.

By Mr. Fullerton—Mr. Bowen, look at those two letters and say whether you addressed them to Mr. Tilton about the time of their very dates. A. I addressed them to him.

Q. And about the time of their respective dates? A. At the time.

Mr Fullerton—Yes, Sir. Just mark them for identification.

[Letters marked for identification, "Exs. 125 and 126."]

Q. Mr. Bowen, do you know where the draft of the "Tripartite Agreement" now is which you refused to sign? A. I do not.

Q. What became of it? A. I don't know, Sir.

Q. Do you recollect what you did with it? A. I handed it to the party who brought it to me.

Q. And who was he? A. Mr. Claflin.

Q. Are you enabled to state when that was, Mr. Bowen? A. The date?

Q. Yes, Sir. A. I am not.

Q. I call your attention to the date of the "Tripartite Agreement," as it was signed, being April 2, 1872 (it seems to be before the arbitration), and ask if you understand why that date was there. A. I am not able to say why the date was there; I didn't notice——

Mr. Beach—It is not the actual date?

Mr. Fullerton—No, not at all. [To the witness.] Don't you recollect, or do you recollect, that the paper that was first presented to you as the draft of the "Tripartite Agreement" purported to have been drawn up several days before it was presented to you, and had a date accordingly? A. My recollection is that the paper did not come to me until after the money was paid, and I am able to say that when it was presented to me I made this statement, that as Mr. Tilton and myself——

Mr. Porter—Well, wait!

Mr. Fullerton—I think it is proper, Sir.

Judge Neilson—I think it is.

The Witness [continuing]—That, as Mr. Tilton and myself had settled our difficulties, and as Mr. Beecher and myself had settled them, that I saw no reason why I should sign any such paper; I made that remark and remember it distinctly.

By Mr. Fullerton—Yes, but you don't recollect the date of the instrument that was first presented to you? A. No, Sir, I do not, nor the second.

Q. Now, what was there in that first paper then presented to you which you objected to?

Mr. Evarts—Oh! well, that I object to. The paper is here. It is objected to.

Mr. Fullerton—Well, is the paper here?

[Paper produced and given to Mr. Fullerton.]

Mr. Beach—That, they say, was the one that was presented to Mr. Tilton.

WHAT MR. BOWEN REFUSED TO SIGN.

By Mr. Fullerton—Look at this paper, which is "Exhibit D, 113," and say whether you recognize it as the first paper that was presented to you as the "Tripartite Agreement?" A. I believe this to be the first paper.

Q. Now, will you be kind enough to indicate by a pencil mark the paragraph which you refused to sign, or the paragraph to which you raised an objection. Just mark it so that I can read it, Mr. Bowen, please? A. [After marking the paper presented.] The paragraph—the words crossed I refused to sign.

Mr. Evarts—What paragraph is it?

Mr. Fullerton—It is contained within a parenthesis.

The Witness—All the words that are crossed I refused to assent to.

Q. Do you recollect, Mr. Bowen, whether you crossed that paragraph out at the time it was presented to you? A. I did.

Q. Look, please, at the interlineation in lead pencil, and say whether it is in your handwriting. A. It is in my writing.

Q. Is it your emendation that you made at the time? A. At the time—while I had it.

Q. While you had it? A. Yes; that evening or the next morning—before I delivered it back.

Q. And does the emendation in lead pencil indicate a paragraph which you were willing to sign if it were substituted for the one which you crossed out? A. It does if I signed any.

Mr. Fullerton—I propose to read what is crossed out and what is substituted in its place. The words crossed out are as follows——

Mr. Evarts—You had better read the context.

Mr. Fullerton—Then you cannot discriminate between the context and the erased part.

Mr. Evarts—Very well.

Mr. Fullerton—I will read what is erased first, and then read the context. The words stricken out are as follows:

I declare that those charges, imputations, and innuendoes are without any foundations in fact, to the best of my knowledge and belief.

What is substituted in place of this, in lead pencil, is as follows:

I sincerely regret having made any imputations, charges, or innuendoes unfavorable to the Christian character of Mr. B.

[To the witness]—Now, Mr. Bowen, you may state whether, with that alteration of yours——

Mr. Evarts—Why not prove the paper actually signed?

Mr. Fullerton—Well, it is easier to prove it this way.

Mr. Evarts—Why so?

Mr. Fullerton—I suppose the same rule applies to this that applied to your account. You had a right to show what balances were.

Mr. Evarts—The paper, as amended, speaks for itself.

Mr. Fullerton—Yes, Sir. [To the witness.] Look at the alteration at the head of page 3 upon this paper, and say whether you intended to erase the word "disavow?" A. I did.

Q. What did you substitute in its place? A. "Withdraw."

Q. "Withdraw all?" A. "Withdraw all."

Mr. Beach—Still the word "disavow" is retained in the paper which was subsequently executed.

Mr. Shearman—Well, "disavow" occurred twice, and instead of repeating it, the word "withdraw" was substituted for it the second time.

Mr. Fullerton—The original read, "And I expressly disavow the charges, imputations, and innuendoes imputed as having been made and uttered by me," &c. The word "disavow" is erased—Mr. Bowen says it was in

tended to be—and the words "withdraw all" substituted in its place.

Q. Look at the original draft, Mr. Bowen, and state whether you struck out this. After the words "I know nothing," did you strike out the words "derogatory to his reputation as a clergyman or a man?" A. I did.

Q. Did you insert in their place anything else? A. I did.

Q. If so, what? A. Those words [indicating in the paper].

Q. These words [reading]: "Which should prevent me from extending to him my most cordial friendship, confidence, and Christian fellowship."

Q. At the time of the arbitration did you know anything about the existence of what has been known as the Apology—the Letter of Apology? A. I did not, that I remember.

Q. Mr. Bowen, at the time of signing the "Tripartite Agreement," did you know anything about that? A. Not that I recollect.

Q. At that time did you know of the existence of any of these other letters, namely, the letter of Feb. 5, 1872? A. What about?

Q. Well, it is a notorious letter, and I did not know but what you were able to identify it.

Mr. Evarts—Mr. Beecher's letter?

Mr. Beach [to the witness]—Those letters that have been in evidence in the course of this trial.

The Witness—I cannot tell you until you show me the letter.

Mr. Evarts—Show it to him.

MR. TILTON'S REMARKS TO THE ARBITRATORS.

By Mr. Fullerton—Whilst they are looking up those exhibits, Mr. Bowen, I will ask you whether, at the time of the arbitration, Mr. Tilton did not call the attention of the arbitrators to Section 6 in the contract between yourself and Mr. Tilton relating to *The Independent*, which is as follows:

This contract may be terminated by either party at any time by paying to the other party the sum of $2,500, or by the death of either, or by mutual consent, but in no other way.

Do you recollect his calling the attention of the arbitrators to that clause? A. I think he did.

Q. Do you also recollect that he called the attention of the arbitrators to the other contract, in respect to *The Daily Union*, or *The Brooklyn Union*, and to Sections 3 and 11, which I will read, Section 3 being as follows:

The party of the first part (that is yourself) shall pay to the party of the second part a salary as follows: $100 per week in cash, payable weekly, together with an additional sum equal to ten per cent of the net profits of *The Brooklyn Daily Union* per annum, payable at intervals of not more than one year or oftener, at the discretion of the party of the second part.

Section 11. This agreement may at any time be annulled by the mutual consent of the parties, or by either of them, after having given to the other, in writing, six months in advance, due notice of a desire and intention to do so; and may be terminated immediately by paying $2,600 in cash to the party of the second part; and the party of the second part shall have the same privilege by making the same payment.

Q. Do you recollect his calling attention to that? A. I think he did.

Mr. Evarts—I understand that those contracts are in evidence.

Mr. Fullerton—Oh, yes, they are in evidence, but I wanted to know if the attention of the arbitrators was called to these several provisions.

Mr. Beach—They are marked in evidence.

Mr. Fullerton—They are marked in evidence. [To the witness.] Did not Mr. Tilton in that arbitration base his claim for damages upon the respective paragraphs to which I have now called your attention? A. I don't remember whether he did entirely. He presented all the case, from his standpoint, briefly.

MR. BOWEN IGNORANT OF THE SCANDAL LETTERS.

Q. I call your attention to the letter of February 7, 1871, from Mr. Beecher to Mr. Moulton, and ask whether you knew of its existence, either at the time of the arbitration, or the time of the signing of the "Tripartite Agreement?" A. I have no recollection of it, Sir, whatever.

Q. I now call your attention to the letter of the same date to Mrs. Tilton; did you know of that? A. I did not.

Q. Did you know anything of the existence of the letter commencing "The blessing of God rest upon you;" it has no date, I believe. A. No, Sir.

Q. I call your attention to the letter of Feb. 5, 1872, and ask you the same question with regard to that, commencing there? [Indicating.] A. [Looking at the letter.] I have no recollection of it whatever.

Mr. Beach—Is that the Morse letter?

Mr. Fullerton—Yes, that is the one.

Q. Did you know anything at that time of the charge which Mrs. Tilton had made against Mr. Beecher in writing?

Mr. Evarts—We object to that, if your Honor please. I have no objection to *these* matters, but it is not material or proper that this witness should be asked concerning his knowledge of this matter in suit here.

Mr. Beach—Well, we propose to prove that he had no knowledge.

Mr. Evarts—Well, concerning *any* knowledge.

Mr. Beach—He had no knowledge.

Mr. Fullerton—This is concerning *no* knowledge that I am going to prove. [Laughter.] It is competent for us to prove that he was entirely ignorant of the existence of this correspondence and of these various papers which

have been given in evidence here, at the time of the signing of the "Tripartite Agreement."

Mr. Evarts—I don't see exactly how it is material, but I should not care anything about these letters. This is not a controversy between Mr. Bowen and Mr. Beecher, as to whether he should be held to the "Tripartite Agreement."

Judge Neilson—I think you can show the fact generally. Have you more papers to show him?

Mr. Fullerton—I have put a question to him with reference to papers that I need not show him, because they are well enough designated by the description of them.

Judge Neilson—Well.

Mr. Fullerton—Did you know anything of the existence of any charge which Mrs. Tilton had made against Mr. Beecher at that time? A. I did not.

Q. Nor of any retraction of that charge? A. I did not.

Q. Nor of any recantation of the retraction? A. I did not.

Q. Now, Mr. Bowen, I understood you to say that you informed Mr. Beecher on the Monday following Jan. 1st that you had then discharged Mr. Tilton? A. I did.

Q. What time in the day was that? A. It was in the evening; it was after 4 o'clock, I should judge.

Q. Was it before or after this letter was written to you which is marked Ex. 41/2? A. It was after that letter was received.

Q. You had received that letter before you told Mr. Beecher? A. Yes, Sir; I received it in the morning, and I told him in the evening.

MR. BOWEN'S ALLEGED IMPUTATIONS ON MR. BEECHER EXCLUDED.

By Mr. Beach—What time, with reference to the receipt of the letter, were the relations of Mr. Tilton with your paper sundered entirely? A. On the Saturday.

Q. The Saturday before? A. Yes, Sir; the last day of the year.

Q. I call your attention to this evidence of Mr. Beecher. [Reading:]

Q. Well, did Mr. Moulton say that Mr. Bowen charged that you had confessed adultery to him? A. I—he did—yes, he said so. I was only hesitating as to whether it was in that interview or not. He said so at some one of the interviews, and about that time.

Q. At about this time? A. Yes, Sir.

Q. Well, what did you reply to that? A. I think I laughed. I denied it. When I confess adultery to Mr. Bowen I am sure it will be impressed upon my mind.

Q. Did you say to him on that subject whether or no Mr. Bowen had ever made any such charge or imputation to you personally? A. I said to him that from the origin of the difficulties between Mr. Bowen and me, down to February, or January and February, 1870, and again, Dec. 26, there had been several adjudications, arbitrations—that is, there had been many conversations, but Mr. Bowen had never had any difficulty with me except business difficulties, and that he never under any circumstances had made a statement which implicated my moral character.

Mr. Evarts—How does this become a subject of re-direct examination?

Mr. Beach—It is to contradict Mr. Beecher.

Mr. Evarts—But it is not re-direct. It is not relating to anything that I inquired about.

Mr. Fullerton—It is a question, your Honor, that we omitted to put on the direct examination inadvertently.

Judge Neilson—Do you plead inadvertence?

Mr. Fullerton—Yes, Sir; my attention was called to it at recess by Mr. Beach and Judge Morris.

Mr. Evarts—Well, now, refer us to the passage.

Mr. Fullerton—I refer to it in this large book.

Mr. Evarts—Tell us the day on which the testimony was given.

Mr. Fullerton—April 5, 1875.

Mr. Evarts—This is a conversation, given on our part, by Mr. Beecher as to what passed between him and Mr. Moulton; they having given on Mr. Moulton's part the conversation, on their view or Mr. Moulton's view, between himself and Mr. Beecher. Now, that——

Mr. Fullerton—You had better hear my question first; I was waiting for you to look up the place.

Mr. Evarts—I beg pardon.

Mr. Fullerton—My question has not been put yet, your Honor. I was waiting for my learned adversary to look up the paragraph. The question which I wish to put is this [to the witness]: Did you at any time state to Mr. Beecher any charges which implicated his moral character? Now, wait until the objection is raised.

Mr. Evarts—Is that the question?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Well, all that has been given in evidence here is that, they proving a conversation between Mr. Moulton and Mr. Beecher, Mr. Beecher speaks of that conversation in contradiction, we may suppose, of Mr. Moulton.

Judge Neilson—Yes.

Mr. Evarts—Mr. Bowen cannot be called to contradict Mr. Beecher in that statement, because the only statement that Mr. Beecher made was concerning what passed between him and Mr. Moulton.

Judge Neilson—Yes.

Mr. Beach—That is a mistake, Sir. Mr. Beecher went further. I don't know whether it has been read.

Mr. Beecher—Not further than what he told Mr. Moulton.

Mr. Beach—Yes, Sir.

Mr. Evarts—[Reading]:

I said to him [that is, to Mr. Moulton] that from the origin of the difficulty between Mr. Bowen and me, down to, &c., * * * there had been several adjudications, arbitrations; that is, there had been many conversations; but Mr. Bowen had never had any difficulty with me except business difficulties, and that he never

under any circumstances had made a statement which implicated my moral character.

It is all given as part of the conversation with Mr. Moulton.

Mr. Beach—We do not so understand that answer.

Mr. Evarts—Mr. Beecher has no right to testify in regard to what passed between Mr. Bowen and him.

Judge Neilson—No.

Mr. Fullerton—We think the question is a proper one, your Honor.

Judge Neilson—It does not strike me so. I don't think it is a proper one. It is really immaterial what conversation ever passed between Mr. Beecher and Mr. Bowen.

Mr. Fullerton—Well, it is not immaterial what charges he brought against Mr. Beecher.

Judge Neilson—Why not?

Mr. Evarts—In this case it is.

Mr. Fullerton—When Mr. Beecher testifies that nothing has been said by Mr. Bowen imputing immorality to him?

Mr. Evarts—He testifies that he told Mr. Moulton so. That is all.

Mr. Fullerton—And now it becomes necessary to see whether he told Mr. Moulton the truth.

Mr. Evarts—Ah!

Judge Neilson—We won't take that; it is too remote.

THE WOODSTOCK LETTER RULED OUT.

Mr. Fullerton—Let me have the Woodstock letter, please?

The Witness—There it is [producing letter].

Q. Is this the letter from which you read the date to the counsel on the other side? A. It is.

Q. Known as the Woodstock letter? A. It is.

Mr. Evarts [to Mr. Fullerton]—I would like to look at the letter.

Mr. Fullerton—I have not read it. Now, if your Honor please, I offer this letter in evidence.

Mr. Evarts—We object to it, if your Honor please.

Judge Neilson—From whom to whom?

Mr. Fullerton—It is from Mr. Bowen to Mr. Tilton.

Mr. Porter—Written when?

Mr. Fullerton—Written in 1863.

Judge Neilson—Not in connection with the employment or dismissal?

Mr. Fullerton—No, Sir; but it is a letter to which attention was called by the other side.

Mr. Evarts—No, not in the first instance.

Mr. Fullerton—Yes, Sir, in the first instance. You asked Mr. Bowen to refer to it and to give its date, and he opened the letter and read it.

Mr. Evarts—No, I didn't. I asked him how old the Woodstock letter was, and he said he could not tell without reading it. The Woodstock letter is spoken of by the arbitrators, as your Honor knows, as one of those papers that were to be disposed of; that is, nothing was said about burning it, but it was to be returned to him. Mr. Bowen differs from him, and does not recollect that, but that does not give a right to expose the letter.

Mr. Beach—It was spoken of much earlier than that, in the letter of Mr. Tilton.

Mr. Fullerton—Of Jan. 1, 1871?

Mr. Evarts—The letter itself has not been brought out in evidence on our part.

Judge Neilson—Is it connected with any event we had before us?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—It has been spoken of as a letter to be given up, and I asked him how old the letter was, whether it was ten years old, or how old it was, and he said he could not tell without reading it.

Judge Neilson—Is that the first time you called attention to the letter?

Mr. Evarts—Yes, Sir; that is the first time I called attention to it. I didn't call attention to it then. The witness looked at it for the purpose of refreshing his recollection.

Mr. Fullerton—It is an exhibit, and is dated Jan. 1, 1871, and contains an extract from the Woodstock letter, and that exhibit is appended to, and became a part of the "Tripartite Agreement."

Judge Neilson—There was a section taken out of that?

Mr. Fullerton—Yes, Sir.

Mr. Beach—This letter, Sir, was shown to Mr. Beecher, and the testimony of Mr. Moulton in regard to it was to this effect. [Reading]:

Q. Did you state to Mr. Beecher what Mr. Tilton proposed to do with that letter? A. Yes, Sir.

Q. What did you say to him on that subject? A. I told him Mr. Tilton intended to publish it.

Q. What did Mr. Beecher say? A. Mr. Beecher said that the statement that he had ever confessed to Mr. Bowen was entirely untrue; he said that he had differences with Mr. Bowen, and a settlement with Mr. Bowen, and that Mr. Bowen had never raised with him, at any such settlement, any question of adultery; he said that he presumed that he knew what one portion of the letter referred to, etc.

There is no necessity of reading it further. We propose to show by the production of the letter, and by the evidence of Mr. Bowen, that the statements of Mr. Beecher upon that subject were untrue—that the representations he made were untrue; and this letter having been referred to (the Woodstock letter) in this letter which was submitted to Mr. Beecher—Mr. Beecher having made remarks concerning it (the Woodstock letter) and its contents, why, we suppose, Sir, it naturally and legally draws in the instrument itself to be taken in connection with the commentaries, the manner in which it was received, made, and indicated by Mr. Beecher; that this part of the evidence and conduct of Mr. Beecher cannot be properly understood except in connection with the original paper instrument to which these declarations, and this conversation, and these references allude.

Mr. Evarts—This letter has been made somewhat

famous in the public consideration, though it never has been given to the public, by its being referred to in another letter that has been made public. Now, I cannot understand, really, how my learned friends can be serious in proposing to give in evidence here a letter written in the year 1863 by Mr. Bowen to Mr. Tilton. Now, no matter what Mr. Beecher has said; he is not affected by ever having seen this letter between Mr. Bowen and Mr. Tilton. It is not a question—this is not any evidence of anything that Mr. Bowen has said to Mr. Beecher, or that has come to Mr. Beecher's knowledge, at least, and I am unable to see the ground upon which a letter written by Mr. Bowen to Mr. Tilton, in 1863, can be given in evidence on this issue, a matter that had its first beginning in the year 1868.

Mr. Beach—It don't make any difference as to the origin or antiquity of the letter. It is revived at the time that the letter of Mr. Tilton to Mr. Bowen was shown to Mr. Beecher. It was there discussed.

Mr. Evarts—Mr. Beecher says that was not so.

Mr. Beach—He says it was.

Mr. Evarts—He says it was not shown to him at the time it was written.

Mr. Beach - Not at the time it was written.

Mr. Evarts—Not at the time of the "Tripartite Agreement."

[Mr. Porter here made a remark to Mr. Beach in an undertone.]

Mr. Beach [to Mr. Porter]—I don't understand, John. The contents of the letter were brought to his attention.

Mr. Porter—So were the contents of the Woodhull scandal. Would that permit them to introduce that as evidence against Mr. Beecher because he made a remark about it?

Mr. Evarts—I don't see how it can be proper evidence.

Judge Neilson—I don't think we are helped by the circumstance that a clause of the letter was incorporated in the agreement, or annexed to the agreement, because that was the act of the parties who used so much of the letter as they chose to use. And although there is some ground for the argument that Mr. Beecher made it the subject of conversation, I don't think it is sufficiently before us to admit the letter in evidence.

Mr. Evarts—He didn't make this letter the subject of conversation.

Mr. Beach—Well, Sir, suppose this letter contains a charge of the very fact which Mr. Beecher denies was ever made against him.

Mr. Evarts—We have nothing to do with charges made by other people.

Mr. Beach—Certainly. But at the time of this conversation spoken of by Mr. Moulton, the fact of the charge on the part of Mr. Bowen against him of adultery, and of impropriety, was one presented to his mind, and he says that Mr. Bowen never made any such charge. Contradicting that declaration, they proved that he did.

Mr. Evarts—We didn't say he made it to A, B, C, and D; he might have made it to all the world.

Judge Neilson—If it has any bearing on the——

Mr. Beach—We will prove it was made to Mr. Beecher.

Mr. Evarts—What then? The question we are talking about is whether we can offer in evidence this letter that Mr. Bowen wrote to Mr. Tilton in 1863.

Mr. Beach—We are talking of a broader thing than that.

Judge Neilson—The learned counsel claims that it is to be received because of what Mr. Beecher stated here on the subject. I think it is too remote and ought not to be received.

Mr. Fullerton [to the Witness]—That is all, Sir.

RE-CROSS-EXAMINATION OF MR. BOWEN.

Mr. Evarts—I omitted to ask Mr. Bowen, by inadvertence, this single question. [To the witness.] Mr. Bowen, did you ever see that paper before? A. I have no recollection of it, Sir.

Q. If you had seen it that night of the arbitration you would have remembered it, would you not? A. I should say that I never saw it before.

Q. You did n't append it to the check when you gave it to Mr. Tilton? A. No, Sir.

TESTIMONY OF JOHN NAPOLEON LONGHI

John Napoleon Longhi, a witness called on behalf of the plaintiff, being duly sworn, testified:

By Mr. Fullerton—Where do you reside? A. The residence or business?

Q. First, your residence? A. Corner of Willoughby and Yates-aves., Brooklyn.

Q. And what is your business? A. Delmonico's Hotel and Restaurant.

Q. Where? A. No. 22 Broad-st.

Q. How long have you been in the employ of Delmonico? A. Forty years about.

Judge Neilson [to Mr. Fullerton]—Quite near the end of your time.

Mr. Fullerton—It is outlawed, and I won't pursue it any further. [To the witness.] Where have you been for the last few years? A. Nowhere.

Q. Where? A. No. 22 Broad for the last ten years; I was 30 years in the old house.

Q. When did Mr. Delmonico move into No. 22 Broad-st.? A. In 1865, ten years ago.

Q. And what part of the building did he then occupy? A. The basement, as a kitchen and cellar, and the bar and lunch room on the first floor. It is about three feet from the grade of the street, inside of the door.

Q. Did it run through to New-st.? A. Yes, Sir. The room is 25 by 140.

Q. And did it run through to New-st. from Broad-st., from 1865 up to the present time? A. Yes, Sir.

Q. Broad-st. and New-st. run parallel to each other, don't they? A. Yes, Sir.

Q. New-st. being in the rear, further west? A. Yes, Sir.

Q. Now, has Delmonico got an eating-room up stairs, above the floor which you speak of? A. Not when I first went there.

Q. When did he open that room? A. Last June—the 27th of June, 1874.

Q. The 27th of June, 1874? A. Yes, Sir.

Q. Before that who had possession of that upper floor? A. A floor for offices.

Q. For offices? A. Yes, Sir.

Q. And when did he commence altering it for a restaurant? A. The 1st of May, 1874.

Q. And when did he admit guests in it for the first time? A. On the 27th of June, 1874.

Q. And before that time he did not occupy it? A. No, Sir; there was nothing up stairs.

Q. Was there any means of communicating between the lower floor, where the old restaurant was, and the upper floor, up to the time the alteration was made by Mr. Delmonico? A. No, Sir; nothing outside in Broad-st., and in New-st. also.

Q. Was there any eating establishment up stairs on the second floor? A. No, Sir.

Q. They were brokers' offices? A. Yes, Sir.

Q. Up to that time? A. Yes, Sir.

Q. And nobody lunched there until after the 27th of June, 1874? A. No, Sir, except some gentlemen called for anything; I used to send up anything they wished, private.

Q. Private offices? A. Yes, Sir.

Q. While they were occupied as broker's offices? A. Yes, Sir.

Q. And where were you situated? A. I attended——

Q. Were you on the first floor or second floor after the second floor was opened? A. I had charge of the house; I was down stairs.

Q. Down stairs? A. Yes, Sir, down stairs, first floor. I was down stairs before I had the upper part, of course.

Q. And where were you placed after the upper floor was opened—upper room? A. I attended to all.

Mr. Fullerton—That is all.

CROSS-EXAMINATION OF MR. LONGHI.

By Mr. Evarts—How many steps did you go up from Broad-st. to get into your saloon as it was in the year 1871? Three steps inside of the door.

Q. Inside of the door? A. The weather-door, some call it.

Q. Now, do you remember the fact that annexed to your establishment there was a restaurant where you went down stairs? A. Yes, Sir.

Q. What was the name of that? A. Charles Shedler, a German house.

Q. That was a restaurant? A. Yes, Sir.

Q. Where they dined and lunched, and so forth? A. Yes, Sir.

Q. And was it the very next place to yours? A. Next door, 24.

Q. And how near were the steps down to that to the steps up into yours? A. I should think 22 feet about.

Mr. Evarts—That is all, Sir.

Judge Neilson [to Mr. Fullerton.]—Can you call another witness to-night?

Mr. Fullerton—I could, Sir, but I hope your Honor won't ask me to.

Judge Neilson [to the jurors]—Please attend at 11 o'clock to-morrow morning.

The Court then adjourned until 11 o'clock on Friday morning.

EIGHTY-FIRST DAY'S PROCEEDINGS.

THE PROCEEDINGS—VERBATIM.

AN ADJOURNMENT UNTIL MONDAY.

FRIDAY, May 7, 1875.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts—If your Honor please we are aware on both sides that Mr Beach and Mr. Shearman are compulsively and inevitably prevented from coming to Court to-day, and I am advised by my learned friends on the other side that we are getting very near, probably, the close of the case, and that it may be terminated probably, substantially as early, even if we should take this interval of to-day, and there are some reasons why it should be desired on our part, if you have no objection.

Judge Neilson—Are counsel engaged in a case on the other side?

Mr. Evarts—Yes, Sir, and absolutely; there was no avoiding it at all.

Judge Neilson—Yes; well then we must adjourn.

The Court then adjourned until Monday morning, May 10, at 11 o'clock.

EIGHTY-SECOND DAY'S PROCEEDINGS.

JEREMIAH P. ROBINSON'S TESTIMONY EXCLUDED.

MUCH OF THE DAY SPENT IN ARGUMENTS BETWEEN COUNSEL—JEREMIAH P. ROBINSON'S TESTIMONY ABOUT MRS. MOULTON'S STATEMENTS WITH REGARD TO HER INTERVIEW WITH MR. BEECHER EXCLUDED—MR. BELL TESTIFIES CONCERNING A CONVERSATION WITH MR. BEECHER IN REGARD TO MR. TILTON'S HOUSEHOLD—TESTIMONY FROM MRS. ROBERT EDDY, LEWIS G. JANES, AND OTHERS.

MONDAY, May 10, 1875.

The principal incident of the trial to-day was the calling, by the plaintiff, of Jeremiah P. Robinson. It was intended to show that Mrs. Moulton had told him the incidents of her alleged interview with Mr. Beecher on June 2, 1873. This led to the anticipated legal battle. Mr. Fullerton, who had been examining the witness on preliminary points, as soon as Mr. Evarts made an objection, said, "Well, Sir, one of my associates is ready to argue it," and sat down. Judge Neilson said that he was ready to hear the arguments of counsel in regard to the admissibility of the evidence. Mr. Pryor then arose and began his argument. He stated the proposition of the plaintiff to be that when the evidence of a witness was impugned on the ground that it was a recent fabrication, brought about from some special interest or influence, it was competent to prove that the witness had told the story prior to the date of the supposed fabrication, and before the existence of the imputed interest or influence. He claimed that Gen. Tracy had intimated in his opening address that Mrs. Moulton had been influenced in her statements by her husband, and that Mr. Beecher in his testimony had made a similar intimation about Mrs. Moulton. To counteract these asserted imputations against Mrs. Moulton, the plaintiff wished to show that the lady had told the circumstances of her alleged interview with Mr. Beecher to Mr. Robinson about the time when the interview occurred.

Mr. Pryor began his address very slowly, but warming with his subject he became very energetic in manner. He spoke in the main in a high key, occasionally changing to a heavy bass tone with startling abruptness. He was apparently very nervous, and picked up his law-books, opened them over his arm, and read his authorities so rapidly that the stenographers could hardly keep up with him. His gestures were very forcible, and he seemed to put his whole strength into the work. Judge Neilson listened closely to this argument, and the persons in the audience were very attentive, and kept their eyes fixed upon the speaker. Suddenly Mr. Pryor stopped in the middle of a sentence which he had been uttering in a loud voice, pressed his hand to his brow, and said falteringly, "If your Honor please, I have an attack of vertigo." The windows were quickly raised by order of Judge Neilson, while Mr. Pryor sank back into his chair, and the counsel crowded around him. Rejecting offers of assistance, by a strong effort Mr. Pryor again rose to his feet and attempted to proceed with his speech. He had pronounced only a few words when he was once more obliged to sit down. When he once more arose and began to speak, Judge Neilson asked him to continue his argument sitting, but Mr. Pryor refused to do so. Judge Neilson also offered to adjourn the Court, but the resolute lawyer declared that it was not worth while, and went on speaking, although his hands trembled violently, and his associates endeavored to have him sit down. After breaking down three times, Mr. Pryor finally said that it was impossible for him to proceed, and left the Court-room accompanied by his friends.

Mr. Fullerton said the plaintiff's counsel were satisfied to let the argument on their side rest where Mr. Pryor had left it. Mr. Evarts, who was supplied with numerous authorities by Mr. Abbott, replied to the argument of Mr. Pryor, and his answering address, which began before recess, occupied a large part of the afternoon session. Mr. Evarts maintained that there was no precedent or authority in this State for the admission of the testimony which the plaintiff wished to introduce. Mr. Fullerton replied briefly to Mr. Evarts. Judge Neilson finally ruled the testimony out, saying in substance that while the imputation contained in Gen. Tracy's opening address and in Mr. Beecher's testimony might be the ground of an exception to the general rule excluding the evidence offered, yet the charge in the opening if unsupported would go for nothing, and the remark of the defendant was a mere opinion of no weight, and ought not to be considered.

The plaintiff's lawyers called Mrs. Robert Eddy of Brooklyn, who testified that a few weeks before July 1, 1873, she had met Mr. Beecher coming out of Mr. Moulton's house. On the part of the plaintiff it was offered to prove that Mrs. Moulton

had told Mrs. Eddy about her interview with Mr. Beecher, but this evidence was excluded also.

Mrs. Moulton was then recalled by the plaintiff. She had come into the court-room accompanied by her husband and Mrs. Eddy, and the three had sat down near the witness chair. The ladies remained only long enough in the court-room to give their testimony. Mrs. Moulton testified that the visit spoken of by Mrs. Eddy, when Mr. Beecher was met on the steps of Mr. Moulton's house, was on June 2, 1873, the day when Mrs. Moulton had her alleged interview with Mr. Beecher. Mr. Beach explained that Mrs. Moulton would be recalled again to give evidence on other subjects.

George A. Bell was recalled by the plaintiff immediately after the opening of the morning session. He testified that in December, 1870, he had a conversation with Mr. Beecher about the domestic difficulty in Mr. Tilton's family. Mr. Beecher told the witness that Mrs. Tilton had left her husband and gone to Mrs. Morse's, that her husband's conduct had been cruel and licentious, and that he (Mr. Beecher) had been called upon by a young girl living in Mr. Tilton's family, who had told him about licentious incidents that had occurred in Mr. Tilton's house. Mr. Bell gave the details of the interview at considerable length. He was not cross-examined.

Lewis G. Janes, the Superintendent of the Butler Health Lift, in New-York and Brooklyn, was called for the plaintiff, and testified that he had seen Mr. Beecher on the morning of June 2, 1873, on the Montague Terrace, Brooklyn, going toward Mr. Moulton's house, with his head cast down dejectedly.

Frederick W. Mitchell of Norwalk, Conn., formerly bookkeeper of Woodhull, Claflin & Co., testified for the plaintiff. He stated that the colored man Woodley had had no regular employment to his knowledge, and was a man of little education.

Mary Catharine McDonald, a servant, who is now in Mr. Tilton's employment, was called for the plaintiff. She testified that she had helped Mrs. Tilton to get ready to go to Monticello about four years ago. She narrated the circumstances of Mrs. Tilton's departure, and what followed, and stated that Miss Bessie Turner left Mr. Tilton's house for Keyport, N. J., on the Monday following Mrs. Tilton's departure for Monticello.

THE PROCEEDINGS—VERBATIM.

GEORGE A. BELL RECALLED.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Morris—George A. Bell. George A. Bell recalled on behalf of the plaintiff.

By Mr. Fullerton—Mr. Bell, I want to call your attention to a proposed Deacons' meeting of Plymouth Church, about the time of the West charges. Do you recollect of a proposed meeting of the Deacons of that church about that time? A. I have no remembrance about the West charges at all, Mr. Fullerton.

Q. Do you recollect of any such proposed meeting, soon after the Woodhull scandal. A. Yes, Sir.

Q. And did Mr. Beecher make any request of you soon after that scandal, in regard to a proposed Deacons' meeting?

Mr. Shearman—Wait a moment. If your Honor please, we object, on the ground that this has been gone into on the direct examination of Mr. Bell, on the plaintiff's opening case, page 695. It has been fully covered

Mr. Fullerton—695?

Mr. Shearman—695.

Mr. Fullerton—Won't you read, Mr. Shearman.

Mr. Shearman—Shall I read?

Mr. Fullerton—Yes.

Mr. Shearman—[Reading]: "Q. Do you remember being present at any time when Mr. Beecher was present, when the subject of the scandal was up for discussion?" After one or two other questions on the part of the witness, to get an explanation, he says, "Yes, Sir."

Mr. Fullerton—What column?

Mr. Shearman—Second column.

Mr. Fullerton—Right hand side?

Mr. Shearman—Right hand side.

"Q. Where did it take place? A. In Mr. Beecher's house.

"Q. Who were present? A. Mr. Beecher and myself. * * * *

"Q. What occurred at the interview between yourself and Mr. Beecher? A. Mr. Beecher said he had sent for me because he understood that there was to be a meeting of the Deacons in regard to this matter," &c.

Then the conversation is stated with great detail.

MR. BEECHER AND MRS. TILTON'S DOMESTIC TROUBLES.

Mr. Fullerton—I believe that is so, Mr. Bell, and I will pass to another topic. Do you recollect of Mr. Beecher's calling upon you about the middle of December, 1870, with reference to a domestic difficulty in the family of Mr. Tilton? A. Yes, Sir.

Q. Do you recollect the date? A. Not excepting as connected with the documents published in this trial.

Q. But in connection with those documents you do recollect the date? A. I remember that——

Mr. Shearman—Can you speak a little louder? Wait a moment, Mr. Bell. [To Mr. Fullerton.] Be kind enough to repeat the question.

Mr. Fullerton—I call his attention to about the middle of December, 1870, an interview with Mr. Beecher, in respect of the domestic difficulty in the family of Mr. Tilton.

The Witness—You were speaking about the date, I understand?

Q. Yes. A. I merely know of my own knowledge within a certain number of years, during which that interview must have taken place—that is, it must have taken place while I lived in my present residence, and I moved into that residence in the Spring of 1869; it must have been since that time; but I have been able to fix the date, of course, from the proceedings in this trial.

Q. And having so fixed it, what date do you say it was? A. About the middle of December.

Q. Of what year? A. 1870.

Q. Did you visit the house of Mr. Tilton or Mrs. Morse with Mr. Beecher? A. No, Sir.

Q. Where did Mr. Beecher see you in regard to it? A. In his own house.

Q. Under what circumstances were you there? A. I went there by his request—to call.

Q. What did he say to you, if anything, in regard to the proposed visit to Mrs. Morse?

Mr. Beach—The question is not heard, Mr. Fullerton. The jury don't hear you.

By Mr. Fullerton—What request did Mr. Beecher make of you, if any, touching a proposed visit of Mrs. Tilton at her mother's, Mrs. Morse's? A. He requested my opinion about certain matters.

Q. What request did he make? A. Do you mean an opinion upon what point?

Q. No, what request of you did he make? A. He requested my opinion.

Q. Well, did he state any facts upon which you were to base your opinion? A. Yes, Sir.

Q. What advice did you give him? A. It is so much plunging to the very end of it from the beginning that I can scarcely answer.

Q. Well, commence at the beginning; tell us what he stated to you, and then the advice you gave him? A. He stated to me that he had been sent for by Mrs. Tilton to consult in regard to the position of domestic affairs in her own household; that she had left her husband and was then at Mrs. Morse's, her mother's; that she was in great trouble and great anxiety; that the conduct of her husband had been in a great many ways very severe, very cruel, and everything but what a—I was going to say, a decent man's conduct ought to be to a woman; he stated that Mr. Tilton's conduct in regard to other matters, in regard to licentiousness, was very low; he stated that he had been called upon by a young girl—he did not mention any name—a young girl, who had been in Mr. Tilton's family; she had related to him circumstances occurring in the family, in the household of Mr. Tilton, which were exceedingly licentious; he stated—I presume I need not go into the circumstances of that statement; I have sufficiently indicated what it was; he stated that at last Mrs. Tilton had been forced to fly from her home; that she had done so, and had gone to Mrs. Morse's; that she had sent then for him to advise with him as to what course she should pursue; that he had consulted Mrs. Beecher on the subject, and then they thought—both thought—that it was better that they should mention the fact to some member of the church, so that they might not go on in the matter without the whole church being ignorant of these proceedings, or what advice they might give—might tender to Mrs. Tilton; they had therefore called for me, not so much to take my advice, as to inform me of the facts that were occurring, and inform me of what advice they proposed to give, if any, to Mrs. Tilton. He asked me then—he said then that he proposed to hand the matter over to Mrs. Beecher; that it was a matter that a lady could manage better than a gentleman, and Mrs. Beecher intended, by his suggestion, to go and see Mrs. Tilton the next day. The question was particularly as to what advice Mrs. Beecher should give to Mrs. Tilton. I don't know whether from Mrs. Beecher or from him, the question came up about a permanent separation, but from one or the other that suggestion was made, of a permanent separation between Mr. and Mrs. Tilton, and Mr. Beecher asked me what I thought of that. I said in answer, "Of course, nothing else can be possible; it is impossible for Mrs. Tilton to live another day with Mr. Tilton on such facts as you have presented to me." Then Mr. Beecher asked me if I thought it would be well to call in any of the ladies of the church; I am not sure whether deaconesses were mentioned then, as I am not quite sure that we had them at that time, but it is clear in my memory that he did ask me if the advice of any of the ladies of the church should be called for, or that the matter should be handed over to the ladies of the church—any of the ladies—to manage. I said, unquestionably not; it was a matter of great delicacy, it was a matter far more easily managed by a few than by many, and it would be exceedingly harmful to bring it into the church, or even to hand it over to any ladies unofficially, and that I was certain that the best management of the case would be to have it left in his own hands and those of Mrs. Beecher. It was then—I think that was about the substance of that interview. I had another interview the following day, I think.

Q. You are not able to state the day of the month when this took place? A. Well, I believe I would have been, Sir, if I had known the very slightest what you were going to examine me about, but I came on this stand without the slightest consultation with any of the lawyers on your side; I have a note at home I think—not

that I preserved papers, but my son is an autograph collector, and he seizes all autographs of Mr. Beecher that I have, and one, a note, I found within a few weeks calling for that very interview.

Q. You can, then, give us the exact date, can you not? A. No, I don't think—I cannot.

Q. I interrupted you as you were going to say something, Mr. Bell. A. I was going to say that I thought perhaps—but I think perhaps I had better not say the date, because I cannot remember distinctly.

Q. Can you by referring to the note in question? A. I can, Sir, but I am going away from town this afternoon at 3 o'clock, to be gone until next Saturday.

Q. Is there any way you could send the note to us? A. I suppose I can be called upon, Judge, for the note, and there would be nothing improper for me to send it to you, that I know of.

Mr. Fullerton—Oh, the other side are willing.

Mr. Shearman—Yes.

Mr. Fullerton—We can get the date without your appearing.

The Witness—I think the date is in it, but I won't be quite certain; yes, I think the date is in it.

Mr. Fullerton—Well, Sir, if you will be kind enough to send it to us it will be returned to you.

The Witness—Yes, Sir.

Mr. Fullerton—And the other side will consent that it may be used for the purpose of getting the date. That is all.

Mr. Shearman—If you will send that, Mr. Bell, that is all.

TESTIMONY OF LEWIS G. JANES.

Lewis G. Janes, a witness called and sworn on behalf of the plaintiff, testified as follows:

By Mr. Morris—Mr. Janes, where do you reside? A. No. 440 Carlton-ave., Brooklyn.

Q. How long have you resided in Brooklyn? A. Five years last January.

Q. And what is your business? A. I am manager or superintendent of the Butler Health-Lift in New-York and Brooklyn.

Q. Where is your place of business in Brooklyn? A. 158 Remsen-st.

Q. And where in New-York? A. Park Bank building, No. 214 Broadway.

Q. Are you acquainted with Mr. Beecher? A. I have known Mr. Beecher by sight for ten years. I was introduced to him in the Spring of 1871.

Q. And has he been a customer of yours? A. He has.

Q. At what time? A. From the latter part of March, 1871, during the three months following, very regularly, and I think running over, irregularly, a little beyond that time; a few days in the Fall.

Q. You are married? A. I am.

Q. Family? A. Yes, Sir.

Q. When is the anniversary of your marriage—what day of the year? A. On the 2d day of June.

Q. When was you married—what year? A. The 2d day of June, 1869?

Q. On the 1st of June, 1873, did you have a place of business in New-York? A. I did.

Q. Where was it at that time? A. At the same place where it is at present, 214 Broadway.

Q. Park Bank? A. Park Bank building.

MR. BEECHER'S ALIBI DISPUTED.

Q. Do you recollect from about the 31st of May, the week following, of having a patient in New-York, that called you over early in the morning? A. From the 29th of May I recollect such an incident; yes, Sir.

Q. Did you see Mr. Beecher on the 2d of June, 1873? A. I recollect that I did.

Q. And where did you see him? A. I saw him first as he was about stepping upon a little bridge crossing the roadway—carriage roadway, which leads down to Wall-Street Ferry at Montague-terrace.

Q. From which direction was he coming? A. From the direction of Columbia Heights.

Q. There is where Mr. Beecher resides? A. I understand so.

Q. No. 124 Columbia Heights? The residence has been given. A. I don't know the number.

Q. And when he passed the bridge, which direction did he take? A. He took the direction leading toward Remsen-st.

Q. Montague-terrace? A. Yes, Sir; crossing Montague-terrace.

Q. Did you see him turn in Remsen-st.? A. I did.

Q. Which way did he turn in Remsen-st.? A. He turned toward Court-st.

Q. And that is toward Mr. Moulton's house? A. Yes, Sir.

Q. Toward 69 Remsen-st.? A. 49 Remsen-st.

Q. 49 I should say. Now, about what hour in the morning was that? A. As accurately as I can fix it, it was shortly before 9 o'clock; I think not after that.

Q. How far is is Mr. Moulton's residence from Montague-terrace, where you saw him turn?

Mr. Beach—From that corner

Mr. Morris—From that corner?

A. I am unable to fix it accurately, but I should think a few houses—four or five houses.

Q. In that block? A. Yes; it is in that first block, if I recollect correctly.

Q. From 24 Columbia Heights to Moulton's residence, that would be the most direct route to go, wouldn't it? A. I should judge so.

Q. About how far is 24 Columbia Heights from Mr. Moulton's? A. I very seldom pass through Columbia Heights, and I am unable to say, Sir; I should think it

would be about 10 minutes' walk, if you want a guess—possibly more.

Mr. Beach—Well, get it by somebody else.

Mr. Morris—Yes; I will get that by some person who knows better than you. Now, then, state what circumstance, if any there was, in your meeting Mr. Beecher that morning, that impressed it upon your mind. A. In order to explain that I shall have to explain my state of feeling.

Q. Well, explain that. A. [Continuing.] When I started out of the house. The 2d of June is a very pleasant anniversary to me. My intention is always, if possible, when business permits, to make a semi-holiday of it. On that occasion I was—felt obliged to go over to New-York at an earlier hour than usual; I usually reached my New-York rooms in the vicinity of half-past 10; but on that morning—for a few days about that time, I was obliged to go earlier, and I left the house with the intention of returning, if possible, earlier than usual, and making a sort of holiday of it, and with a very—in a very pleasant mood of mind. On seeing Mr. Beecher, I recognized him at once, and, perhaps egotistically, thought that he would recognize me when we met, as we did very nearly. But, as I came nearer to him, I saw his countenance indicated a person who was troubled.

Mr. Evarts—Well, it is no matter about the indication of his countenance.

Mr. Beach—It is some matter to us.

The Witness—His head was cast down. He appeared to be in trouble, and it produced a change of my state of mind that fixed itself upon my memory, and upon returning home at night I repeated the incident to my wife.

Q. And how near were you to Mr. Beecher—how near did you pass by him? A. I should think nearer, or as near, as I am to him now.

Q. He did not recognize you? A. He did not appear to recognize me. I don't think from his appearance he would have recognized any one.

Mr. Evarts—I move to strike out that last clause.

Judge Neilson—Yes; that last clause.

The Witness—I hope Mr. Evarts will accept my apology if I deviate in any way from the——

Mr. Evarts—Do not vary from the course of the examination. I do not know that you owe any apology to anybody.

The Witness—Entirely unintentional, if I made any error.

CROSS-EXAMINATION OF MR. JANES.

Q. Now, Mr. Janes, you say that you make the 2d of June, or have a disposition on that day at least, to make the 2d of June a semi-holiday? A. That is my feeling and intention when business permits.

Q. Well, this was in 1873? A. Yes, Sir.

Q. Then you had been married four years? A. '69 to '73; yes, Sir.

Q. Had you carried out that purpose on your previous anniversaries? A. Well, to a certain extent, Sir.

Q. Not succeeded on any one entirely? A. That I would have to recall to my recollection a little; on the one following——

Q. Oh! I don't care for the details. A. I think I had on one, at least; I can tell why I had not on the other two, if you would like to know, Sir; would you like to have me tell you why ——

Q. Oh! Not the least; I haven't the least curiosity; not the least. Now, Mr. Janes, you think Mr. Beecher had a gloomy look? A. Yes, Sir.

Q. Do you remember how he was dressed? A. Yes, Sir; that is, I could not, of course, indicate absolutely, but I recollect the general impression made upon me.

Q. Recollect he had his clothes on? A. Yes, Sir; a dark suit, or black suit, I should say, without overcoat.

Q. Do you remember whether the weather was warm or not? A. It was.

Q. Was it quite hot? A. Well, my recollection is that it was a day to dispense with coats, or outside coats at all events.

Q. The 2d of June? A. Yes, Sir.

Q. But you have no more distinct recollection about it than that? A. Well, I have refreshed my recollection by a reference to the tables.

Q. Yes; and what did you find out? A. I found out that it was from 80° to 85° along through the day, in that vicinity—the thermometer.

Q. Did you find out it was near 90° about 8 o'clock in the morning? A. I could not tell you absolute; I think not, though; about 9 o'clock in the morning I think it was——

Q. You don't remember it was a very hot day? A. I recollect it was a warm day; yes, that is my impression; it was a warm day; I recollect the day previous to it more than that day, for I was out of doors nearly all day.

Q. Well, do you remember whether it was a hot, sunshining day? A. No, Sir, I could not say whether it was cloudy, but I recollect that it was not stormy; that is my recollection, not stormy.

Q. Well, then the obscuration of Mr. Beecher's face produced more of a chill on you than the question whether sun was obscured or not? A. Yes, Sir; decidedly.

Q. Now, what sort of a hat did Mr. Beecher have on? A. My recollection is simply that he didn't have on a tall silk hat; I could not say more definitely than that.

Q. Now, was it an unusual thing for you to see Mr. Beecher? A. Rather unusual, yes, Sir, at that time.

Q. Quite so, wasn't it? A. Yes, Sir.

Q. How long do you think it had been since you had seen him? A. Well, I may have met him on a boat or——

Q. Yes, I am not asking you that; I asked how long since you remember to have seen him; you may have met him anywhere—— A. I do not remember; I have no distinct recollection of having seen him since he left our rooms;

I think, however, that I attended his church once during that period, but I am not certain.

Q. Don't even remember that? A. Not absolutely; I think—I have only attended there three or four times since I have been in Brooklyn; I would not be likely to remember the exact dates.

Q. Well, you run on a little, but that is not important if you will attend to my questions and confine your answers to them. A. I will endeavor to do so, Sir.

Q. You did see him the last time that he left your place? A. No, Sir, I didn't say that.

Q. Your presence—when was it? A. The last time that he left my presence I saw him certainly.

Q. Your presence? A. Yes, Sir, certainly.

Q. When was that? A. That I cannot state now definitely.

Q. Well, what can you say about it? A. Well, he—I think—I am not certain—I cannot say whether I saw him—he was in my rooms, I think, three or four times, possibly more; possibly not over two or three, in the Fall of 1871. Whether I saw him there I do not recollect; but I do recollect distinctly an occasion in the Spring of 1871 which I think was toward the last of his lifting.

Q. Very well; now, for two years you had n't seen him, then, according to your recollection? A. I think I had met him casually, but not so as to identify the occasion; there was nothing to impress it on my memory.

Q. Well, you don't know, then, that you ever met him, do you? A. I could not swear to it during that period.

Q. Now, was your usual trip to the city over the Wall Street Ferry? A. Yes, Sir.

Q. That was an everyday matter to you? A. Not an everyday absolutely, but usual.

Q. Well, usual—you went over every day, didn't you? A. I went over some way every day nearly.

Q. Well, that was your habit. A. That was my habit.

Q. Your business was to go every day. A. Yes, Sir.

Q. And you went by the Wall Street Ferry? A. Usually.

Q. Now, where did you live at this time? A. I lived where I live now on June 2, 1873.

Q. Well, I haven't the least idea where you live now. A. I stated on my direct examination—No. 440 Carlton-ave.

Q. Where is that as respects this ferry? A. It is, I should judge, a mile and a half from the ferry or more.

Q. You go through a great many streets to get to it? A. Not a great many.

Q. Well, a good length? A. A good length of streets—yes, Sir.

Q. Now, where did you come into Montague-st. that morning? A. That I am unable absolutely to say, on that day; I can give you my general course, and occasionally I deviate from it.

Q. Yes? Well, then, I don't think it would be any use to me to know; that is the only day I want to know about it? A. Yes, Sir.

Q. And you don't know? A. I know this—that I came into it on that morning as high up as Clinton-st.

Q. Clinton? A. Yes, Sir; as far toward Court as Clinton.

Q. Now, did you go along the platform there and down the steps, or did you go down under the bridge? A. I went along the platform and down the steps.

Q. Is that your usual course? A. That is a very frequent course with me; I like to look out on the water as I go by.

Q. Now, which way do you usually go? A. I think about as often one way as the other, as near as I can——

Q. You have no impression, however, about that? A. I know that I did that on that morning; yes, Sir, I have very decided impression.

Q. Do you remember looking out on the water? A. Yes, Sir.

Q. What did you see? A. I saw water.

Q. Well, you have a distinct recollection that you looked out on the water that morning, and saw it? A. I perhaps reason to that, Mr. Evarts.

Mr. Evarts—Ah! ah!

The Witness—To be strict about it.

Q. Only reason? A. The incident that struck me most I have mentioned; of these others——

Q. Yes, yes; where was Mr. Beecher when you first saw him? A. He was very near the bridge.

Q. What street was he in? A. I think it is called Montague-terrace along there; I am not—I don't know that I ever looked at the name, but I think all that space across there is called Montague-terrace.

Q. Yes; well, it is a prolongation of Columbia-st., or Columbia Hights? A. Pretty nearly; I think there is a little break.

Q. Yes, Sir; a little jog there. Now, you think you were in that part of it? A. Yes, Sir.

Q. On which side of the street was it? A. Toward Columbia Hights; it was on the side of the bridge toward Columbia Hights, just about stepping on the bridge, or very nearly.

Q. The bridge? A. There is a small foot-bridge crossing over the passage-way.

Q. Well, what is this bridge; what is it over? A. It is over the roadway which leads down to the ferry.

Q. Yes. A. You will recollect there is an arch there, and steps which go down by the arch—back of the arch.

Q. Well, he was on that bridge? A. Yes, Sir; he was about stepping on it.

Q. And where were you when you first saw him? A. Well, I was up—I was walking down Montague-st. in that direction on to the ferries—toward the ferries.

Q. Then he turned and passed you, did he, and you him? A. He did not require to turn very much; we

were approaching very nearly at right angles with each other.

Q. Well, exactly; did you come together at right angles? A. Not absolutely together, but within a few feet.

Q. Well, how did he pass by—in front of you, or you in front of him? A. He passed by in front of me.

Q. Yes; and he did not turn round and look at you, did he? A. No, Sir.

Q. And that disappointed you? A. Well, possibly.

Q. It was not like meeting a man, then, face to face, and his not recognizing you, but he was going at right angles to your course, and he did not turn? A. Yes, Sir; I could see his face distinctly, however.

Q. One side of it, I should judge? A. A sort of semi-profile view, I should judge.

MR. BEECHER'S LOOK OF TROUBLE.

Q. Yes, a semi-profile view; and what indication of trouble did you see in that semi-profile view which you had of him? A. Simply that the face was—his eyes were cast upon the ground, toward the ground, and the expression of his face was sober—sad.

Q. Sober? A. A sort of corrugation of the brows, and he gave me the—perhaps you would not want me to say that, however—the impression that he gave me.

Q. No, not a semi-profile judgment of the inside of a man, you know. A. I don't set myself up as a judge, Sir, at all.

Q. Well, at any rate, however, he felt; he did not make any secret of it, did he? A. I don't believe it is easy for Mr. Beecher to make a secret of his feelings.

Q. You think he is a pretty transparent character?

Mr. Beach—Well, I object to that, Sir.

The Witness—I am not a judge, as I said before.

Mr. Evarts—You are not a judge?

The Witness—But I have seen him——

Mr. Beach—Wait one moment.

Mr. Evarts—You are not a judge, you say?

Mr. Beach—Wait a moment; what is the question?

Mr. Evarts—This last one was whether he was a judge; he said he was not.

Mr. Beach—I was objecting all the time.

Mr. Evarts—Now, you passed along; and how long before you came to the descent—to the steps? A. It was not very long, but longer than I would generally be in coming to the descent, the steps.

Q. Well, how long, as a matter of fact, were you? A. I don't think over three minutes; possibly not as long as that.

Q. Three minutes—well, it did n't take you that time to walk the—— A. No, Sir.

Q. How long would it take you to walk it at ordinary speed? A. I do n't know; I suppose a minute, possibly.

Q. Half a minute, would n't it? A. I should judge it would be pretty quick in half a minute, but it is a mere matter of judgment, and I do not think I am a very good judge of that.

Q. Well, now, Mr. Beecher passed ahead of you; where did his course take him? A. Toward Remsen-st.

Q. Well, but how—as I understand you were going along Montague-st., weren't you? A. Yes, Sir.

Q. And he would cross over, then, and on? A. He would cross the path which I was taking; yes, Sir.

Q. Yes, cross the path; and then would he cross over the road that comes down to the ferry? A. He would cross over that way the road which—he did cross over the bridge before I reached his immediate vicinity.

Q. Before you saw him? A. Not before I saw him, but before I reached his immediate vicinity.

Q. Well, now, I don't know that you said which side of Montague-st. you were on? A. Which side of Montague-st.—I was on the left hand side as you go down toward the ferry.

Q. Going down? A. Yes, Sir.

Q. The steps are on both sides, are they? A. Yes, Sir.

Q. And Mr. Beecher then went along—what street would it be? A. I think it is called Montague-terrace along there; that is my impression.

Q. That is, he would go along? A. Yes, Sir.

Q. As far as he passed you? A. Yes, Sir.

Q. His course took him along Montague-terrace, did it? A. Yes, Sir.

Q. And which side was that—nearest the water—he was on? A. Which side of Montague-terrace?

Q. Yes. A. Montague-terrace passes parallel with the water, as I understand; he was on the bridge; you could hardly tell which side he was on; the bridge is very narrow.

Q. And you never saw, after he got on Montague-terrace, which side he was, did you? A. That is, after he crossed the bridge.

Q. Well? A. Oh, he was on the upper side, Sir, toward Court-st.

Q. Toward Court-st.? A. Yes, Sir.

Q. And how was he heading? A. He was heading toward Remsen-st.

Q. And is Remsen-st. the first street beyond Montague? A. Yes, Sir.

Q. The terrace runs into ——? A. I understand that to be called Montague-terrace until it reaches Remsen-st.; I may be incorrect on that, but that is my understanding.

Q. It ends there, do n't it—runs up against a building? A. Yes, Sir.

Q. Now, did you see Mr. Beecher turn into Remsen-st.? A. I did.

Q. Well, did you stop to look at him? A. I slacked my pace, and may have stopped; I had curiosity enough to do that.

Q. Yes, and you cannot say whether you came to a dead halt? A. Well, not absolutely; no, Sir; I may have

walked very slowly; I may have stopped absolutely for an instant.

Q. And then you turned your head, I suppose? A. If I saw him turn the corner I turned my head.

Q. Well, but you turned your head to see him as he went along, did n't you? A. Yes, Sir, my head or my body.

Q. Well, threw your eyes around somehow? A. Yes, Sir, certainly.

Q. And then, when he turned into Remsen-st. you then ——? A. Passed down toward the steps.

Q. Paid attention to your own course entirely? A. Yes, Sir.

Q. Went down the steps. Now, you did not see any expression of his face except at the moment he was passing you, did you? A. I noticed only the general inclination of his head when I first saw him; as I came near him I noticed the expression of his face.

Q. Yes, and after he got by you, why, you then did not see any expression in his face? A. No, Sir, not when his back was turned toward me.

Q. Now, you say that you think this was the 2d day of June, 1873? A. Yes, Sir; it is connected in my mind with that event, so that when the recollection of one arose, the recollection of the other arose with it.

Q. Yes, with the event of your marriage? A. Yes, Sir.

Q. Well, on that day, after seeing Mr. Beecher, you went to your office? A. Yes, Sir.

Q. And did you stay there? A. I stayed there for some time; yes, Sir.

Q. Well, what did you do afterward? A. After I got through with staying there I went home.

Q. Well, what time did you go home? A. My recollection is that it was later than I anticipated going home in the morning; that it was in the vicinity of 5 o'clock that I left my room.

Q. About your usual time of going home, wasn't it. A. No, Sir; I usually go home at 6.

Q. A little earlier? A. Yes, Sir.

Q. So that all you saved of that holiday was from 5 to 6? A. Not much, Sir, that day.

Q. What? A. I didn't save very much that day; I always make it——

Q. That was all, 5 to 6? A. I judge that to be about all the time.

Q. About all? A. Yes, Sir.

Q. Now, have you any distinct recollection that you saved anything? A. I am very certain that I did, and if you would want to know, why I will tell you.

Q. It is not for me to say; you think you did save that fag end of the day? A. Yes, Sir.

Q. Now, when were you first spoken to to be a witness? A. I was subpenaed last Saturday.

Q. Well, how did that come about? A. Would you like to have me tell you the whole story?

Q. Well, if it is a very long one I would not, but I would like to know what you said or did about the matter to be subpenaed here? A. Yes, Sir; I don't see how I can get rid of going into the history of it a little if I give you a correct idea truthfully.

Q. Well, then, I will dispense with it, because I see that you like details; I don't.

Mr. Beach—Well, then, you should not manifest so much desire for them.

Mr. Evarts—No, I haven't much desire for them. [To the witness.] But all you say is that you were subpenaed last Saturday? A. Yes, Sir.

Q. And that to tell how you came to be subpenaed would require a long history? A. Not very long, Sir.

Q. Pretty long? A. I think I could tell it in ten minutes, perhaps less.

Mr. Evarts—Oh, well, that is long. [Laughter.] Now, Sir, how do you know at what time you started from home that morning, or did you start from home, or from your office? A. I started from home.

Q. Well, you were at home to begin with, I suppose? A. Yes, Sir.

Q. But when you started to go across the ferry were you at the office, or at your house? A. My office in Brooklyn, do you mean?

Q. Yes, Sir. A. That is what I am unable to determine absolutely, that particular day; my habit was to stop at my Brooklyn office in the morning, but on that particular occasion of a few days it was especially necessary for me to reach New-York early, and I think some of those days I dispensed with stopping in Brooklyn in the morning, and whether that was one——

Q. Some of those days? A. Yes, Sir; I am unable to say.

Q. How many days do you include in that period of "some of those days?" A. I think for about a week.

Q. Antecedent or following this? A. Commencing on the 29th.

Q. And extending for a week? A. Yes, Sir.

Q. Then for that period, from the 29th for a week onward, there was something exceptional in the hours of your movements, was there? Yes, Sir.

Q. And that exception applied as much to the other days as to the 2d of June? A. Yes, Sir.

Q. And you cannot tell me, therefore, what particular hour—whether you were at your office on the 2d of June, in Brooklyn, or not? A. No, Sir; I have investigated that as thoroughly as I could, and I am unable to tell.

Q. Can't find out—did you have some business there, or some assistants there? A. I had assistants there, but the 2d of June being Monday I had no absolute business there; on Saturdays I usually had a little business there, but on that—for that period I am unable to tell any of those days absolutely.

Q. So that in your movements that week, as to those hours, there was no difference between this 2d of June

and any time from the 29th of May for a week? A. No difference in the circumstances that I recollect.

Q. No as to hours? A. No, Sir.

Mr. Morris—That is all.

Mr. Evarts—Wait a moment; Mr. Hull, the juryman, asks which side of Montague-st. Remsen-st. is. A. Remsen-st. is on the left hand side of Montague as you go down toward Wall Street Ferry, at the left.

Judge Neilson—It is on the west side isn't it? A. South, I should think more properly.

Mr. Evarts—How far is Remsen-st., the juryman asks, from Montague? A. One block.

Q. Well, a short block, or a —— A. Not a very long block.

Q. Do you remember meeting anybody else that morning? A. No, Sir.

Q. Either in Brooklyn or New-York? A. I do not recollect any particular person I met; no, Sir.

Q. No; no doubt you did see somebody in the street? A. Yes, Sir; no doubt of it.

JEREMIAH P. ROBINSON RECALLED.

Jeremiah P. Robinson was next recalled and testified as follows:

By Mr. Fullerton—Mr. Robinson, you know Emma C. Moulton, the wife of Francis D. Moulton, do you not? A. Yes, Sir, when I see her.

Q. How? A. Yes, Sir.

Q. Is she related to you in any way? A. Yes, Sir.

Q. In what way, please? A. She is my niece.

Q. Do you recollect of seeing her in the month of June, 1873, and early in that month? A. I probably saw her that month; I have seen her almost every month when I have been at home.

MRS. MOULTON NARRATES THE JUNE 2 INTERVIEW.

Q. Do you recollect of seeing her in the month of June, 1873, when you had a conversation with her in regard to Mr. Beecher? A. I could not fix the month or the date; I had a good many conversations with her in regard to the question.

Mr. Beach—A little louder.

A. I had a good many conversations at different times.

By Mr. Fullerton—Well, I call your attention to the occasion, if you remember it, when she related to you anything that occurred between herself and Mr. Beecher in the month of June, 1873.

THE NARRATION OBJECTED TO.

Mr. Evarts—I object to that.

Judge Neilson—As yet it goes to the question of date simply; perhaps you had better get the date.

Mr. Fullerton—Well, Sir, the conversation will fix the date, if we are permitted to give that.

Mr. Evarts—But the conversation cannot be given in evidence.

Judge Neilson—Then the question is whether the conversation——

Mr. Fullerton—Yes, Sir; that is the question; we think it can.

Mr. Beach—It is a question we propose to discuss, your Honor, upon authority, if it arises.

Mr. Fullerton—It may as well come up now as at any time. We propose to show that Mrs. Moulton, in the month of June, 1873, related the conversation that she had with Mr. Beecher on the 2d day of that month, as testified to by herself here as a witness, and that evidence we think we are clearly entitled to, Sir, under the law.

Judge Neilson—Well, I will hear you, gentlemen, on that question.

Mr. Evarts—We do not understand any principle of law upon which the conversation is to be given; we make the objection.

Mr. Fullerton—Well, Sir, one of my associates is ready to argue it.

Judge Neilson—Counsel can proceed.

Mr. Evarts—Conversations between this gentleman and his niece do not affect Mr. Beecher in any way, that I know of.

Mr. Fullerton—They certainly do.

Mr. Evarts—I do not see how.

Mr. Fullerton—Well, that is what we propose to show you.

Judge Neilson—Are you ready to be heard?

Mr. Evarts—I do not understand that I need to argue that matter at present, if your Honor please. Here is a conversation between two strangers——

Judge Neilson—Yes.

Mr. Evarts—Which is offered to be given in evidence to affect the parties to this suit.

ARGUMENT OF MR. PRYOR.

Mr. Pryor—If your Honor please, as an absolute and universal rule, that the consistent declarations of a witness out of court are admissible to corroborate his testimony under oath, is a proposition which we do not affirm, and which is not involved in the offer of evidence we make. The proposition for which we contend, and by virtue of which we maintain the admissibility of the evidence offered, is precisely and critically this: that when the testimony of a witness is impugned by the imputation that it is a recent fabrication, or the product of some special interest or influence, that then it is competent to prove, in the one case, that the witness told the story prior to the date of the supposed fabrication, and in the other that he made the statement before the existence of the imputed interests or influence. This, Sir, is our proposition, and it is a proposition maintained by abundant authority, maintained by the teachings of

all the text-writers, and by the uniform language of the courts, notably of our own State. Thus, Sir, W. D. Evans, in his valuable commentaries upon "Pothier on Obligations"—Evans, one of the clearest and most philosophical writers upon the law of evidence—employs the following language. I quote from page 289 of the edition of 1806:

One of the cases which are mentioned as exceptions to the general rule for the exclusion of hearsay evidence is where it is adduced to show that the testimony given by a witness upon the trial is consistent with his declarations on former occasions. But it has been said that this is not evidence-in-chief, and it is doubtful whether it be so in reply. According to the principles of correct reasoning, the propriety of the evidence in this case, as in the others already referred to, must depend upon the nature of the object it is intended to attain. In an ordinary case the evidence would be at least superfluous; for the assertions of a witness are to be regarded, in general, as true, until there is some particular reason for impeaching them as false; which reason may be repelled by circumstances showing that the motive upon which it is supposed to have been founded could not have had existence at the time when the previous relation was made, and which therefore repels the supposition of the fact related being afterthought fabrication. The suspicion of the opposite conduct may result either from the inherent nature and application of the evidence itself, or it may be indicated by the imputations actually thrown out in the cross-examination, or otherwise, by the opposite party. If a witness speaks to facts negativing the existence of a contract, and insinuations are thrown out that he has a near connection with the party on whose behalf he appears, that a change of market, or an alteration of circumstances, has excited an inducement to recede from a deliberate engagement, the proof, by unsuspicious testimony, that a similar account was given when the contract had every prospect of advantage, removes the imputations resulting from the opposite circumstance, and the testimony is placed upon the same level which it would have had if the motives for receding from the previous intention had never existed. Upon accusations of rape, where the having failed to mention the circumstance for a considerable time, is in itself a reason for imputing fabrication, unless repelled, disclosure of the fact upon the first apparent opportunity after its commission, and the apparent state of mind of the party who suffered the injury, are always regarded as admissible, and the evidence of them is constantly admitted without objection.

To the same effect Starkie, in his work upon Evidence [marginal page 253], after combating the general proposition that the consistent declarations of a witness out of court are admissible to corroborate his testimony under oath, says:

But, although such evidence be not *generally* admissible in confirmation of a witness, there may be cases where, under special circumstances, it possibly might be admissible, as, for instance, in contradiction of evidence tending to show that the account was a fabrication of a late date, and where it becomes material to show that the same account had been given before its ultimate effect and operation, arising from a change of circumstances, could have been foreseen.

And Mr. Phillips, in his work on Evidence, says—but the book is not here; I will send for it, and meanwhile read another authority.

Mr. Powell, in his treatise upon Evidence, propounds the rule even more broadly and absolutely [marginal paper 60]:

It is stated that although hearsay evidence is not received as direct evidence, yet it may be admitted in corroboration of a witness's testimony to show that he affirmed the same thing before on other occasions.

Mr. Phillips states the proposition, and enunciates the doctrine for which we contend and upon which we stand, in clear, emphatic and conclusive language; and as soon as the book can be produced I will read his language literally to your Honor.

Mr. Greenleaf, in his work upon Evidence [Vol. 1. p. 586], uses this language:

Where evidence of contradictory statements by a witness, or of particular facts, is offered by way of impeaching his veracity, his general character for truth being thus in some sort put in issue, it has been deemed reasonable to admit general evidence that he is a man of strict integrity and scrupulous regard for truth; but evidence that he has on other occasions made statements similar to what he has testified in the case is not admissible, unless where a design to misrepresent is charged upon the witness in consequence of his relation to the party or to the case, in which case it seems to be proper to show that he has made a similar statement before the relation existed.

And, in the very latest treatise upon the law of evidence—the standard and infallible authority in the courts of England—I refer to "Taylor on Evidence," we find the following language [Vol. 2, Sec. 1,330]:

Where evidence of contradictory statements, or other improper conduct, on the part of a witness has been either elicited from him on cross-examination or obtained from other witnesses, with the view of impeaching his veracity, his general character for truth being thus put in issue in some sort, it has been deemed reasonable that general evidence that he is a man of strict integrity and scrupulous regard for truth should be admitted; but evidence that he has on similar occasions made similar statements to what he has testified to in the case is not admissible, unless the party be charged with a design to misrepresent in consequence of his relation to the party or to the case, in which case it may be proper to show that he has made similar statements before the relation existed.

Now, Sir, this is the language of the elementary writers, but the language of the courts is equally as consistent and conclusive. In The People agt. Vane, reported in 12 Wendell, this point was adjudicated, was decided—namely, where the testimony of an accomplice had been impeached by the suggestion that he was inspired by a hope of pardon and immunity, that it was competent to relieve his evidence from the suspicion by proving that on previous occasions antecedent to the time when this inspiration of hope operated upon him, he had made consistent statements out of court. That, Sir, is adjudicated, and it is the only point adjudicated in the case of The People agt. Vane, the opinion of the Court being propounded by Chief Justice Savage, with the concurrence

of his learned and distinguished associates. But as even able judges sometimes are not content to stand upon the mere point adjudicated, that learned jurist proceeded to travel beyond the record and to propound extra-judicial *dicta* which subsequently have fallen under the revision and correction of the courts—to wit, he enunciated the broad, absolute proposition that whenever the credibility of a witness is impeached, either on direct or on cross-examination or otherwise, that then it is competent to maintain his credibility by proof of his consistent declarations out of court. But this was *obiter*—not necessary to the decision of the case, not presented by the facts upon the record, not involved in the determination of the point presented. These *dicta*, I say, have subsequently fallen under the criticism and condemnation of the courts; but mark, your Honor, that in the very cases which have reviewed and revised and rejected the authority of these *dicta*—in those very cases and in the very act of repudiating and exploding those *dicta*, these subsequent cases recognize and reaffirm and ratify the exception and the qualification and the doctrine upon which we stand. Thus, in 23 Wendell we find the case of Robb agt. Hackley, quoted at page 50, and your Honor must indulge me if I read somewhat extensively from the opinion here propounded by one of the ablest jurists that ever adorned the bench of this State—I mean Mr. Justice Bronson:

When a witness is contradicted his testimony may, of course, be verified by proving the same facts by others. If his character for truth is attacked it may be supported by proving it good; or if evidence is given that the witness has made declarations out of court inconsistent with his testimony, it may be shown that those declarations were made under such circumstances as not to detract from his credibility. If an attempt is made to discredit the witness on the ground that his testimony is given under the influence of some motive prompting him to make a false or colored statement, the party calling him has been allowed to show in reply that the witness made similar declarations at times when the imputed motive did not exist. But as a general and almost universal rule, evidence of what the witness has said out of court cannot be received to verify his testimony. It violates a first principle in the law of evidence to allow a party (and that is the objection raised by the learned gentleman on the other side) to be affected, either in his person or his property, by the declarations of a witness made without oath. Besides, it can be no confirmation of what the witness has said or not, to show that he has made similar declarations when under no such solemn obligations to speak the truth. It is no answer to say that such evidence will not be likely to gain credit, and, consequently, will do no harm. Evidence should never be given to a jury when they are at liberty not to believe it. The referee was probably governed by the language of the late learned Chief-Justice in The People agt. Vane, but that case does not necessarily go beyond deciding that the testimony of such an accomplice in crime may be corroborated by showing that when first arrested he gave the same relation of the facts which he had given on oath upon the trial. The fact that the accomplice was called as a witness for the people gave rise to the inference that he was criminating the defendant for the purpose of exempting himself from prosecution for the larceny. It might therefore be proper to show that he gave the same account of the matter at a time when there was no such motive for making a false accusation. If when first arrested, and when he had no expectation of personal examination, he had frankly disclosed the whole matter, that might tend to confirm his subsequent repetition of the same statement on oath. This brings the case within *the acknowledged exception* to the general rule, that the testimony of a contradicted, impeached or discredited witness cannot be confirmed by proving that he has made similar declarations out of court.

"*The acknowledged exception to the general rule,*" says Mr. Justice Bronson. The head-note to the case is this:

Proof of declarations made by a witness out of court in corroboration of the testimony given by him on the trial of the case is, as a general and almost universal rule, inadmissible. *It seems, however, that to this rule there are exceptions,* and that, under special circumstances, such proof will be received. As, where *the witness is charged with giving his testimony under the influence of some motive* prompting him to make false or colored statements, it may be shown that he made similar declarations at a time when the imputed motive did not exist. So, in contradiction of evidence tending to show that the account of the transaction given by the witness is a fabrication of late date, it may be shown that the same account was given by him before its ultimate effect and operation, arising from a change of circumstances, could have been foreseen.

If your Honor please, this is the language of Mr. Phillips (marginal page 974):

In one point of view, however, a former statement by the witness appears to be admissible information of his evidence, and that is where the counsel on the other side impute a design to misrepresent from some motive of interest or relationship. In that case, perhaps, in order to repel such an imputation, it might be proper to show that the witness made the same statement at a time when the supposed motive did not exist, or when motives of interest would have prompted him to make a different statement of the facts.

And in the case of Smith agt. Stickney, reported in 17 Barbour, page 189, Mr. Justice Welles delivering the opinion of the Court, recapitulates the authorities (or at least so many of them as were then extant) which I have adduced, recognizes and reaffirms them, and then adds: "We can perceive nothing in the present case to bring it within the exception to the general rule;" recognizing the exception ratifying the principle, reaffirming the doctrine for which we now contend, and by virtue of which we maintain the admissibility of this evidence.

So in 1 "Parker's Criminal Reports," page 147, we find in the case of "The People agt. Finnigan" this language:

"As a general rule (says the head-notes) it is not competent, in support of the testimony of a witness, for the party calling him to prove that he has made declarations out of court corresponding with his testimony in court." And the court says: "The exceptions to the rule, as now established in this State (*as now established;* not 'seems'—'nay, it *is*')—the exceptions to the rule as now established in this State are, when the witness is charged with giving his testimony under the influence of

some motive prompting him to make a false or colored statement, it may be shown that he made similar declarations at a time when the imputed motive did not exist; or when there is evidence in contradiction tending to show that the account of the transaction given by the witness is a fabrication of a late date [it is said] it may be shown that the same account was given by him before its ultimate effect or operation, arising from a change of circumstances, could have been perceived."

Now, Sir, I could adduce other authorities, both from the elementary writers and from the reports, but it were idle to detain the court with their recital. Suffice it to say, that the concurrence is unanimous, of authors and of judges, in support of the doctrine which we enunciate; and that to the contrary of it, not a solitary dogma is to be found in any book of repute, not a solitary dictum from any court of respectability. It stands as little criticised or challenged as any principle in the law of evidence. It is imbedded deep and unshaken in our system of jurisprudence. It is one of the lights, fixed and unstable, set for the guidance of courts in the investigation of truth, and—pardon me, your Honor—rash would be the hand that would venture to extinguish it.

But the proposition is as well established by reason as it is supported by authority. Where the testimony of a witness is merely contradicted by his declarations; where on one side is mere asseveration and on the other denial; where affirmation is only opposed by negation, there is only a competition of credibility, and it would be preposterous to receive the unsworn declarations of the witness in confirmation of his testimony under oath. But where, beyond and beside this, by way of contradiction, an alien and independent fact is introduced in discredit of the testimony, manifestly and essentially, the case is different, for then the testimony of the witness——

MR. PRYOR INTERRUPTED BY AN ATTACK OF VERTIGO.

At this point Mr. Pryor suddenly broke off, remarking to Judge Neilson: If your Honor please, I have an attack of vertigo.

Judge Neilson directed an officer to raise the window, and, addressing Mr. Pryor, said: You can suspend your argument, General.

Mr. Pryor—Yes, Sir.

In a few minutes Mr. Pryor resumed as follows:

If your Honor please, I think I have made the proposition which we enunciated intelligible to your Honor, and to my learned adversaries, and I do not now feel able to state the argument from reason in support of that proposition, because I feel that if I should undertake it, it is possible that I should miscarry again. I assume it, however, to be clear. Then the question arises—but it is impossible for me to proceed; your Honor must excuse me.

Mr. Pryor [in reply to a suggestion that the court should adjourn]—It is not worth an adjournment, if your Honor please.

Judge Neilson—I will adjourn cheerfully if it is desired.

Mr. Pryor—Oh, no, Sir; I will endeavor to proceed. It appears, your Honor, by the authorities which I have produced, and by the train of argument which I have been unable to develop, that where the testimony of a witness is impugned by the imputation that it is a recent invention——

Judge Neilson—Take your seat, Mr. Pryor. I can hear you converse, if it will be easier for you.

Mr. Pryor—Oh, never mind, Sir; I can go on. It appears, I say, that where the testimony of a witness is impugned by the imputation that it is a recent invention, or a fabrication for the occasion, or the product of some special interest or influence, that then, in either of these contingencies, it is competent for the party to maintain the credibility of his witness by disproving the infirmitive and discrediting fact adduced against him. This being, I say, an incontrovertible proposition of law, the question arises whether here the defendant has attacked the testimony of Mrs. Moulton, by evidence or allegation, of such infirmitive or discrediting fact; for we concede, may it please your Honor, that if her testimony were barely contradicted, the evidence offered would not be open to us. Now, Sir, by reference to the address of the learned counsel who opened for the defense, and especially by reference to the testimony of the defendant himself, it will be found that ample foundation was laid and ample provocation given for the introduction of the testimony we offer. Gen. Tracy, on page 82 of the pamphlet edition of his address, uses this language:

We now, gentlemen, approach one of the most delicate subjects which my duty calls upon me to discuss. I refer to the connection of Mrs. Emma Moulton with this case. Apart from her relations to this matter, I shall not speak of this lady otherwise than in terms of respect. I feel most deeply her extraordinary position, the terrible emergency which she had to meet, and the overwhelming power of the temptation before which she has fallen. The truth of this case makes it impossible for me to abstain from speaking with apparent severity of this lady's testimony; but I do so with sorrow for her, reserving all my indignation for those who have forced her upon the witness stand to confirm the accusations which they have invented.

Again, on page 83, he says:

What is the relation of Mrs. Moulton to this case? This lady is the wife of the only man who has anything to lose by a verdict for the defendant. Animated by his thirst for revenge, Francis D. Moulton has periled all on the issue of this suit. The plaintiff himself might find some persons to excuse him, on the supposition of an insane jealousy, but no such excuse can be made for his friend. He will be held to a strict and stern responsibility, and the plaintiff's failure in this suit, as every man can see, involves Mr. Moulton in utter and hopeless ruin. Yet his guilt and his ruin will not release his unhappy wife from her allegiance nor make him any the less the father of her only child. What a terrible alternative for her! If she so testifies as to save Mr. Beecher, she necessarily ruins her own husband, destroys her home, and leaves her only child to a blight.

And so on through columns of vehement and exaggerated declaration.

Now, the defendant on his direct examination uses this language in reply to a question by Mr. Evarts:

Mr. Morris—What page?

Mr. Pryor—Page 885.

"Q. Did Mrs. Moulton ever address you in that way? A. No, Sir; it is not in her nature to say anything of that kind, and she never did—[a long pause]—of her own accord."

This is apropos of the interview of June 2. Now, then, further, upon his cross-examination, in development and amplification and explanation of the ideas here asserted, if not expressed, the defendant spoke as follows:

"Q. In the course of the examination of Mrs. Moulton you were asked by your counsel whether she said a certain thing to you, and your reply was in part, 'Not of her own accord.' A. No, Sir, I do not; I think, Sir, you have made a mistake in your designation; you say in the examination of Mrs. Moulton, and I think you have made an error.

Q. Perhaps I have; in the examination of yourself, then? A. Yes, Sir.

Q. You were asked as to whether Mrs. Moulton did not say a certain thing to you, and you said, in substance, that she did not, or she 'never did of her own accord;' do you recollect the circumstance? A. I do, Sir.

Q. What did you mean by the words 'not of her own accord?' A. Perhaps I meant what I ought not to have said——

Q. Never mind that. A. [Continuing.] But this is what I meant, that I believed that Mrs. Moulton had been made to make that statement by influence.

Q. Who do you think exerted the influence upon her? A. I think that Mr. Moulton did.

Q. And when do you think he did it? A. Ah! I don't know; after we broke, probably.

Q. In the Summer of 1874? A. Yes, Sir."

Now, if your Honor please, here is the positive and explicit declaration of the learned counsel for the defendant. Here is the positive and explicit testimony of the defendant himself that the story told by Mrs. Moulton upon the witness-stand was not the effect of her own mind and will, but was an utterance wrung from her by the sovereign and remorseless influence of her husband. That was a fiction fabricated for the occasion; and it was a tissue of falsehoods conceived and delivered to meet the exigencies of this particular litigation, and to uphold her husband in his present controversy with the defendant. Now, Sir, to rebut this fact, and to repel this imputation, we offer to prove—and this is our offer—that immediately after the interview with Mr. Beecher, and of her own volition, and without the privity of her husband, and before any controversy between her husband and Mr. Beecher had arisen, or was apprehended; nay, when Mr. Beecher and Mr. Moulton were in affectionate confederacy of coöperation for a common purpose, namely, to suppress this scandal and to shield the defendant's character—we offer to prove that at that time, and under those circumstances, Mrs. Moulton told the story precisely as she told it under the sanction of an oath and in the presence of the Court and the jury. Now, if your Honor please, if this evidence be rejected, then is presented this—— I cannot go on.

Judge Neilson—Take your time.

Mr. Pryor—I have done, if your Honor please. It is impossible for me to go on.

Mr. Fullerton—We are content to leave the opening argument as it is, and to let the other side reply to it.

Mr. Beach—We make a proposition, and we have heard nothing of the objection of the other side.

Mr. Evarts—I have the close.

Judge Neilson—If counsel argue this question at all, you have a right to reply, whether he takes the close or not.

Mr. Evarts—I have the close.

Judge Neilson—You may have the close at the end; only, it is possible, if you make an argument at all, it may be one I may want help about in order to see the other view.

Mr. Beach—It is very fair we should learn from the other side what their views are before the argument closes.

Judge Neilson—Undoubtedly.

ARGUMENT OF MR. EVARTS.

Mr. Evarts—The views on our side remain as simple as they did when they were first stated. If your Honor please, it is a recognized rule of evidence that no party is to suffer in a judicial proceeding by the production of evidence unless under the sanction of an oath. That excludes all hearsay evidence in all its forms. Now, there came to be a notion in England and in our own courts, that when a witness, in reply to statements made in court, has been contradicted by evidence of contradictory statements out of court, that then there was a seeming reason in allowing confirmation of the statements in court thus weakened by statements to the contrary out of court, to be confirmed or assisted by corroborative or adhering statements out of court, and, to a certain extent, in England and in this country that rule was followed. But its infirmity, its contradiction of the first principles of the administration of justice and the law of evidence, was soon detected. The rule was rejected and the practice exploded. I shall call your Honor's attention to the cases that thus dispose of the matter. It is a rule which can have no foundation in reason, unless you abandon the rule that hearsay evidence shall not be heard in a court of justice, for whenever opposing witnesses under oath resist one another, you are then to look around for what each one of them has said out of court during a period of years since the occasion arose for opinions and statements. You at once throw down the barrier of reduction, and our court has animadverted with severity upon the proposition that has now been made to your Honor. Now, after the reassertion of the

clear and necessary rule of evidence, and the vindication of the courts of justice from the folly of having a rule against hearsay, and then, on a light suggestion, introducing the essay, there are found suggestions that there may be exceptions. Where will my learned friend find an authority in this State that has allowed any evidence that has been attempted to be produced under such circumstances? Every case where that attempt has been made under the cover of this special reasoning and special exception, has been rejected, and no support is given, no inclination of any court of ours to sustain any such reduction of the integrity of the rule. In "Greenleaf on Evidence," it seems there is alleged to be certain exceptions; but if, as I say, they had relinquished the proposition that confirmatory extra-judicial statements shall be received, no court in the State has admitted any such innovation or reduction of the rule of evidence. But what is the proposition? Why, the proposition thus introduced by the words "it seems" in some text-books, and in some cases, is that a change of situation may, when the new situation is alleged to be the cause of the inference, or of the inducement that before the new situation intervened there were corroborative statements. Now, what fact arises here for the application of such a proposition? This lady was examined as a witness in regard to an interview which is alleged to have taken place between herself and Mr. Beecher on the 2d of June. Mr. Beecher is introduced to speak to that same alleged interview, and he has given his testimony abrogating the day—abrogating the interview as an interview, and giving such testimony as is pertinent to other interviews that may touch the same subject matter. No witness has been introduced to prove that Mrs. Moulton has made contradictory statements out of court. That situation does not arise. That is not sufficient. But that situation must exist before you can look around for the further aid of introducing this kind of evidence, on the ground that before a change of attitude or relation which is supposed to be cause of the bias intervene, the person when free from that relation spoke out of court otherwise. I don't believe that any court in this State will ever sustain the exception to that extent. There is no case sustaining it, and there is no disposition to sustain it. But Mrs. Moulton has not changed her relation. She has been the wife of Mr. Moulton at all times which are embraced by any proposed testimony now to be given. The imputation that she testifies under another's will than her own is an imputation that she testifies under the will and purpose of her husband, and he was her husband during the whole period that is sought to be brought in review of her extra-judicial statements, but the testimony, if anything that comes from Mr. Beecher is relied upon, must be limited to this particular inquiry: "Then did she say anything of this kind?" This is the question in respect to which his answer is supposed to contain an imputation that a will other than her own has affected her testimony.

"Then did she say anything of this kind: 'Mr. Beecher, I am very sorry for you in this great trouble; there is only one way out for you, and that is by a confession and telling the truth; you cannot continue in this life of deception and hypocrisy; the truth will come out sooner or later.' Did Mrs. Moulton ever address you in that way? A. No, Sir; it was not in her nature to say anything of that kind, and she never did—[after a long pause]—of her own accord."

Now, what is the cause of imputation? Why, the imputation, if it is anything, is that she speaks under the influence of her husband. They don't show any statements of her's out of court antecedent to the existence of that relation. They don't show any change of relation on the part of this witness toward the alleged bias, to wit, her husband's will. They don't show any change of relation as to this matter at all. What Moulton has been saying and doing, what Mrs. Moulton has been saying and doing, is just as much a question of the influence of the husband over the wife at one part of their common dealings as at any other. You introduce no change of relation. It is said that Moulton had an animosity excited as of a particular date. Well, that is to be remarked upon in its proper place. What he was doing, what he was really doing in the way of statements to other people, or on any minds that he influences, or shaping things for purposes then at that time in view, we are not responsible for; we have not furnished him with any certificate of credit or freedom from the imputation during this period—not in the least. We are finding out now, by the aid of a court of justice, and under sworn testimony, in which they all have an opportunity to speak, what was going on all the while. Now, they undertook to prove what was going on at a particular time by the statement of this married woman to her uncle at the time. What change of attitude is there? Why, if your Honor please, just look at the proposition. Parties go on in matters of contract, or in matters of conduct, and there comes a litigation and the suit is brought. Then they differ. Then they oppose one another, and they oppose one another in testimony. And now it is suggested that it is competent for either of them to eke out his testimony against the other by showing that while they were going on under the contract, and without quarrel, or in the conduct that becomes the subject of controversy without quarrel, they took the same view of it, and expressed themselves to their neighbors in the same manner that they have testified under oath. Where are you going to draw the line? Parties oppose one another in testimony too frequently under our present system of evidence, They, it is said, didn't have that opposition of view until they came into court, and before they came into court there is a situation in which this hostility does not exist, and, therefore, this is a changed

relation when they come into court, and, therefore, what either of them said to his friends and neighbors out of court before they got into the attitude of hostility is evidence. Well, now, that is the old story whether you can corroborate testimony in court by concurring statements out of court. It never was pretended that you could do that until you had contradicted, under the rules of evidence, the statements in court, not by statements in court of other witnesses, but by statements out of court by the testimony of the witness whose testimony you impugn, and then, as I say, there came up an idea that you might bring in corroborative statements of the testimony of a witness thus attacked. That has gone. There is no pretense that that is the law of this State or of England now. Then, as I say, there has been a suggestion that if, by the old situation of contradiction out of court, proved against the witness under the rules of evidence, you could add an element of an imputation of an influence that had supervened, or of an attitude that had justified or encouraged the present statement, then the witness thus attacked might fall back in a limited degree upon the old protection of showing statements out of court before the alleged change of attitude. But that must be a change not in disposition of the witness, not a situation merely *ante litem motum*. That has never been presented, for that would bring you up to the situation that all the parties are in before they disagree, and would break up entirely by the rule of evidence that has been so carefully guarded about hearsay. Mrs. Moulton was the wife of Mr. Moulton. Moulton was the friend of Tilton. Moulton was the manager of this interest and attitude of Tilton through the entire period as well as when they came into litigation, and there is no pretense that there is a change of situation except a change of disposition, if you please, and a change of disposition is not permitted to be the basis for the introduction of any such evidence.

Now, the section of Taylor, which I think is taken bodily from Greenleaf, is this:

Where evidence of contradictory statements, or of other improper conduct on the part of a witness, has been either elicited from him on cross-examination, or obtained from other witnesses with a view of impeaching his veracity, his general character for truth being thus in some sort put in issue, it has been deemed reasonable to admit general evidence that he is a man of strict integrity and scrupulous regard for truth. But evidence that he has on other occasions made statements similar to what he has testified in the case is not admissible unless he could be charged with a desire to misrepresent in consequence of his relation to the party or to the case, in which case it may be proper to show that he has made a similar statement before that relation existed.

Not that there is a disposition now which has enlisted a witness on either side of the controversy, and that formerly he had not that disposition; but when it is imputed that his relation to the party or to the case in which it may be proper to show that he has made a similar statement before that statement existed, but Mrs. Moulton's relation to the party (Tilton) and to the case between these parties—to wit, her relation as wife of Moulton—remains the same during all the stages of this transaction. That is all, I believe, of this section that applies to this subject.

Now, in the case of King agt. Parker, 3d of Douglass, Buller, Justice, said: "That the evidence was clearly inadmissible, not being upon oath; and that whether Fowler expressed himself by words or by signs and gestures, made no difference. As to the other ground, he said that the information of Fowler was not read as evidence for the defendant; but if it had, it was now settled that what a witness said not upon oath would not be admitted to confirm what he said upon oath; and that the case of Lutterell agt. Reynell, and the passage cited from Hawkins, were not now law." Now, the first case recognizing the ensemble is the case of The People agt. Vane.

Evidence that a witness has upon previous occasions given the same relation of facts to which he testifies when examined on the trial of a case is admissible where the witness is impeached either by adversary testimony or upon cross-examination, or even upon direct examination, as where he admits that he was an accomplice in the crime of which he proves another to have been guilty.

Well, that case has been withdrawn. We won't comment upon that.

Mr. Beach—Who has withdrawn it?

Mr. Evarts—The Court.

Mr. Beach—Not at all.

Mr. Evarts—You will have an opportunity to reply to me.

Mr. Beach—I thought you said it was unnecessary to comment upon it.

Mr. Evarts—Not to comment upon it in the case, because it has been withdrawn. I am going to show it was withdrawn. You would not have me comment on a case that has been overruled.

Mr. Beach—I would. I suppose showing it has been withdrawn is a comment on the case.

Mr. Evarts—I am willing to submit to all kinds of personal criticism that you desire at any state of the case.

Mr. Beach—It is no criticism.

Mr. Evarts—I stated the case had been withdrawn from our jurisprudence by subsequent legislation.

Mr. Beach—And there was no use saying anything about it.

Mr. Evarts—About that case, but it may be of use to the hardness of your case to show what cases withdraw it.

Mr. Fullerton—You will have a hard case to do it.

Mr. Evarts—There is nothing in that case that goes as far as you contend for, but I don't propose to consider how far a case goes that has been overruled. That is my proposition.

Mr. Fullerton—It has not been overruled on that point. That is our proposition.

Mr. Evarts—It will be quite time enough for you to say that when you make your reply.

Mr. Fullerton—I will say it over again then.

Mr. Evarts—Robb agt. Hackley, in the 23d of Wendell, Bronson, J., gives the following opinion:

But, as a general and almost universal rule, evidence of what the witness has said out of court cannot be received to fortify his testimony. It violates a first principle in the law of evidence to allow a party to be affected, either in his person or in his property, by the declarations of a witness made without oath. And, besides, it can be no confirmation of what the witness has said on oath to show that he has made similar declarations when under no such solemn obligation to speak the truth. It is no answer to say that such evidence will not be likely to gain credit, and consequently will do no harm. Evidence should never be given to a jury which they are not at liberty to believe.

The referee was probably governed in receiving the evidence by the language of the late learned Chief-Justice in The People agt. Vane, 12th Wendell, 78: "But that case does not necessarily go beyond deciding that the testimony of an accomplice in court may be corroborated by showing that when first arrested he gave the same relation of facts which he had given on oath upon the trial."

I don't think any one would pretend that that is the law of this State just now. That is the extent of that case, as the Court decides. [Reading from the same quotation.]

The fact that the accomplice was called as a witness for the people gave rise to the inference that he was criminating the defendant for the purpose of exempting himself from prosecution for the larceny. It might, therefore, be proper to show that he had given the same account of the matter *at a time when there was no such motive* for making a false accusation. If when first arrested, *and when he had no expectation of personal exemption*, he had frankly disclosed the whole matters, that might tend to confirm his subsequent repetition of the same statement under oath. This brings the case within an acknowledged exception to the general rule, that the testimony of a contradicted, impeached or discredited witness can be confirmed by proving that he made similar declarations out of court.

It is suggested that our usual hour for adjourning has arrived.

Judge Neilson—If it is convenient we will suspend now. [To the jurors]—Gentlemen, return at 2 o'clock. The court then took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2, pursuant to adjournment.

Mr. Fullerton—If your Honor please, Mr. Bell has been kind enough to inclose me the note spoken of in his testimony, and it is dated Dec. 15, 1870, which will fix the date of the interview between himself, of course, and Mr. Beecher.

Judge Neilson—Well, have that taken down.

Mr. Shearman—Better put the note in evidence.

Mr. Fullerton—It is suggested that I put the note in evidence [reading]:

My Dear MR. BELL: Will you stop in at 124 (old 82), on your way over? Important. Truly yours. H. W. B.

December 15, 1870.

MR. EVARTS'S ARGUMENT CONTINUED.

Mr. Evarts—The learned Court, Judge Bronson, proceeds, after considering some of the authorities which have been referred to by my friend, Gen. Pryor:

But this most dangerous doctrine was long since exploded in England, although the case in which it was first formally overruled has been but recently published. The case to which I allude is The King agt. Parker, 13 Doug., 242, where the witness was an accomplice in the robbery. Buller, J., said: "It was now settled that what a witness said not upon oath, would not be admitted to confirm what he said upon oath,: and that the case of Lutterell agt. Reynell, and the passage cited from Hawkins, was not now law;" and such was the judgment of the whole Court of K. B. upon solemn argument. Since the decision in The King agt. Parker, I find no authority or dictum in the English books in favor of receiving this kind of confirmatory evidence, except under some such special circumstances as have already been mentioned. Mr. Starkie says: "It seems the better opinion that a witness cannot confirm by proof that he has given the same account before, even although it has been proved that he has given a different account, in order to impeach his veracity; for his mere declaration of the fact is not evidence."

Then, after considering further the English cases—but there is no tendency in this case to reinstate a witness when he has been contradicted—Mr. Phillips is quoted:

It may be observed, upon this kind of evidence, in general, that a representation without oath can scarcely be considered as any confirmation of a statement upon oath. It is the oath that confirms, and the bare assertion that requires confirmation. The probability is that in almost every case, the witness who swears to certain facts at the trial has been heard to relate the same facts before trial; and it is not so much in support of his character that he has given the same account, as it would be to his discredit that he should ever have made one different. The imputation on his veracity results from the fact of his having contradicted himself, and this is not in the least controverted or explained by the evidence in question. If a witness has made a statement a hundred times one way and a hundred times in another way directly contrary, the only inference must be that he is utterly destitute of all title to credit.

Then the Judge proceeds:

Some of the American Courts have admitted this kind of evidence. A collection of the cases, accompanied by very judicious remarks, will be found in the learned notes to 1 Phillips, by the Messrs. Cowen & Hill, pp. 776-9. These decisions are based upon English authorities which are no longer respected in Westminster Hall, and I have failed to discover in them anything calculated to shake my decided conviction that this kind of confirmatory evidence is of dangerous tendency, and ought not to be received, except under some such special circumstances as have already been noticed. We have not in this State departed from that ancient and safe landmark in the law of evidence which requires a witness in all cases to speak under the solemn sanction of an oath, and I am unwilling to peril the lives, the fame, or the property of individuals by adopting the contrary doctrine.

In 24 Wendell the same learned Court, by Cowen, J., says:

The reception of Bartle's statements [that is, one of the witnesses in the case] in confirmation of his testimony was erroneous. We have recently, in Robb agt. Hackley, 50 et seq., reconsidered the dictum to the contrary in The People agt. Vane, 12 Wendell, 78, and agree that consistent statements cannot in general be received in reply to contradictions of a witness; *a fortiori* are they inadmissible in answer to direct and positive contradiction by other witnesses.

Now, your Honor will see that all that has ever been pretended for the rule was that when a witness has been impeached or contradicted by showing statements out of court contrary to what he has said in court, that then there was a notion that you might bring him up by showing that he told the same story out of court that he told in. But, as the Court say in 24 Wendell, the doctrine is discarded, and *a fortiori*, as we reject all hearsay evidence in support of one witness where the contradiction is not between his various statements of the same story, but a contradiction of other witnesses who tell the opposite story. Your Honor sees at once that this is the most pernicious and dangerous form of hearsay evidence, for it is hearsay evidence that is created by the witness in advance of his examination. It is a reproduction by hearsay of his own statement, which never could be testimony *per se* if he were not a witness, and yet they are brought in to be evidence by the fact that he becomes a witness, and thus in the cause, and under oath, corroborates himself by hearsay evidence that he himself had created before he came on the stand. Nothing could be more dreadful than that. Now, where will you find any disposition in our courts to recognize what is called "special circumstances?"

In Smith agt. Stickney, 17 Barbour, where Welles, J., gives the opinion of the General Term:

The action was brought by the respondent against the appellant to recover the sum of $65 63 for work and labor (for building some kind of a dam). The defendant answered the complaint, and the plaintiff replied. The action was referred to three referees, who heard the same, and made a report that there was due from the defendant to the plaintiff the sum of $72 27. From that judgment the defendant appealed.

Now comes the posture of the witness:

Upon the trial before the referees, the plaintiff's principal witness to prove his claim was his brother, John Smith. It appeared by his evidence that the plaintiff sawed for the defendant, in the saw-mill of the latter, 133,000 feet of lumber; that the witness worked with the plaintiff in sawing lumber at $18 per month, and that he had no interest in the sawing, but that the sawing was worth 50 cents per thousand. Other evidence tended to show that the sawing was done under an agreement as to the price at three shillings six pence per thousand. One question which appears to have been much litigated at the time of the trial was whether the sawing was done by the plaintiff and the witness, John Smith, jointly for the defendant, with a view of enabling the defendant to insist that the action in the name of the plaintiff alone was misconceived, and that John Smith should have been a party plaintiff. The witness John Smith was inquired of whether he had made statements to various individuals mentioned to the effect that he and the plaintiff had taken the job of sawing together and had performed the labor jointly under such arrangement with the plaintiff; all which he either denied, or stated he did not recollect of making them.

That is to say, he was asked if he had not said out of court that this was a joint interest of himself and this brother, whereas he testified in court that it was his brother's interest, and he was a mere witness.

This was upon a point directly in issue, and upon which it was competent to contradict the witness. The defendant accordingly called a number of the individuals referred to, some of whom materially contradicted the witness, and testified that he had made statements the import of which was that the sawing in question was done under a joint undertaking by the said John Smith and the plaintiff. With a view of restoring the credit of the witness, which, it was claimed, was thus impaired, the plaintiff offered to prove that he had previously, when not under oath, made declarations consistent with his testimony on the trial in respect to the point in question. This was objected to by the defendant's counsel, and the objection was overruled by the referees, and the evidence so offered was received. In this we think the referees erred.

Then Greenleaf is quoted:

So much of the rule here stated as allows *general evidence of good character for truth* in reply to evidence of contradictory statements of a witness, or other particular facts, offered by way of impeaching his veracity, has not been followed in this State. But, in relation to the residue, and which is all that applies to the question under consideration, it may be regarded as the settled law. It is substantially laid down by Mr. Starkie. In Robb agt. Hackley (23 Wendell, 50). Bronson, J., says: As a general and almost universal rule, evidence of what the witness has said out of court cannot be received to fortify his evidence. We can perceive nothing in the present case to bring it within the exception to the general rule. The witness has sustained but one relation to the party or to the cause; and that relation has at no time been changed.

That is, he was his brother, he was his employé, and there was no change of relation to furnish the basis of a change to be a credit—add credit from outside statements, because they had arisen antecedent to a relation which was supposed to account for the untruthful statement in court. The case of The People agt. Finnigan, in which the dictum is supposed to be quoted, there the evidence was excluded. Perhaps the latest case is the case of Butler agt. Truslow (55 Barbour, page 293), where, under somewhat important circumstances, the general rule is adhered to.

Now, your Honor will see that all that is pretended here is that in the first place Mr. Beecher, as a witness, has said, when contradicting the statement of the witness that she had never said this to him, adds to that statement, she never had said it, and then says—that is, never of her own accord; but she did not say it to him. That is all that was in evidence—the subject of evidence. Her expression was an expression of opinion, and goes

for nothing, and it certainly makes no change of situation. Now, in regard to Gen. Tracy's opening in this case, why Gen. Tracy does not make any change in the situation. Mr. Moulton is charged in the opening with having been a party to certain hostile proceedings and combinations toward Mr. Beecher, and the wife does not come in any relation, excepting of the marital relation, which, as I say, covers the entire features. Now, if your Honor please, where is the line to be drawn? What is there in this proposition but an attempt to overthrow the rules of evidence which Judge Bronson and the Supreme Court have said are so essential to the security of life and interest and property? Why, if your Honor please, the situation is that it is alleged that the litigants to this suit, and the witnesses that go with them, are now in a purpose of recovering in this action, if you please, to give no further description of it, and that before they had any purpose of bringing a suit they made statements in confirmation of what has been said. Well, Mr. Moulton and Mr. Tilton have both been made the subjects of testimony on our part, of statements out of court contrary to what they have said in court on this subject. Now, is it to be pretended to your Honor that Mr. Moulton and Mr. Tilton are to be permitted to bring in statements that they had made at any time during the last four years before this suit was commenced, corroborative of the stories that they tell on the witness stand? Well, if it is true of that witness—of either of these witnesses—then it is true of witnesses on our side, and you are right back to the proposition that if a witness's evidence on the stand is countervailed or contradicted by other witnesses on the stand, you may go then into a controversy or confirmatory aid to the witness, from the fact that out of court they said to this and that man what agrees with what they say in court, and you are right back then to the old proposition that has long long ago been disposed of.

MR. FULLERTON REPLIES TO MR. EVARTS.

Mr. Fullerton—If your Honor please, the force of the argument submitted by my learned associate, has neither been broken nor impaired in the slightest degree by anything that has fallen from the counsel upon the other side. He has quoted no authority, either from a report or from a text-writer, which countervails in the slightest degree the doctrine which was established by the argument of Gen. Pryor. This case has been presented upon the part of the defendant as if we contended that the rule was that where a witness was sought to be impeached by proving, first, that his character for truth and veracity was bad, or in the second place, by proving statements out of court inconsistent with those made in court, that in such case evidence could be produced upon our behalf to show that statements out of court had been made by the witness consistent with those sworn to in court. Now, that is not our proposition at all. I concede, I agree with the counsel upon the other side that the rule in this State is, that you cannot show in court statements of a witness consistent out of court—you cannot show in court statements of a witness which are consistent with a statement made out of court.

Judge Neilson—In the progress of the case I had occasion to state that rule at least once, I think.

Mr. Fullerton—And your Honor will recollect that we made the reply that that was the general rule, but that there were exceptions to it. Now, what is the attitude of Mrs. Moulton to this case? What has she testified to that is material to this issue which it becomes necessary for us to sustain by showing that she told a similar story out of court? Attention is called to June 2, 1873. She alleges that at that time she had a conversation with Mr. Beecher, which she detailed upon the witness-stand—a very important piece of evidence in this controversy. How is it met upon the other side? It is met first by what they call a contradiction upon the part of Mr. Beecher. He says that no such conversation was had; that it is all a fiction; an invention upon the part of this witness, and he adds further, Sir, that that story was told by Mrs. Moulton under the influence of her husband, and that that influence was brought to bear upon his wife after the relation of friendship, which had so long existed between Mr. Moulton and Mr. Beecher, was broken up. That, your Honor will recollect, was late in the Summer of 1874. They put this case, therefore, upon the ground that Mrs. Moulton, overshadowed by her husband, has invented this story and stated it here to the detriment of the defendant in this case, when there is no truth whatever in it. Now, how are we to meet the proposition, Sir, that that was a recent invention on the part of this witness under the influence of her husband? How can we meet it so well as to show that in 1873, in the month of June, and on the same day when the occurrence took place at Mrs. Moulton's house, that she told that story to third parties as she has told it here? Does it not completely meet the accusation that it is an invention of a recent date? Now, I repeat, Sir, we admit that if they had impeached Mrs. Moulton by producing witnesses to swear that her character for truth and veracity was not good, that we could not give any such evidence as we now propose. I admit that if they had been able to prove that Mrs. Moulton had said out of court what was entirely inconsistent with her story in court, that we could not have given this evidence that we now propose. We do not disagree with regard to the general rule, but we do disagree with regard to the exception to that general rule.

Now, what is the exception? It was clearly stated by my associate, in his argument in presenting this case, that where it is imputed to a witness that the story told in court, under oath, was a recent invention, and had its origin in an improper influence lately brought to bear upon the witness, that there you may overcome that

operation by showing the same story to have been told at a prior period when the influence did not exist, or when the reasons for it did not exist. Now, what is the law of this State upon this subject? It is very clear, very well defined, and not easily misunderstood.

The first is the case of the People agt. Vane, and your Honor will bear with me while I read somewhat from these authorities to show exactly what questions arose and what questions were decided in that. Now, in the People agt. Vane a prisoner was put upon his trial for a crime. A witness by the name of Wapshot was introduced to give evidence against him, and in order to impeach that evidence they suggested that he gave it for the purpose of producing immunity from punishment; that he acknowledged his complicity with the offender on trial, and, for the purpose of courting favor with the people, he gave evidence tending to convict the prisoner, supposing that he would not be put upon trial himself for the offense. In order to overcome that, the District-Attorney offered to prove, and did prove, under permission of the Court, that the witness, the accomplice, gave the same relation at the time, that the offense was committed before either himself or the party on trial were put in jeopardy, and before there was any inducement to tell other than the truth. The evidence was admitted. Now, that brought that case within the exception to the general rule. Now, what does the Court say in regard to that?

The right of either party to support and fortify the testimony of his witness is essential to the preservation of the rights of individuals as well as the public. When a witness is sworn and testifies, his testimony *prima facie* is entitled to belief; if his character is attacked, it may be supported; if his testimony is shown by other witnesses to be false or doubtful, other witnesses may be introduced ustain the testimony as given. If a witness be introduced by the defendant to show that the plaintiff's witness has given a different account of the transaction about which he has been testifying, another witness may be introduced to show that the first witness has on previous occasions given the same story to which he has testified. It is not proper to introduce this kind of testimony in the first instance. Should a party offer to do so, it would show that he was unworthy of belief. It is received only in reply and in answer to doubts, attempted to be raised by the other party, by impeaching the witness either by testimony or by cross-examination, or it may be proper when the witness stands impeached by the direct testimony given by himself, as in the present case. The witness shows on his direct examination that he was an accomplice; his testimony is therefore suspicious; it comes from a tainted source, and may well be doubted. In such a case it seems to me the principle applies that a witness who is impeached may be supported.

Now, your Honor will perceive that the learned Judge, in deciding that question, went beyond what was necessary to accomplish that object, because he decided not only that a witness could be supported and sustained in such a case, but that he could be supported and sustained where his character was impeached for truth and veracity, by direct evidence, or where it was incidentally impeached, by showing that he had told different stories out of court. He did not administer the exception to the general rule as we contend for it, and as it was laid down in subsequent cases. Now, that case is nowhere directly overruled, but your Honor will perceive that the decision there has been commented upon in several other cases. It came under review in the case of Robb agt. Hackley, in 23 Wendell. Now, in dealing with the case of 12 Wendell, The People agt. Vane, the learned Judge made use of these observations:

The referee was probably governed in receiving the evidence by the language of the late Chief Justice, in The People agt. Vane, 12 Wendell, 78; but that case does not necessarily go beyond deciding that the testimony of an accomplice in crime may be corroborated by showing that when first arrested he gave the same relation of the facts which he had given on oath upon the trial. The fact that the accomplice was called as a witness for the people gave rise to the inference that he was criminating the defendant for the purpose of exempting himself from prosecution for the larceny. It might, therefore, be proper to show that he had given the same account of the matter *at a time when there was no such motive* for making a false accusation. If, when first arrested, *and when he had no expectation of personal exemption*, he had frankly disclosed the whole matter, that might tend to confirm his subsequent representation of the same statement on oath. This brings the case within the acknowledged exception to the general rule, that the testimony of a contradicted, impeached or discredited witness cannot be confirmed by proving that he has made similar declarations out of court.

Now, Sir, am I not right in saying that the case in The People agt. Vane is sustained and approved by this case of 23 Wendell, so far as it may be regarded as a decision of the case in question, or which came up for review in that case? It is nowhere reversed. And then again he says, on page 54:

Mr. Evans, in his valuable notes to Pothier, after speaking of the admission of declarations of the witness on former occasions to confirm his statements in court, says in ordinary cases the evidence would be at least superfluous, for the assertions of a witness are to be regarded in general as true until there is some *particular reason* for impeaching them as false, which reason may be repelled by circumstances showing that *the motive* upon which it is supposed to have been founded *could not have had existence at the time when the previous relation was made*, and which therefore repelled the supposition of the fact related being an afterthought or fabrication. He adds, if a witness speaks to facts negaiving the existence of a contract, and insinuations are thrown out that he has *a near connection with the party* on whose behalf he appears—that *a change of market*, or any other alteration of circumstances has excited an inducement to recede from a deliberate engagement—the proof by unsuspicious testimony that a similar account was given *when the contract alleged had every prospect of advantage*, removes the imputation resulting from the opposite circumstances, and the testimony is placed upon the same level which it would have had if the motive for receding from the previous intention had never had existence.

There the exception to the general rule is stated, and the case in which evidence such as we propose to give now was considered as proper. I refer your Honor also again to the case of 17 Barbour, where the opinion is delivered by Justice Welles. The head-note is this:

Where the witness is impeached by proof that he has made statements on other occasions inconsistent with his testimony, evidence that he has at different times made statements similar to what he has testified in the case, cannot be received to fortify his testimony.

Now, I read from the opinion in this case, for the purpose of showing in what light Judge Welles regarded this decision of the People agt. Vane, and the case of Robb agt. Hackley, to which I last referred. The learned Judge says:

The witness was inquired of whether he had made statements to various individuals mentioned, to the effect that he and the plaintiff had taken the job of sawing together, and had performed the labor jointly in such arrangement with the plaintiff—all which he either denied or stated he did not recollect of making them. This was upon a point directly in issue, and upon which it was competent to contradict the witness. The defendant accordingly called a number of the individuals referred to, some of whom materially contradicted the witness, and testified that he had made statements the import of which was that the sawing in question was done under a general undertaking by the said John Smith and the plaintiff. With a view of restoring the credit of the witness which it was claimed was thus impaired, the plaintiff offered to prove that he had previously, when not under oath, made declarations consistent with his testimony on the trial in respect to the point in question. This was objected to by the defendant's counsel; and the objection was overruled by the Referee, and the evidence so offered was received.

Now, of course, that was error:

In this, we think, the Referee has erred. Mr. Greenleaf, in his treatise on Evidence, states the rule as follows: "Where evidence or contradictory statements by a witness, or of other particular facts, is offered by way of impeaching his veracity, his general character for truth being thus, in some sort, put in issue, it has been deemed reasonable to admit evidence that he is a man of strict integrity and scrupulous regard for truth. But, evidence that he has, on other occasions, made statements similar to what he has testified to in the case, is not admissible unless where a design to misrepresent is charged upon the witness in consequence of his relations to the party or to the cause, in which case it seems that it may be proper to show that he made a similar statement before the relation existed."

There the learned Judge recognizes this exception to the general rule.

So much of the rule here stated as allows general evidence of good character for truth in reply to contradictory statements of the witness, or other particular facts, by way of impeaching his veracity, has not been followed in this State.

Then he quotes the People agt. Hulse, in the 3d Hill, and other authorities:

But, in relation to the residue, and which has all that applies to the question under consideration, I believe it may be regarded as the settled law. It is substantially laid down by Mr. Starkie.

Then he quotes the authorities already referred to. [Reading:]

In Robb agt. Hackley, 23 Wendell, 50, Bronson, Justice, says: "As a general, and almost universal rule, evidence of what the witness has said out of court cannot be received to fortify his evidence. We can perceive nothing in the present case to bring it within the exception to the general rule. The witness has sustained but one relation to the party in the cause; and that relation has at no time been changed."

Now, I ask your Honor, whether or not the relation of Mrs. Moulton to this question and to the parties to this case has not been changed? Is it to-day what it was in June, 1873? The counsel upon the other side does not meet the case by saying that she is the wife of her husband now, and was the wife of her husband then, and therefore the same relation exists. We do not use the term "relation" in such a limited sense as that. "Relation" there is a synonym of "attitude." What is the attitude, or, if you please, the relation of Mrs. Moulton now compared with what it was then? Then her husband was the best friend that God ever raised up for Henry Ward Beecher, and he repeated it over and over again in his correspondence. He was putting forth every exertion, spending his time and his money, exerting his influence to conceal and prevent this scandal, and to keep it beneath the surface, and his wife was co-operating with him. They all were of one mind, they all had but one object to accomplish, and their united efforts were directed to the accomplishment of that object. Well, your Honor knows perfectly well what occurred in 1874. Then Mr. Beecher discovered that for the purpose of saving himself he must sacrifice this God-given friend, and he turned upon him and tried to slay him. Instead of an attitude of close, intimate friendship, there came to be an attitude of personal hostility. Mr. Beecher at that time was induced to believe, with the aid of two lawyers, that Mr. Moulton had levied blackmail upon him, and he was denounced from one end of the universe almost to the other, as a blackmailer. Well, as a matter of course, Mrs. Moulton sympathized with her husband and stood by him; and her feelings toward Mr. Beecher underwent a change; and her attitude to-day when she comes upon the stand is as different from what it was in 1873, as night is from darkness. I need not pursue that subject any further. They say that in 1874, after this breach between Mr. Beecher and Mr. Moulton occurred, after they assumed attitudes of hostility and were making statements and counter-statements, that then this story was concocted by Mr. Moulton and forced upon his wife, and that she has told it here under his influence. How shall we meet that, I say, except by showing that when these relations were different—when this friendly feeling existed between herself and Mr. Beecher and between

her husband and Mr. Beecher, when she was exhorting those who had charge of this thing to give Mr. Beecher another chance to save him from destruction, that then she whispered into the ears of her private confidential, bosom friends and relatives, the same story that she has told upon the stand here? And then what becomes of this invention in 1874? Your Honor will see the wisdom and the propriety, and the necessity also, of administering the rule as we say it exists, or the exception to the rule as we say it exists, by permitting us to show in this case, in order to get rid of those foul imputations upon this good woman, that that story was no production of 1874; it did not grow out of hostile relations; it was not the fruit of that enmity which grew up between these parties then, but it had its origin when her heart beat in unison with Mr. Beecher's and with her husband's, when she was coöperating with them to save Mr. Beecher from this great overshadowing disgrace, that then she told it, and told it as she has told it here. What we contend for, therefore, is the administration of the exception to the general rule, that where they impute to witness a recent design to mislead and to tell a falsehood, the result of a recent influence, that we may go back of this evidence, and show that at a time long prior, when no reason for falsehood existed, the same story was told for the purpose of corroborating the witness. Now, if your Honor please, I will not advert to the other authorities which have been cited by the counsel upon the other side, because throughout the whole of them there is a recognition of the general rule that you cannot sustain a witness in court by proving that that witness told the same story out of court, and at the same time they recognize and enforce the exception to that rule as it has been stated and urged upon the consideration of your Honor.

JUDGE NEILSON ACKNOWLEDGES PERPLEXITY.

Judge Neilson—Mr. Fullerton, we all agree, of course, about the general rule, that there is no doubt about it as settled with us, and the writers and the decisions very often speak of the exception to the general rule as stated by yourself and also by Mr. Evarts. Now, of course this evidence could not be offered, and would not be proper matter to be presented save for the reflection, aspersion, or whatever it may be called, made upon Mrs. Moulton in the opening and in that part of Mr. Beecher's evidence to which reference has been made. The right to claim an exception to the general rule, or to have evidence received on the ground that it is to contradict the witness, springs out of that, first, the opening; second, the defendant's suggestion or statement in regard to it. Well, it being conceded there is an exception to the general rule, of course there is great force in what has been said. What troubles me is this: Suppose the evidence is received before the jury; it is in a sense evidence in the cause, and yet it is not evidence to confirm what Mr. Moulton said; it is not evidence to prove any fact whatever, but it is evidence simply to push aside and get rid of this imputation against her, and could it be placed before the jury safely with an instruction to that effect and limited in its influence?

Mr. Fullerton—Well, Sir, that question would have been very properly put when this rule first had its origin; it could have been determined then. But the rule has been established, Sir, without reference to any consequences that might flow from it, as a just and a proper rule to be administered in a court of law.

Judge Neilson—Yes, what would be the effect of the evidence upon the mind of the jury? Anything beyond getting rid of this imputation?

Mr. Fullerton—I am not here, Sir, to speculate upon what effect legitimate evidence will have upon the mind of the jury.

Mr. Beach—We disclaim any purpose of arguing for any other effect than for the restoration of Mrs. Moulton to her true position as a witness.

Judge Neilson—By way of answering what you call an aspersion.

Mr. Beach—Yes, Sir; we don't contend that these outside declarations of Mrs. Moulton would have any legitimate effect to establish the truth of the allegations made in her principal evidence.

Mr. Evarts—If your Honor please, this is to me an entirely novel proposition, that without any impeachment of a witness there can be corroboration of a witness offered, and there is not a dictum, an argument, or a suggestion in the text-books, or in the authorities, but what rests wholly upon the question whether, when the true measure of a witness's testimony has been struck down by direct or collateral impeachment, you can or cannot reinstate it by these out-of-court, confirmatory statements of the witness. There never was a proposition that you could do that in the first instance. The proposition was that if contradictory statements out of court were given in evidence, then concurring statements out of court might reinstate. But it never was dreamed of that when a witness had not been subjected to that form of reduction or impeachment, such a witness could be corroborated.

Mr. Beach—Mr. Evarts, I cite you to the case of the accomplice.

Mr. Evarts—I have it in my hand; I will read it. I said I would not read it, because it had been overruled, as it has been. Now I will read it and show you that I am right.

Mr. Beach—I guess not. [Laughter.]

Mr. Evarts—The Courts say:

"When a witness has sworn and testifies, his testimony,

prima facie, is entitled to belief. If his character is attacked it may be supported. If his testimony is shown by other witnesses to be false or doubtful, other witnesses may be introduced to sustain the testimony as given." That we all understand. "If a witness be introduced by the defendant to show that the plaintiff's witness has given a different account of the transaction about which he has been testifying, another witness may be introduced to show that the first witness has on previous occasions given the same relation to which he has testified. It is not proper to introduce this kind of testimony in the first instance."

This never came in except in rehabilitation of a witness by concurrent statements out of court, when he had been struck out by showing counter statements out of court, and this case, and all the old cases that permit the rehabilitation, permit it only as a rehabilitation. No court, at any time that the rule prevailed that you could give concurrent statements out of court—no court ever dreamed that you could bring it in before the testimony had been reduced by direct or collateral impeachment. Now, the rule here laid down in the 12 of Wendell, that in that case, where there had been a reduction by counter statements out of court, that would be rehabilitation—that rule is exploded. Now, there is not a word here about exceptions in this case, and that I will show you.

Judge Neilson—Well, where the authorities do recognize an exception to the general rule, what is that exception?

Mr. Evarts—There is not an authority in this State that has ever admitted any evidence under that exception, not one.

Judge Neilson—What is the exception? Is there an exception?

Mr. Evarts—Nobody can tell what it is; it is a *semble;* it is, "it seems there is an exception;" but so far as it is stated it comes to this (and I am going to discuss it)—so far as it is stated it comes to this, that although the naked fact of counter statements being proved, or direct impeachment, is not enough to introduce the rehabilitating evidence, yet if, in addition to that, there is also a changed relation, my learned friend says that relation is not used in an explicit or restricted sense. It is used, not as to a change of disposition, but a change of relation, to wit, that, having been a partner at one time, and so interested to state so and so, the party, the witness, had told the same story before he was a party and had no such interest.

Mr. Beach—Now, will the counsel permit me to refer him to an authority, and read a word or two from it. In the case, Sir, of The People agt. Finnegan [reading]:

"It is said the exceptions to the rule, as now established in this State, are when the witness is charged with giving his testimony under the influence of some motive prompting him to make a false or colored statement, in which case, it is said, it may be shown that he made similar declarations at a time when the imputed motive did not exist. And where there is evidence in contradiction tending to show that the account of the transaction given by the witness is a production of a late date, it is said that it may be shown that the same account was given by him before its ultimate effect and operation, arising from a change of circumstances, could have been foreseen"—referring to the case of Robb and Hackley, in the 23d of Wendell. "But neither of these exceptions are" (it should be "is," I suppose) "applicable to the case under consideration. The evidence in this case was received only for the purpose of answering the doubts attempted to be thrown, &c., by the cross-examination. But it was not admissible for that purpose; it stood upon the same footing as if it had been offered to support the witness after other witnesses had been called to contradict it. What Terhune had previously said was mere hearsay, and could add nothing," &c.

Mr. Evarts—Very well. The nearest my learned friend gets to an argument is—that it is said so and so. But the decision is against it, and there is not a case that has permitted the introduction of rehabilitating evidence in this State except when the rule was understood to be that after contradiction you could then, pure and simple, introduce, without relation or special circumstances, confirmatory evidence—not a case. And in that case the Court says, "Why, you have nothing but the naked case of introducing evidence, just as if you had been contratradicted." Now, let us come to this question of imputation. The imputation is in the opening of counsel. Very well, there has been drawn out on one particular question a statement of Mr. Beecher that Mrs. Moulton did not make that statement to him, and then a superfluous statement that she never made it unless, as he then says, she was under influence or something of that kind. Now, how does that come to be a ground of saying that a witness is to be supported by earlier statements agreeing with what she said on the stand? What, if I had called witness after witness, not resting upon the opening of counsel, nor upon this reference of Mr. Beecher to his estimate of her character, altogether in her favor, and putting what he regarded as the same upon another—what if, instead of that, I had brought witness after witness to prove that this lady had made absolutely contradictory statements up to the very day she knew her husband and Mr. Beecher had quarreled, as they say, in 1874, to take their view of it—supposing I called witness after witness to prove that this lady, up to that day, had said that Mr. Beecher never had such a conversation with her.

Judge Neilson—Well, that would not open the door to this evidence.

Mr. Fullerton—Certainly not.

Mr. Evarts—That would not. And is not that more of an imputation, and under oath of proving that she said so and so, of proving as matter of fact that up to a date she had one view, and her view here comes after that date—and would it not be as vital, as essential, in her interest and the interest of the cause that she espoused, to be permitted to introduce her statements out of court to concur with her statement in court, and beat down not

mere imputations, but sworn testimony, that she had a different opinion and expressed it up to the disposition alleged? That would not have been admitted. And yet my learned friends think that the law, in its care that testimony shall be of a quality to be credited and have its true weight as proving the thing spoken about, will exclude it when direct proof has been introduced, all of which may be false, that the lady has spoken a contradictory mind up to the date of the supposed change of relation, and there is no license to introduce one particle of this evidence. And yet if, in a witness who does not say that she has ever testified to the contrary, but who contradicts her and says also, "That statement she never made to me; she never made it at all unless under influence"—under that, which is mere rhetoric and not testimony, under the opening of counsel which is their view of the character and conduct of witnesses that have been called, and are to be called, there is gained an authority to introduce hearsay evidence, that the law discards even when the contrary evidence up to the very day and date of the supposed change of feeling and opinion makes it so important to the witness that the antecedent concurrent views should be expressed. Now, the Court goes on in this case:

It is not proper to introduce this kind of testimony in the first instance. Should a party offer to do so, it would show that he was conscious his own witness required support, and without it was unworthy of belief.

Now, this is the law; it is received only in reply and in answer to doubts attempted to be raised by the other party, by impeaching the witness, either by testimony (that is direct impeachment) or by cross-examination (which is collateral), or it may be proper when a witness stands impeached by the direct testimony given by himself, as in the present case.

Now, they go on and say, "The witness says on his direct examination that he was an accomplice; his testimony is therefore suspicious. It comes from a tainted source, and may well be doubted. In such a case it seems to me the principle applies that a witness who is impeached may be supported." I have not impeached. The best they can make out of the case is that they get an analogy between a man that by his position of an accomplice is quasi impeached, to put him on the same footing as if the party had actually impeached him. Now, is there anything contradictory to my proposition in that? I do not think the reasoning is very good which says the party was in that position, but it does not profess to get the whole of a rule of law upon him except by putting him upon the analogy that he is in a situation in which a witness is who has been impeached.

These positions are believed to be so near to elementary principles that few adjudications are to be found to sustain them.

And then he goes on and cites the old doctrines of Hawkins [Hawkins's Treatise—Luttrell agt. Reynal] on the intended proposition. Hawkins says:

What a witness hath been heard to say at another time may be given in evidence in order either to invalidate or to confirm the testimony which he gives in court.

That is exploded in England we say. Now, the Court go on and say:

No one ever pretended that his declaration not under oath was equal to his testimony under oath, nor is it in that point of view that confirmatory evidence was ever given. The question is, Will the fact of his having often related the same story which he has now sworn to tend to rebut the prejudice raised against him by his having given a contrary or different relation?

That is the only shape that in any of our law books the question ever has been presented. There never has been a time, in Westminster Hall or here, that you introduced corroborative evidence of a witness not attacked and reduced by evidence could have been sustained. Mr. Starkie admits there may be cases where such testimony may be proper, as where it rebutted the idea that it was a recent fabrication, and when it was given before time was afforded for contrivance; that is, after that testimony had been given. "But I apprehend the true question in all cases is whether such confirmatory evidence can tend to the sustaining and supporting of the testimony of the witness who has been impeached. If it can have that tendency it is testimony of which the party may avail himself. How much weight it is entitled to is for the consideration of the jury under the advice of the Court." The rule itself was established long before the trials alluded to (*i. e.*, some Irish trials). "It was recognized by Chief-Justice Tighlman, in the first of Sergeant & Kawle, who says"—now, these were the bases of the rule, even when it was liberal:

It was recognized by Chief-Justice Tilghman, who said: "When the credit of a witness is impeached by evidence that he had said something at another time inconsistent with what he has sworn, this may be rebutted by proof of other declarations by him in conformity to what he has sworn, because both being under oath, one is as good as the other, and the jury will judge of his credit on the whole.

The same rule was adopted, and was recognized by Washington, Judge of the Supreme Court of the United States, who says:

Declarations of a witness cannot" be given in evidence, except in answer to other declarations of the witness inconsistent with what he had before sworn to. Now, surely"—so the Court proceeds—"the only reason for giving evidence of contradictory declarations of a witness is to discredit the witness and impeach his credibility. When evidence has been given to produce that effect, it may be rebutted by evidence which destroys the effect of such testimony. And, as it has been before remarked, it can make no difference in principle whether the impeachment arises from evidence discrediting the witness, or from a cross-examination or a direct examination, if the witness stands"—(his own direct examination that is, of course)—"like a man who swore he was an accomplice."

Has Mrs. Moulton sworn she was an accomplice?

Mr. Beach—No, but your proposition was that this evidence could not be admitted unless there was an attack from affirmative evidence outside.

Mr. Evarts—I did say so, exactly, and I have proved it by every word that I have read, excepting that the learned Court tries to argue that an accomplice who discredits himself gets within the analogy of having been discredited by evidence. If Mrs. Moulton has sworn that she is an accomplice—if you put her in that attitude—why, then, your case is such that perhaps you may be able to show what she said before she became an accomplice, though it is very shadowy, this accomplice view, in any case.

Mr. Beach—Your proof puts her in that position.

Mr. Evarts—It does not. But even if it does—even if it does, it is only by having witnesses prove this, that and the other thing. The question is, whether you have been directly impeached, either by the principal impeachment, or by collateral impeachment, or by this quasi or imaginary impeachment, of your own statement, that you are an accomplice—an actual accomplice in crime as you say, but of course the jury do not like to believe you if they can help it. That has been always the rule. Now, when it was the law that when a witness had been so reduced by evidence, you could rebut by concurrent statements, such evidence was admitted; but never, even in that state of the law, except in rebuttal of direct evidence, or collateral evidence of impeachment; that is, contradictory statements out of court. But our courts have exploded that, and since they exploded that general rule no witness has been admitted in any court in this State to give corroborative evidence of extra-judicial statements in the same sense in which the witness has sworn in court. Every case that has been attempted to be made an exception, and in which it has been sought to be introduced, this infraction of the rule of evidence has failed. All that there is—and it is more important in Finnegan's case than any other—is this: "It is said—it is said" that you may rebut impeaching evidence if you have also the fact of changed relation; but if you have not that fact of changed relation, then you cannot rebut. But here the effort is not to rebut, for no evidence has been offered, none pretended; and if we had offered, you could not introduce this, because there is no changed relation. The imputation is that the wife falls under the husband's power. If she had married since June, 1873, and her statements now, made under that imputation of marital authority, could be shown to be corroborated by statements out of court, and we had impeached her by statements out of court to the contrary of what she now says, they might have brought themselves within the ground of arguing to your Honor whether the law of this State made any such exception as they contend for. Now, if your Honor please——

A DOUBTFUL VICTORY FOR DEFENDANT'S COUNSEL.

Judge Neilson—I am quite satisfied about this. In the first place, without assuming to deny that there may be an exception to the general rule of evidence reaching a question of this kind (because it would be remarkable if we could find a rule without an exception or qualification), the real basis for this application is found in the opening of the learned counsel for the defendant, and in an observation made by the defendant himself in giving his testimony—an observation suggestive and, as has been said, rhetorical. Now, that part of the opening of the learned counsel, if it has not been proved, goes for nothing. If it has not been proved it ought not to have been made; it is unsupported, and therefore might as well not exist. This observation made by the defendant, after having answered the question put to him, was uncalled for—his mere opinion. It does not appear to have any basis to rest upon, and does not indeed seem to be entitled to be called even an opinion. It is an uncharitable observation, resting, at most, in mere conjecture and suspicion. The theory, the suggestion whether it is in the evidence, or whether it is in the opening, or in the argument, or anywhere else—the theory that a wife who comes and testifies on oath before the court, and who is cross-examined with diligence and acuteness, is overshadowed by her husband and is under his control and influence, is a demoralizing theory unworthy of a court of justice, and I shall instruct the jury not to be carried away by any such proposition. Better have no husbands if women cannot come into court without being perverted in their moral sense and led to fabricate and invent and swear to things which did not occur. I think this evidence cannot be received.

Mr. Beach—Your Honor will permit us to make the offer in form.

Judge Neilson—Yes, Sir.

Mr. Beach—We offer to prove by the witness upon the stand that on the evening——

Mr. Evarts—It is already made.

Mr. Beach—Sir?

Mr. Evarts—It is already made.

Mr. Beach—Then I will re-make it. [To the Court.] We offer to prove by this witness that on the evening of the 2d of June, 1873, he called at the house and saw Mrs. Moulton, and that Mrs. Moulton then, being somewhat discomfited and agitated, communicated to him the facts of the conversation between herself and Mr. Beecher had upon that day, in conformity with the evidence which she has given in court; and we except if your Honor excludes it.

Judge Neilson—Yes, it is ruled out.

Mr. Evarts—The witness has already stated about his not being able to identify the time.

Judge Neilson—This is an offer of proof?

Mr. Beach—Yes, and if this witness shall not identify it we offer to prove the same facts by the testimony of Mrs. Eddy ——

Mr. Morris—Who met him on the stoop?

Mr. Evarts—That is not an offer of proof by the witness.

Mr. Beach—Well, Sir, when the gentleman gets up to interfere with an offer of evidence that I make, and makes his interruption by way of comment upon the witness upon the stand, and suggests that the witness has already testified, I make that additional offer to meet that suggestion, and I will maintain the offer that I make.

Mr. Evarts—With regard to Mrs. Eddy, we will hear about her whenever she is offered.

Mr. Beach—Well, Sir, you have heard about her now.

Mr. Evarts—Yes, but not in the sense that I mean.

Judge Neilson—The counsel has a right to make his offer.

Mr. Beach—Well, Sir, she is in court, and if you want us to put her upon the stand we will do so.

Judge Neilson—Your offer stands in the terms in which it was originally made, and it is not overruled from any question about the date.

Mr. Morris—We want that offer made of Mrs. Eddy's testimony.

Mr. Beach—I make the same offer with regard to Mrs. Eddy, a lady who is in attendance in court.

Mr. Evarts—I don't say anything about that.

Mr. Beach—I don't ask you to say anything about it, nor care whether you say anything or not.

Mr. Evarts—When the witness is offered we will have something to say.

Mr. Beach—I offer her now.

Mr. Evarts—Ah! When she is called we will see about it.

Mr. Beach—Is it necessary to call her upon the stand, Sir, in order to make an offer?

Judge Neilson—I think it is a matter of form. I don't know why the counsel should be compelled to call her upon the stand.

Mr. Evarts—The matter, Sir, is in the confusion between what is this evidence that is excluded, and alleged statements of facts that may be good evidence. I don't know what matter of fact they may have a right to prove. I say that they cannot prove what Mrs. Moulton said to other people before this trial, and any offer to prove that is covered by this, no doubt, without the need of bringing in any witness's name——

Mr. Beach—Very well.

Mr. Evarts—But then it must not be mixed up with the proof of some person going there on a certain day, and all that——

Judge Neilson—I think his offer might be taken down in the terms he proposes. I don't see any objection to it.

TESTIMONY OF MRS. SARAH C. EDDY.

Mrs. Sarah C. Eddy, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. Fullerton—Where do you reside, Mrs. Eddy? A. In Brooklyn.

Q. What street and number? A. 124 Montague-st.

Q. Be kind enough to state your husband's name? A. Robert Eddy.

Q. How long have you resided in Brooklyn? A. I have resided in Brooklyn ten years.

Q. Before that where did you reside? A. In New-York.

Q. With your father? A. Yes, Sir.

Q. And who is your father? A. Josiah Sutherland.

Q. Are you acquainted with Mr. Moulton and his family? A. I am.

Q. State whether you have been in the habit of visiting Mrs. Moulton? A. I have, frequently.

Q. When did your intimacy or acquaintance first commence? A. About fifteen years ago.

Q. Before or after your marriage? A. Just before my marriage.

Q. I want to call your attention to the year 1873; do you recollect visiting Mrs. Moulton during that year? A. Yes, Sir.

Q. Where did she reside in 1873? A. 49 Remsen-st.

Q. Where she now resides? A. Yes, Sir.

Q. Do you know Mr. Henry Ward Beecher? A. I have met him.

Q. When did your acquaintance with him commence? A. I think in 1871.

Q. State whether at any time in 1873 you met him at or near Mr. Moulton's house in Remsen-st? A. I met him just at or on the steps of Mr. Moulton's house, once, I think, in the morning——

Q. Where were you? A. I was just going into the house.

Q. You were ascending the steps as he was descending? A. Yes, Sir.

Q. Were you acquainted with Mr. Beecher at that time? A. Yes, Sir.

Q. State whether or not he saluted you? A. He did not.

Q. Did you salute him? A. I did not.

Q. What was his appearance when you met him on that occasion, Mrs. Eddy? A. He didn't notice me; he seemed absorbed.

Q. Did you see any one in the doorway or near the door of Mr. Moulton's house as you ascended the steps when you met Mr. Beecher? A. No, Sir; I didn't observe anybody; Mrs. Moulton opened the door for me; the door was shut, and she must have seen me coming up the steps.

Q. Why do you think so? A. Because she opened the door for me.

Q. Without your ringing? A. Yes, Sir.

Q. Or knocking? A. I did n't knock.

Q. Nor ring? A. No, Sir.

Q. Mrs. Moulton let you in, did she? A. She did.

Q. What was Mrs. Moulton's condition as she appeared? A. She seemed agitated.

Mr. Evarts—I object to that. We had nothing to say about that.

Judge Neilson—I think we will take that.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Q. What was Mrs. Moulton's condition when you entered the room or the hall? A. She was agitated.

Q. State if you can—indicate if you please to what extent—whether it was slight or considerable? A. She seemed greatly agitated.

Q. Did you say anything to her upon the subject of her then agitation? A. Yes, Sir.

Mr. Evarts—I object to any conversation between this lady and Mrs. Moulton.

Mr. Fullerton—That brings us now right to the point. I propose to show by this witness that Mrs. Moulton then and there told her what had just taken place between Mr. Beecher and herself, in which she related substantially the same story she has testified to here as a witness.

Judge Neilson—The same ruling, and of course you will take the same exception.

Mr. Evarts—We except to your Honor's ruling.

By Mr. Fullerton—State whether you were in the habit of going into the country during the Summer months? A. Yes, Sir.

Q. Did you go into the country in the year 1873 in the Summer months? A. I did.

Q. Where did you spend the Summer? A. In Dutchess County, town of Stanford.

Q. What season of the year did you go? A. The first day of July, I think.

Q. How long was it before you went into the country in the Summer of 1873 that you visited Mrs. Moulton and found her in this state of agitation as you have described, and when you met Mr. Beecher? A. I think shortly before I went; I cannot state the time positively.

Q. Well, you think it was shortly before you went into the country? A. I think so.

Q. Within what period of time? A. Within a few weeks; I cannot state positively.

Q. One of the jurors asks what time in the day or morning you went there? A. I can't remember; I think it was in the morning, but I don't remember what time of day.

Q. What time in the morning do you mean by that term? A. Well, I should think early morning—pretty early.

Q. Well, about what time? A. About, perhaps, 11 or 12 o'clock.

CROSS-EXAMINATION OF MRS. EDDY.

By Mr. Evarts—What does your intimacy or acquaintance with Mrs. Moulton or Mr. Moulton date from? A. About the time of my marriage.

Q. What is your husband's name? A. Robert Eddy.

Q. What connection or relation had he, or has he, with the business of Woodruff & Robinson? A. He is bookkeeper in their establishment, I think.

Q. And for what length of time has he been? A. I think 17 or 18 years. I do not——

Q. He was so when you were married, and has remained so? A. Yes, Sir.

Q. Is he in the employment of the new firm? A. Yes, Sir.

Q. Now, why do you think it was as late as 11 o'clock that you called at that house on the occasion that you have spoken of? A. I usually called there about that time in the morning. I don't frequently get out before that time in the morning.

Q. Not before 11? A. No, Sir.

Q. How far is your house from theirs? A. Only a short distance.

Q. In the same street? A. No, Sir. I live on Montague-st.

Q. Well, the same block? A. No, Sir, about two blocks away, I should think, or two and a half.

Q. And was your intimacy such that you were in the habit of running around there—making informal calls as ladies intimate do? A. Yes, Sir.

Q. And on this occasion that you called you have no means of identifying the time any nearer than that it was a few weeks before the first of July? A. No, Sir.

Q. Do you know Mr. Willis E. Caldwell? A. I do, Sir.

Q. He is a friend of yours, is he not? A. Yes, Sir.

Q. A family friend? A. Yes, Sir.

Q. Do you remember about his going to Europe that Summer, and when that occurred? A. I remember—he frequently goes to Europe in the Summer season; I don't remember that particular Summer.

Q. You don't remember about that? A. No, Sir.

Q. You don't know whether this visit you made was before or after he went to Europe? A. No, Sir.

Q. Mrs. Eddy, do you remember whether at the time of this call Mr. Moulton was sick? A. No, Sir; I don't remember.

Q. What is your recollection on that subject? A. I think he was not sick in the house.

Q. Well, was he sick? A. That I don't remember.

Q. Have you no association of his sickness with this call of yours? A. I don't recollect; I think I asked Mrs. Moulton whether her husband was sick——

Q. No matter about the conversation; it is only your own memory I ask you about. A. I don't recollect, Sir

Q. What is your best recollection as to whether, at or about this time of your call, Mr. Moulton was understood by you to be sick? A. I have no recollection about it, Sir

Q. No impression on that subject? A. No, Sir.

Q. Did you know of his being sick at all that Summer? A. I don't remember that particular Summer, Sir; he has frequently been sick.

Q. But you have no association of this call of yours with his sickness? A. No, Sir.

MRS. EMMA C. MOULTON RECALLED.

Emma C. Moulton, a witness on behalf of plaintiff, was then recalled and further examined:

By Mr. Fullerton—Mrs. Moulton, you are acquainted with Mrs. Eddy, the witness who last testified? A. Yes, Sir.

Q. Do you recollect the call she made upon you in 1873, to which she has testified? A. Yes, Sir.

Q. On what day was that call made with reference to the conversation which you had with Mr. Beecher, which you have testified to, and which was supposed to be on the 2d of June? A. On Monday, Sir.

Q. On what day was Mrs. Eddy's call, with reference to that conversation? A. It was on the same day.

Q. Was Mr. Beecher just leaving the house when Mrs. Eddy entered? A. Yes, Sir; I think he had just left the house.

Mr. Fullerton—That is all that I will prove by Mrs. Moulton now. I shall have to recall her again on other topics.

Mr. Beach [to Mr. Fullerton]—Well, I think you should—— [To the witness.] Wait one moment, madam.

[Mr. Beach and Mr. Fullerton held a brief whispered consultation.]

Mr. Beach—We have only at this moment recalled Mrs. Moulton for the purpose of closing up the subject which was introduced by Mrs. Eddy. We shall be under the necessity of recalling her again in regard to some points of evidence connected with Mr. Beecher and Mr. Tracy.

Judge Neilson—You can do so; it was proper to call her while Mrs. Eddy was here, of course.

Mr. Evarts—I suppose I may as well close up my part of this business now.

Judge Neilson—As you please, Sir.

CROSS-EXAMINATION OF MRS. MOULTON.

By Mr. Evarts—Do you mean to say, Mrs. Moulton, that Mrs. Eddy called on you on the 2d day of June? A. Yes, Sir; it was on the day that I had that conversation with Mr. Beecher.

Q. Well, you have stated that that was the 2d of June? A. Yes, Sir.

Q. You recollect that day, do you? A. Yes, Sir.

Q. As being the date that she called? A. I think so.

Q. You think so? A. Yes, Sir; I remember distinctly her calling——

Q. You remember her calling, but I ask you if you remember her calling on the 2d of June? A. Yes, Sir; I remember her calling on the 2d of June.

Q. What? A. Yes, Sir.

Q. How do you recollect it was the 2d of June? A. Because it was on the 2d of June that I had that conversation with Mr. Beecher.

Q. And that is the only way you recollect Mrs. Eddy's calling as being the 2d of June? A. That was the only conversation that I had with him where he talked of suicide, and I repeated that to her—that was on the 2d of June.

Mr. Evarts—I have not asked about your conversation with him. I ask to have that stricken out.

Judge Neilson—Yes.

Q. The only association that you have of Mrs. Eddy's call with the 2d of June is its being the time that you had a conversation with Mr. Beecher, is it? A. I think that is the only way that I can fix it; that she came in on that day, and that I repeated that conversation——

Q. On the day of the conversation? A. Yes, Sir, the 2d of June.

Mr. Evarts—I move to have that struck out about repeating the conversation.

Judge Neilson—Yes.

Q. Is there anything in Mrs. Eddy's call that has relation to the 2d day of June? A. Only the fact that I repeated the conversation to her.

Mr. Evarts—Well, that was not a call before she got there. I ask to have that evidence struck out, if your Honor please.

Judge Neilson—Yes.

Q. Was there anything in Mrs. Eddy's call, in its purpose, that had to do with the 2d of June? A. I cannot fix the call in any other way than in relation to the conversation which I repeated to her.

Q. Then it is only in regard to your opinion that you had a conversation with Mr. Beecher on the 2d of June, that you think she called on the 2d of June, is it? A. Yes, Sir.

Mr. Evarts—Very well. [To Judge Neilson.] All reference to the conversation I ask to have struck out.

Judge Neilson—Yes.

Mr. Morris—Mr. Mitchell—Frederick Mitchell.

TESTIMONY OF FREDERICK W. MITCHELL.

Frederick W. Mitchell, a witness called on behalf of the plaintiff, being duly sworn, testified:

By Mr. Fullerton—Mr. Mitchell, where do you reside? A. I reside in Norwalk, Conn.

Q. Where do you do business? A. I have at present no occupation.

Q. What was your business in 1872 and 1873? A. My occupation in 1873 was speculator in the house of W. B. Farr & Co., in No. 2 Exchange-court, New-York.

Q. In 1871 what was your business? A. From the 1st of February to the 1st of October I was employed by Woodhull, Claflin & Co.

Q. In what capacity? A. Bookkeeper.

Q. What offices did they occupy at that time? A. 44 Broad-st.

Mr. Beach [to the witness]—You seem to be able-bodied, Mr. Mitchell. Please speak a little louder.

By Mr. Fullerton—How long did they occupy the offices at 44 Broad-st? A. I don't recollect exactly how long. I know they were there when I went there, and how long they occupied them after I left them I don't know; I am unable to say.

Q. When did you leave them? A. The 1st of October, 1871.

Q. Did you visit them after they removed their office from 44 Broad-st.? A. No, Sir.

Q. You left their employ when? A. The 1st of October, 1871.

Q. Did you know a colored boy in their employ by the name of Woodley? A. I did.

Q. During what period was he in their employ? A. I think he was there during the whole time I was there.

Q. In what capacity? A. Well, he didn't appear to be in anything, hardly—that is, in particular. He was sweeping out the office once in a while, and would take a few newspapers out and sell them, for something to eat, I suppose. He was very poor.

Mr. Evarts—Well, speculations——

By Mr. Beach—Sell them on his own account? A. Yes, Sir.

Mr. Fullerton—That was not a speculation. [To the witness.] Do you know whether he had any education? A. I don't think he did, because he could scarcely write his name; I know that.

Q. Do you know whether he could read? A. I don't remember.

Q. Do you know of his ever making selections from exchanges to be printed? A. I don't think he ever did.

Mr. Evarts—Well, the question is what you know.

By Mr. Fullerton—Did you ever see him do anything of that kind? A. No, Sir.

Q. What was your position with reference to his when he was in the office and attending to his duties, whatever they were? A. Well, I was bookkeeper behind the desk, and he was around in different parts of the office.

Q. Anything in front of you so that your view was obstructed? A. No, Sir.

Q. Did he ever stand by the counter with you and make selections from newspapers? A. No, Sir.

Q. Nothing of that kind? A. Nothing, to my knowledge.

Q. What had he to do with the exchanges, so far as you observed? A. Nothing more than to go to the Post-Office after them; that is all I ever knew.

Q. What would he do when he got them? A. Nothing but deliver them to the office.

Q. Did you ever see him opening them? A. No, Sir, I never did.

Q. Or marking any particular parts of them? A. No, Sir.

Q. Nothing of that kind? A. No, Sir.

Q. Now, did he do anything beyond the sweeping out of the office, and running to the Post-Office back and forth, that you knew? A. Well, nothing more than help them up in Beekman-st. once in a while putting off the mail, but not regularly.

Q. What hours in the day did you spend in the office as bookkeeper? A. Well, I was there from—I usually got to the office about 20 minutes past 9, and left about half-past 3.

Q. When was the office closed? A. About 4 or 5 o'clock. I left before the office closed.

Q. What time did you leave? A. I left at half past 3.

Q. Was the office closed then? A. Not generally; no, Sir.

Q. How many rooms were there in that suite? A. Well, the main office and two rear rooms, besides the hall.

Q. Was there any gas in the rear room? A. I am not able to say; I don't remember whether there was or not.

Q. Did you ever see Mr. Tilton there? A. I did; yes, Sir.

Q. How frequently have you seen him there? A. I am not able to say positively, but perhaps two or three times a week; maybe more, and may be less; I didn't take particular notice.

Q. A great many other people visited the office, I suppose? A. Yes, Sir.

Q. Largely? A. Well, there was not generally more than two or three in there at a time.

Q. I have forgotten when your duties commenced there as bookkeeper? A. The 1st of February, 1871.

CROSS-EXAMINATION OF FREDERICK W. MITCHELL.

By Mr. Evarts—Do you know what Woodley did there in 1872? A. No, Sir, I do not.

Q. Not at all? A. No, Sir.

Q. Do you know what proficiency he made in reading and writing, in his attention to school here, after he got North? A. No, I do not; I have not seen him since October, 1871, to my knowledge.

Q. You say you saw Tilton there two or three times a week when you were there? A. About that, I think. I don't know whether he commenced as soon as I was first employed by them or not; but I had seen him there.

Q. You have no recollection that he didn't commence as soon as you? A. No, Sir; I have no recollection either way, whether he did or not.

Q. Do you know what Woodley had a month? A. He didn't have anything, according to my knowledge.

Q. Didn't it go through the bookkeeping of that concern, what he had? A. I think not.

Q. What was the bookkeeping of the establisment occupied about? A. Stocks, &c.

Q. The brokers' part? A. Yes, Sir.

Q. But not the newspapers. Did you have anything to do with the newspapers? A. Once in a while I would help out the other clerks when they were behind.

Q. But your business of bookkeeper had nothing to do with the newspaper establishment? A. No, Sir.

Q. Not at all? A. No, Sir.

Q. Now, which office was your desk in? A. In the main office.

Q. The outer office? A. The one nearer the front.

Q. And were you exclusively occupied in that office? A. Yes, Sir.

Q. Didn't go into the other offices? A. Oh, no; I was n't exclusively occupied in that office.

Q. What had you to do with the other offices? A. Well, Col. Blood's desk used to be in the rear office, and I had occasion to go see him at very short intervals.

Q. On the stock question? A. Yes, Sir; and different things.

Q. I mean stocks? A. Yes, Sir.

Q. Not about the newspapers? A. No, Sir.

Q. You had no share in editing or publishing the newspapers? A. Nothing whatever.

Q. No responsibility for its articles? A. No, Sir.

Q. You say you think about half-past three? A. Yes, Sir.

Q. That was the end of your obligation to be there, was it? A. Yes, Sir.

Q. And you were not there later? A. Not there later, because I went home to Connecticut every day.

Q. So you know nothing of what happened later than that? A. No, Sir; I do not.

Mr. Evarts—That is all.

Judge Neilson—That is all.

TESTIMONY OF MARY CATHARINE McDONALD.

Mary Catharine McDonald, a witness called on behalf of plaintiff, being duly sworn, testified:

By Mr. Fullerton—Catherine, where do you reside now? A. No. 174 Livingston-st., at present.

Q. With whom do you reside? A. Mr. Tilton.

Q. How long have you resided with him? A. I have always made it my home for a great many years. I did'nt stay there altogether—I would go and come just as I pleased, to see his parents and back.

Q. And during what period of time have you been in the habit of doing that? A. During the last five or six years, ever since he has been married. Since he kept house I have visited him occasionally, and have been for three or four years there pretty much altogether. When he kept house I used to visit him occasionally, and for the last two or three or three or four years I was there pretty much altogether.

Q. Speak a little louder, Catharine, please, for these gentlemen all wish to hear you, and the jury. For the last three or four years you were there pretty much altogether? A. For a few weeks I would leave to go down to his parents, and then come back again.

Q. Where did his parents reside? A. Keyport, New-Jersey.

Q. What portion of the time did you spend at his parents' in New-Jersey? A. Generally in the Summer.

Q. And how much time in the Summer? A. Five or six weeks, or sometimes two months.

Q. State whether you were in the habit of going down there every Summer. A. Nearly every Summer, but not quite so long every Summer.

Q. Do you recollect when Mrs. Tilton went to Monticello? A. Yes, Sir.

Q. Where were you when she went to Monticello? A. I was in the house.

Q. In what house? A. In Mr. Tilton's house; I helped her to get ready to go—Mrs. Tilton.

Q. Do you recollect what season of the year it was when she went to Monticello? A. I think it was in the latter part of July.

Q. Do you recollect the year? A. I don't know as I do exactly.

Q. See if you can remember the year in which Mrs. Tilton went to Monticello? A. I think it was about three or four years ago; I don't know which. I think it will be four years this Summer—four years, I think.

Q. Are you at all certain as to the year in which she went to Monticello? A. No, Sir, I am not certain.

Q. Did she go there more than one Summer? A. I think she did; I am not certain.

Q. You think she went to Monticello more than once? A. I am not certain she did.

Q. Did you ever see any letters that Mrs. Tilton wrote back from Monticello? A. I saw one she wrote to myself; I don't know that I saw any others.

Q. Have you got that letter? A. I have not got it here.

Q. Have you got it in your possession? A. I think I have; I am not sure, though.

Q. Where is it? A. I think it is down in Keyport.

Q. Where did you remain after Mrs. Tilton went to Monticello? A. I remained in the house in Livingston-st. for three or four days, I think; she went in the middle of the week, I think, and I remained over Sunday.

Q. You mean she went to Monticello in the middle of the week? A. In the middle of the week, and I stayed at No. 174 Livingston-st. until after Sunday.

Q. You mean the following Sunday? A. Yes, Sir.

Q. And where did you go after the following Sunday? A. I think on Monday I went down to Keyport.

Q. Where? A. To Mr. Tilton's parents.

Q. And how long did you remain at Keyport that time? A. Four or five weeks, I suppose; I came up occasionally and spent a day and went back again.

Q. Who went to Keyport with you on that occasion? A. I don't know as any one did the day I went. Miss Tur

ner, she was to go on Monday. She left the house to go, but I don't think she came there until Tuesday. She was to go with me, but she left the house on Monday before I did, but she didn't get to Keyport, I think, until Tuesday.

Q. On what day did you arrive at Keyport? A. Monday afternoon. The boat goes at 4 o'clock, and I got there about 6 o'clock.

Q. When you got there was Bessie Turner there? A. She was not, I don't think; I am not certain about that, but I don't think she came until the next day.

Q. What time the next day do you think she arrived there? A. She could not get there before 6 o'clock in the evening, because the boat didn't go. Now and then an excursion boat went, but it was not regular. I don't think she got there until about 6 o'clock.

Q. Now, I want you to state when you left on that day to go to Keyport, where Mr. Greeley was, if you know? A. I don't know where he was.

Q. Was he at Mr. Tilton's? A. He was not; Mr. Tilton, expected him, but he didn't come.

Q. Now, I want you to state whether you designed going down to Keyport earlier than you did go at that time? A. I think not; I didn't intend to go before Monday, but on Monday Mr. Tilton fixed a table for Mr. Greeley to write on in the front sitting-room in the second story, and I assisted him on that day to arrange that table.

Q. Was the table fixed in any peculiar way? A. Nothing, only the table that was already there was not high enough, and Mr. Tilton put something on top of it to make it higher to write upon, and I assisted him in that.

Q. What time did you get through with arranging that table? A. Perhaps 11 or 12 o'clock; I could not be certain about that.

Q. And what day was it that you fixed that table? A. I don't know the date. It was on Monday—the Monday after Mrs. Tilton went away.

Q. And was it the day on which you left to go to Keyport? A. That very same day.

Q. Do you know where Elizabeth, or Bessie Turner, as we call her, went when she left the house? A. I could not say, but Mr. Tilton gave her money——

Mr. Evarts—No matter about that.

The Witness—To pay her fare down to Keyport, and she took it and left the house. I don't know where she went to. I don't think she went to Keyport that day.

Q. Do you know how much money Mr. Tilton gave her? A. I could not say. It was a bill. I could not say whether it was a two dollar bill or a five dollar bill; it was either one.

Q. What time in the day did Bessie Turner leave that house? A. It was after 10 o'clock; between 10 and 11 o'clock, I think, as well as I can remember.

Mr. Fullerton—I am reminded by my adversary that it is after the time for adjourning, begging your Honor's pardon for consuming two minutes extra.

Judge Neilson [to the Jury]—Return at 11 o'clock tomorrow, gentlemen.

The Court thereupon adjourned until 11 o'clock on Tuesday.

EIGHTY-THIRD DAY'S PROCEEDINGS.

THE PLAINTIFF TESTIFIES IN REBUTTAL.

NUMEROUS DENIALS BY MR. TILTON OF STATEMENTS MADE BY THE DEFENDANT'S WITNESSES—WOODLEY, THE COLORED WITNESS, FREELY CONTRADICTED—MR. TILTON SAYS THAT HE NEVER TALKED WITH MRS. WOODHULL ABOUT PUBLISHING THE SCANDAL — HIS DIFFERENCES OF ASSERTION WITH MR. TRACY—MANY OF BESSIE TURNER'S CHARGES DENIED — CONTRADICTIONS OF TESTIMONY GIVEN BY MR. BEECHER—MR. TILTON NOT CROSS-EXAMINED—MINOR TESTIMONY FROM MARY CATHARINE M'DONALD.

TUESDAY, May 11, 1875.

The counsel for the plaintiff to-day surprised almost every one in the court-room by suddenly recalling Mr. Tilton to the witness chair. He was called by Mr. Morris, who turned to him, after the brief examination of Miss McDonald was finished, and said in a low voice, hardly audible beyond the circle of the counsel's chairs, "Mr. Tilton. will you take the stand?" Mr. Tilton arose, and, walking forward, sat down in the witness chair so quietly that many in the audience were unaware that the plaintiff himself was upon the stand.

Mr. Tilton began a long series of denials by declaring that he had not visited Mrs. Woodhull in Irving-place, as the colored witness Woodley had asserted. Then he said that he had never called Mrs. Woodhull "Vickey" in his life, and had never spoken to her or Col. Blood about publishing the scandal. He contradicted several other statements made by Woodley. Mrs. Palmer, one of the defendant's witnesses, had testified that in the early part of 1872 Mrs. Woodhull read a portion of the proofs of the scandal article in the presence of herself and Mr. Tilton. This Mr. Tilton yesterday denied, saying that at the date assigned by Mrs. Palmer for this interview he was absent in the North-West lecturing. Mr. Tilton showed where he was in 1871 and 1872, prior to Nov. 5, 1872, by reading a long list of places, in various parts of the country, where he had lectured during that time. He denied that he had had what is known as the "True Story" at the Sunday even-

ing interview at Mr. Moulton's house, when Mr. Tracy, Mr. Moulton, and himself were present. That document had not been written then. He also contradicted Gen. Tracy's statement that at that interview Mr. Tilton had unfolded the covering of a manuscript which he had brought with him, and had begun to read a statement. In several other particulars the witness contradicted the testimony of Gen. Tracy, as well as the evidence of various other witnesses for the defendant.

The liveliest interest was shown by the audience in the plaintiff's statements in regard to the scene at his house when Miss Bessie Turner asserted that she had been knocked down by Mr. Tilton. In a very decided manner the witness denied that any such scene had ever taken place. He was asked if he had made certain statements to Bessie Turner—among others, that "it was no wonder his gray hairs were going down in sorrow to the grave." "Did you say that?" asked Mr. Morris. "No, Sir," replied Mr. Tilton; and then added, without smiling, in a low tone, "I had no gray hairs at that time." Mr. Tilton went on denying statement after statement of Miss Turner as they were read to him, from her testimony, by Mr. Morris. These denials, which were listened to in perfect silence by the audience, were made without hesitation as rapidly as the questions were put. Mr. Tilton stated that Bessie Turner was absent in Keyport during the whole time of Mr. Greeley's stay at his house in 1869.

Mr. Tilton denied that the interview had taken place which was spoken of by Mr. Beecher as occurring in 1871, when the defendant said that he and Mrs. Tilton sat on Mr. Tilton's knees, and that they all kissed one another. Mr. Tilton said, however, that he remembered a scene somewhat similar which had occurred about 10 years ago, and which had reference to another matter. Mr. Tilton further denied that he had read to Mr. Beecher from a slip of paper a statement of his wife concerning improper advances made to her by Mr. Beecher. He said that he had read a very different paper to Mr. Beecher. He likewise denied that anything had been said at the time of the arbitration, in his presence, about burning the papers. Mr. Wilkeson had not suggested or insisted on the destruction of the papers to him.

When Mr. Morris had finished his examination of Mr. Tilton he turned toward Mr. Evarts, indicating that he could begin the cross-examination, but Mr. Evarts shook his head, saying: "I have nothing to ask," and the plaintiff stepped down from the witness stand and resumed his seat among his counsel. The time for adjournment had nearly arrived when Mr. Tilton's examination was finished.

Mary Catharine McDonald, whose examination was begun on Monday, was the first witness this morning. Her testimony related to the departure of Mrs. Tilton for Monticello in 1869, and the visit of Mr. Greeley to Mr. Tilton's house about that time. Among other things she testified that Miss Bessie Turner went to Keyport before the arrival of Mr. Greeley, and did not return for four or five weeks. Miss McDonald's testimony was introduced to contradict some of that of Miss Turner. She was cross-examined by Mr. Shearman.

THE PROCEEDINGS—VERBATIM.

MARY CATHARINE McDONALD RECALLED.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Beach—If your Honor please, Mr. Fullerton has been unexpectedly detained at the General Term of the Supreme Court, in New-York.

Judge Neilson—Will you take some other witness?

Mr. Beach—If your Honor will permit one of us to take his place in the examination, we will endeavor to proceed, Sir.

Judge Neilson—Oh, yes. Witness, take the stand.

Mary Catharine McDonald was then recalled, and her direct examination resumed.

By Mr. Morris—I think you stated yesterday, Miss McDonald, that you thought Bessie Turner went to Keyport on Tuesday, the day after you went? A. That is my recollection; I thought so; I know she did not go with me; I didn't see her in the boat.

Mr. Shearman—A little louder.

Mr. Morris—Speak a little louder, if you please, so that the jury can hear you.

Mr. Beach—Repeat the answer.

Mr. Morris—She says she thought she went on Tuesday, the day following. And she left Mr. Tilton's, if I understand you right, about 10 o'clock on Monday to go, before the table that you have spoken of was fixed or arranged for Mr. Greeley? A. She left before I did, some time before 12—between 10 and 12; she was not later than that.

Mr. Shearman—Repeat it.

Judge Neilson—You will have to repeat the answer.

Mr. Morris—I did not hear it myself.

Mr. Beach—You must speak louder.

Mr. Morris—Will the stenographer repeat the answer?

The Tribune stenographer read the last answer.

Q. How long did you remain at Keyport? A. Four or five weeks.

Q. Did Miss Turner remain there all the while that you did? A. Yes, Sir.

Q. Did you return together to Brooklyn? A. No, Sir.

Q. Who returned first? A. She did.

Q. How long before you returned? A. About a week or so.

Q. And you was there about four weeks? A. Four or five; I guess I was five weeks or perhaps more. I come up twice in the mean time for a day.

Q. Do you know whether Mrs. Tilton had returned from Monticello when Bessie came back from Brooklyn? A. I think she had.

Q. Do you know whether Mr. Greeley had left Mr. Tilton's before Mrs. Tilton returned or not? A. I couldn't say; I don't think he stayed so long as he expected.

Q. Do you recollect on any other occasion Mr. Greeley's staying at Mr. Tilton's? A. No, Sir.

THE FOLDING DOORS IN MR. TILTON'S HOUSE.

Q. Now, Mrs. McDonald, you know the folding doors that have been spoken of between the two front rooms on the second floor? A. Yes, Sir.

Q. How were those doors usually left? A. Sometimes they were shut, and sometimes they were open.

Q. How were they fastened, if at all, when they were shut? A. I don't think they fastened tight together.

Q. Did not fasten tight together; that is, you mean they didn't shut together? A. I don't think.

Q. Were they ever locked? A. There was no lock to it, at least I never saw a key in it.

Q. You never saw it locked? A. Nor the place for a lock to come out; there was just merely a bolt.

Q. And do you know whether the doors shut so they could be locked or not? A. I couldn't say that; I never tried, but I don't think they could.

Q. And you never saw them locked? A. I never saw them locked; there was a place for a key, but there was no key in the door.

Q. When the doors were pulled together was there a crack or an opening at the top, the doors standing apart? A. On one side there was, one side of those folding doors, at the top.

Q. The top part of one of the doors—they didn't come together? A. Not at the top.

Q. Are those doors in the condition now with reference to their shutting that way that they were then? A. I think so.

Q. In the same condition? A. I am almost sure they are, exactly.

Mr. Morris—That is all.

Mr. Beach—Miss McDonald, will you speak a little louder in answering questions?

The Witness—I will try.

CROSS-EXAMINATION OF MISS McDONALD.

By Mr. Shearman—How long have you been in any part of the Tilton family, Miss McDonald? A. I have been in the Tilton family for over 25 years, to and fro; I didn't remain all the time.

Q. Over 25 years since you went to them? A. I always made it my home, for that length of time, with the two families.

Q. With whom did you live when you went to them, 25 years ago? A. With Mr. Tilton's parents.

Q. In Keyport? A. Yes, Sir; they were not in Keyport at that time; they were in New-York then.

Q. How long did you live with them at that time? A. One year before they moved to the country; then about —I expect it was 10 or 12 years after that, in the country.

Q. And when did you first come to live with Mr. Theodore Tilton? A. I usen't to stay all the time; I used to come to Brooklyn when I felt like it, and go back, stay a week or two and then go back again.

Q. You would stay a week or two, do you mean with Mr. Theodore Tilton? A. Yes, Sir.

Q. And go back—during all that period, of ten or twelve years? A. Well, after he was married, before he went to housekeeping, I spent some time at Mrs. Morse's, Mrs. Richards at that time; I used to go and visit him there and stay a while.

Q. After he was married you used to go visiting to Mrs. Richards, now Mrs. Morse? A. Yes, Sir, on his account. I used to go there.

Q. Do you mean while Mr. Tilton was living with Mrs. Richards—Mr. and Mrs. Tilton were living with Mrs. Richards? A. Yes, Sir, before they went to housekeeping.

Q. They were not housekeeping? A. Not at first, but I mean to say that I used to go and see him even then; I didn't stay all the time with his parents.

Q. How long did you stay with Mr. and Mrs. Tilton at those times when they lived with Mrs. Richards? A. About six weeks the first time I went there.

Q. About six weeks the first time after they had been married? A. Yes, Sir.

Q. And how long the second time you went there? A. I couldn't say.

Q. Well, some length of time? A. Perhaps not more than a few days at a time.

Q. But did you make frequent visits of this kind, so that you stayed a month or more? A. Not very; no, Sir, not until after they went to housekeeping.

Q. Well, after they went to housekeeping, when did you go to stay with Mr. and Mrs. Tilton? A. About three or four years ago.

Judge Neilson—Mr. Shearman, will you be kind enough to repeat each answer?

Mr. Shearman—Speak a little louder, and turn toward the jury. If you would speak to the jury it would be the better way; they want to hear. Now, can you state about how long it was after they went to housekeeping

that you went to live with them? A. I am not positive about the year; I think about four years.

Q. About four years after they went to housekeeping? A. Housekeeping; and occasionally I visited them before that; before I went to stay altogether.

Q. Well, don't you remember that they went to housekeeping in their present house in October, 1866? A. I was not with them then.

Q. How long was it after that period that you went to live with them? A. I was there the time Mrs. Tilton went to Monticello.

Q. Well, that was 1869, we all agree. How long did you stay with the family at that time? A. Well, after Mrs. Tilton went away, I went the next week to Keyport and stayed there until she came back.

Q. Yes; but how long had you been there before Mrs. Tilton went to Monticello? A. I couldn't say.

Q. Were you there when Ralph was born? A. Yes, Sir.

Q. That was in June, 1869; now, were you there any length of time before that? A. Not very long, except occasional visits.

Q. Who paid your wages at that time? A. Mrs. Tilton sometimes, and Mr. Tilton.

Q. Mr. Theodore Tilton? A. Yes, Sir.

Q. Well, did Mr. Theodore Tilton and Mrs. Theodore Tilton pay your wages for any length of time about that period, or more than one month? A. Not very long.

Q. Did they pay you for more than one month? A. Mrs. Tilton did not but Mr. Tilton did; he paid me some after she went away for the length of time I had been there, and for the time that I waited for her return he paid me when I was not there.

Q. Who paid your wages for the rest of the time—the rest of the year? A. The rest of what year?

Q. This year that Mrs. Tilton went to Monticello? A. That is the year I am speaking about.

Q. Yes. Well, I say, did Mr. Theodore Tilton pay you your wages for all of that year, or for any part of it? A. He paid me for all of the year, I think.

Q. All of the year, 1869. Well, then don't you think that you lived in the house all of the year 1869? A. I did not, but his agreement was with me to pay me, no matter whether I was there or not.

Q. Mr. Tilton paid you whether you were there or not? A. At that time, because I waited for Mrs. Tilton's return, and thought I would remain with her when she came back, but I did not, so he paid me according to agreement, for the year out.

Q. Then you came back, did you, from Keyport in about five weeks, if I understand you? A. I think so, near about that time.

Q. Yes. I am not particular as to the time, but after that did you stay in the family the rest of that year? A. I did not.

Q. How long did you stay with the family, then? A. I don't think that I stayed more than a week after I came up. I went back to his parents, and I stayed away for some time. I used to visit Mrs. Tilton occasionally; I did not live with her all the time after that until the year she went to Monticello—to Schoharie, and I remained—I kept house until she came back, and have been with her ever since, with the exception of a few days now and then.

Q. Then you have been with her ever since the year 1869, do I understand? Have you been with Mrs. Tilton ever since the year that she went to Monticello? A. I have not; I just said I have not.

Q. The trouble is I cannot hear half of what you say. I may seem to ask things over when I did not hear what you said. A. I try to make you hear, but I can't speak any louder.

Q. I am sorry. What I want to get at is just how long you lived in the family—the house of Theodore Tilton. Now, suppose you go back to that year that Mrs. Tilton went to Monticello; and you were there when Ralph was born? A. I was there when Ralph was born.

Q. Had you been there long before that? A. No, Sir, I had not; if I recollect right, Mr. Tilton came for me to be in the house at that time—down to his parents'—and I came up, and he wanted me there to take the children to Coney Island so they would not disturb Mrs. Tilton at that time; and so, about two days after Frank was born I went to Coney Island.

Q. Well, never mind that; all I want is the time. Then you stayed from the time Ralph was born until Mrs. Tilton went to Monticello? A. Until she went to Monticello—until the week after; she went in the middle of the week.

Q. Never mind. Then you went down in the following week to Monticello? A. Yes, Sir.

Q. And returned in not less than five weeks? A. I don't think, except for a day.

Q. Yes; except for a day. Then, how long did you stay when you returned with them? A. After Mrs. Tilton came back?

Q. Yes? A. I don't think I stayed with them more than a week; I don't think I did.

Q. Then did you come again with them? A. I came again and again, but I did not stay; it was no more than a visit; sometimes two or three days, and sometimes——

Q. You have visited the family constantly, have you not, since that time? A. Yes, Sir?

Q. And now you are living in Mr. Tilton's family? A. Yes, Sir.

Q. And how long have you been living there now? A. Well, I never left altogether since Mrs. Tilton went away; never took my things from there; I came and went when I pleased.

Q. When Mrs. Tilton went away you were living there, were you not? A. Yes, Sir.

Q. And had been for some time. How long then? A. Since the year Mrs. Tilton went to Schoharie, I think.

Q. Since the year she went to Schoharie? A. Yes, Sir; I have never entirely left the family since that; I would leave for a while and go back again.

Q. Miss McDonald, you were on very intimate and confidential terms, were you not, with the family? A. Oh, pretty much so.

Q. Mr. Tilton always thought a great deal of you, didn't he? A. I don't know.

Q. Well you thought a great deal of Mr. Tilton and the children? A. They always treated me well; that is all.

Q. And you went all over the house, didn't you? A. Yes, Sir.

Q. Now, we will go back to the time that Mrs. Tilton went to Monticello, and remember that time, if you please, if you can, when they went to live in this house, 174 Livingston-st.—that was October, 1866? A. I was not in Brooklyn then.

Q. No; you were in Keyport then. Well, did you come up that Fall or Winter, do you think, to stay any time? A. I don't think I did.

Q. Did you come the next year? A. No, I think not; I think I had been away from the Tilton family for some time.

Q. Living not with Mr. Tilton at Keyport, there; were you living with the old Mr. Tilton at Keyport? A. I was not, when they were at Monticello—at least not at the time he went to housekeeping, I was not.

Q. Well, how long was it before Mrs. Tilton went to Monticello that you began to live again in the Tilton family—either for a long or a short time, Miss McDonald—was it as much as a year? A. I am not certain that it was.

Q. Can't you recollect anything about the three years before Mrs. Tilton went to Monticello, as to whether you lived with the Tilton family or not? A. I don't think I did.

Q. Not any part of the time? A. No, I don't think so.

Q. But you visited there constantly, didn't you? A. Not very constantly in that year; occasionally.

Q. Well, how often? A. I could not say how often.

Q. Now, about Miss Turner's visit to Keyport; you say he was there, or rather you were there all the time that she was? A. With the exception of two days.

Q. With the exception of two days; and did you see everything that went on in the house where she was? A. I don't know as I did.

Q. Well, where were you during that time? were you in the same room generally during the day with the family, or were you in the kitchen, or where were you? A. I was always treated as one of the family there, and did not spend much of my time in the kitchen.

Q. Well, that is what I thought; you were treated as one of the family? A. Yes, Sir.

Q. And you were as much at the table and in the room with Mr. and Mrs. Tilton as Miss Turner was? A. Yes, Sir.

Q. And weren't you at meals with Miss Turner? A. Yes, Sir.

Q. You say that you saw Mr. Tilton, or rather you say that Mr. Tilton gave Miss Turner money to go down to Keyport; did you see him give her that money? A. I saw him put his hand in his pocket and take out a bill and hand it to her; I could not say what kind of a bill it was.

Q. Yes; what did Mr. Tilton say at the time? A. She asked him—he told her she must go to Keyport; he didn't want her in the house; Mr. Greeley was coming there, and he proposed to her to go to Keyport to his parents, and he instructed her to be useful to his mother, and she told him if he wanted her to go to Keyport that he would have to give her money to pay her fare there; she didn't have any.

Q. She told him if he wanted her to go to Keyport he would have to give her money to pay her fare—she didn't have any? A. And then, in the passage betweeen the rooms, in the hall of the second floor, he told her—he said, "Yes, Bessie, I will give you some money," and so he gave her a bill; I could not—

Q. He said, "Yes, Bessie, I will give you some money," and so he gave her a bill? A. Quite near the room door.

Q. Very well, where were these folding doors that you were describing? A. In the second story, front room—I expect that is what you ask.

Q. Well, there are two front rooms there, are there not? A. Yes, Sir; but they connect by folding doors.

Q. They connect by folding doors, and there is a front bedroom there, isn't there—oneroom was used at that time for a bedroom? A. One was a bedroom, and the other a sitting-room—was used for that.

Q. And how can you get into those two rooms—can you get from the other part of the house into each room? A. From the hall—you can get from the hall into either room, and then you can get from the sitting-room to the bedroom without going through the hall, by the folding doors.

Q. You are not obliged to go through either room in order to get to the other room? A. No.

Mr. Shearman—That is all.

Mr. Morris—Miss McDonald, just one question; Mrs. Tilton went to Monticello when Ralph was a baby, did she not? A. Yes, Sir.

Q. How old was Ralph when she went? A. That reminds me, Mr. Morris, of something I said yesterday; I said it was four years, I thought, but I have found when I went home that Frank is over five years old.

Q. Yes; and it was when he was an infant? A. Yes, Sir; it was a mistake of mine.

MR. TILTON RECALLED.

Mr. Morris—That is all. Mr. Tilton, you take the chair now.

Theodore Tilton, being recalled, testified as follows:

By Mr. Morris—Mr. Tilton, Mr. Woodley, when he was upon the stand, testified that he had seen you on different occasions stopping over night at Mrs. Woodhull's when she lived in Irving-place; were you ever there when she lived at Irving-place? A. I never was, Sir; I never knew that she ever lived there until I heard that fact announced in court here.

Q. Did you ever say in Mrs. Woodhull's presence——

Mr. Evarts—What page and what passage do you refer to?

Mr. Morris—I refer to Part 9, page 600.

Mr. Evarts—Wait until I find it.

Mr. Morris—Yes, Sir. The first question refers to testimony on page 609; the question I ask now, Part 9, page 600. Did you ever say to Mrs. Woodhull, in Mr. Woodley's presence, or in the presence of any person, or to her when no person was present, anything in substance to this effect: "Vicky, you publish this thing," referring to to the scandal, "you will be a made woman?" A. No, Sir, I never did; I never called her "Vicky," and I never spoke to her about publishing this scandal.

Mr. Evarts—Oh, well, Mr. Tilton, you are not allowed to go beyond answering the question.

Mr. Beach—That is very proper, Sir, that answer.

Mr. Evarts—I think not.

Mr. Beach—I think it is.

Mr. Morris—I should have asked that question, Mr. Evarts; it saved me the trouble of asking the question by his answering.

Mr. Evarts—Oh, well, of course your Honor understands that we are entitled to have an answer confined to the question.

Judge Neilson—Yes, Sir.

Mr. Evarts—Otherwise, we are deprived of our rights of objecting to the question.

WHOLESALE DENIALS BY THE PLAINTIFF.

By Mr. Morris—Did you ever, at their office in Broad-st., or at any other place, call Mr. Blood aside and have an interview with him with reference to the publication of that scandal in the presence of Mr. Woodley or any other person, or when no person was present? A. No, Sir; I never had a conversation with him on any such subject.

Q. Did Mr. Blood, at any time, with reference to the publication of that article, ever say to you that he would have nothing to do with it? A. No, Sir; I had ceased my acquaintance with Mr. Blood many months previous to the publication of that article.

Mr. Evarts—That I move to have struck out, if your Honor please.

Judge Neilson—Well, strike it out, and ask the question, please.

Mr. Beach—Oh, well, I hope your Honor will not go through that form, Sir.

Mr. Morris—I will ask the question.

Mr. Evarts—Why, if your Honor please, this is rebutting evidence. Mr. Tilton has been examined in chief as to all these facts of his general intercourse, its commencement, and its termination.

Judge Neilson—Yes; but as to specific facts they have a right to interrogate.

Mr. Evarts—I agree, and therefore I desire that his answer shall be confined to those specific facts; he has already told us when his relations with this family ceased.

Mr. Beach—No, Sir.

Judge Neilson—Had he been asked as to Col. Blood specifically?

Mr. Beach—No, Sir; he has not stated anything about his acquaintance with Col. Blood ceasing.

Judge Neilson—However, the witness understands now that he is to answer the precise question put; that is what the counsel desires.

Mr. Morris—Mr. Tilton, when did your acquaintance with Mr. Blood terminate? A. In the month of April, 1872.

Q. And after that, and prior to the publication of that article, the scandal, had you any conversation with Col. Blood whatever? A. No, Sir; never a word.

Q. Were you, from the time you say you terminated your acquaintance with him in April, and prior to the publication of that article, at their office in Broad-st.? A. I was not, Sir; I never was in the office out of which that article was published.

Q. Or at their house? A. No, Sir.

Q. Did you meet them at any place? A. I did not, Sir.

Q. Or either of them? A. No, Sir.

Q. Were you ever present when any proof-slips of that article were shown? A. I was not, Sir.

Q. Did you ever see any proof-slips of that article? A. No, Sir.

MR. TILTON'S WHEREABOUTS IN 1871-1872.

Q. Now, Mr. Tilton, at this point, will you state your whereabouts during 1871 and 1872, prior to the 2d, or the 5th of November, 1872? A. [Referring to a paper.] On the 3d of October, 1871, I lectured at——

Mr. Evarts—Mr. Tilton, what use are you making of this memorandum?

The Witness—I am about to state, Sir, in answer to Mr. Morris's question, the list of the places at which I made public addresses outside of New-York City, between the time of the publication of Mrs. Woodhull's card of May and the time of the publication of Mrs. Woodhull's scandal of November, 1872.

Mr. Evarts—You have made this memorandum to assist your memory?

The Witness—Yes, Sir; I will say that, in reference to the memorandum, I have brought with me all the vouchers.

Mr. Morris—Never mind that.

The Witness—Oct. 3, 1871, at the Cornell University,

in Ithaca, New-York; Oct. 26, at Bristol, Conn.; Oct. 31, at West Chester, Penn.; Nov. 1, Wilkesbarre, Penn.; Nov. 2, Allentown, Penn.; Nov. 7, Fredonia, New-York; Nov. 8, Randolph, New-York; Nov. 14, Lancaster, Penn.; Nov. 15, Tyrone, Penn.; Nov. 16, Lock Haven, Penn.; Nov. 21, Honesdale, Penn.; Nov. 29, Webster, Mass.; Nov. 30, Norwich, Conn.; Dec. 5, Indiana, Penn. (that Indiana is a little town called after the State); Dec. 6, Washington, Penn.——

Mr. Abbott—What is the last place? What is that?

The Witness—It is a little town in Pennsylvania called Indiana.

Mr. Abbott—What is the date?

The Witness—Dec. 5; Dec. 7, Pittsburgh, Penn.; Dec. 26, Kenneth-square, Penn.; Dec. 28, Greencastle, Penn.; Jan. 5, 1872, Shippensburgh, Penn.; Jan. 8, Oneida, N. Y.; Jan. 9, Taunton, Mass.; Jan. 10, Leominster, Mass.; Jan. 16, Columbia, Penn.; Jan. 22, Natick, Mass.; Jan. 23, Marlboro, Mass.; Jan. 24, Dover, N. H.; Jan. 30, Columbia, Penn.—second lecture at that place during that same season; Feb. 1, Lancaster, Penn.; Feb. 7, Kankakee, Ill.; Feb. 9, Bloomington, Ind.; Feb. 13, Monmouth, Ill. These engagements were made by Mr. Mumford of the Literary Bureau, and are accompanied with the dates; the next list which I will read is a list of engagements made by Mr. James H. Bliss of the North-Western Lyceum Bureau, and he has furnished me the places, but not the dates. The places are: Madison, Wis.—

Mr. Evarts—What period is this?

The Witness—They lie in the period between the 13th of February and the 18th of March, 1872.

Mr. Evarts—Same year?

The Witness—Same year; the places are these: Madison, Wis.; Rochester, Minn.—two nights; Minneapolis, Minn.—two nights; when I say "two nights," I mean two lectures; St. Paul, Minn.; Sparta, Wis.; La Crosse, Wis.; Watertown, Wis.; Appleton, Wis.; Neenah, Wis.; Whitewater, Wis.; Milton, Wis.; Janesville, Wis.; Beloit, Wis.; Freeport, Ill.; Rockford, Ill.; Belvidere, Ill.; Racine, Wis.—three successive nights; Riverside, Ill.; Princeton, Ill.; Menomonee, Wis.—two successive nights—completes Mr. Bliss's list, which are without dates; then Mr. Mumford's list resumes again: March 18, 1872, Chicago, Ill.; March 21, Pittsburgh, Penn.; then I reach home March 24; then followed a few days in early April devoted to arbitration with Mr. Bowen; then, later in the same month, I went to Cincinnati, devoting ten days there to the labors of the Convention which nominated Mr. Greeley; then I went home again, into the campaign; May 25, 1872, Potsdam, N. Y.; May 27, Ogdensburg, N. Y.——

Mr. Morris—Just right there, one question. Were you there at one time—was that the period at which you brought your relation of acquaintance with Mr. Blood and Mrs. Woodhull to a close? A. Yes, Sir, on the 25th of April; May 25 at Potsdam, N. Y.; May 27 at Ogdensburg; then occurred an interval in my speaking, in which I went to Baltimore to attend the Baltimore Convention; then a visit to Mr. Sumner in Washington; then back again to the public field, as follows: July 22, 1872, Bangor, Me.; July 23, Augusta, Me.; July 26, Oldtown, Me.; July 29, Houlton, Me.; July 30, Lincoln, Me.; Aug. 1, Dover, Me.; Aug. 9, Portland, Me.; Aug. 11, Biddeford, Me.; Aug. 14, Ellsworth, Me.; Aug. 15, Rockland, Me.; Aug. 16, Camden, Me.; Aug. 17, Bath, Me.; Aug. 20, Lewiston, Me.; Aug. 22, Bridgeton, Me.; Aug. 23, Skowhegan, Me.; Aug. 27, Calais, Me., called "Calay" by some people; Aug. 29, Eastport, Me.; Aug. 30, Machias, Me.; Sept. 3, Castine, Me.; Sept. 4, Winterport, Me.; Sept. 5, Belfast, Me.; Sept. 7, Hampden, Me.; September, between the 7th and 8th, midnight, at Bangor, Me.; then follows the Maine election Sept. 10; then on the following day, Sept. 11, Concord, N. H.; Sept. 13, Orange, N. J.; Sept. 17, Stamford, Conn.; Sept. 20, Paterson, N. J.; Sept. 21, Philadelphia, Penn.; Sept. 23, Norwich, Conn.; Sept. 30, Allentown, Penn.; Oct. 2, Harrisburg, Penn. Then followed a list of appointments every night in Pennsylvania up to the Pennsylvania election. I have written in vain to get those dates, and have only three—namely: Oct. 2, Harrisburg; Oct. 4, Pittsburgh; Oct. 7, Jamestown, N. Y.; but I remember speaking every night during that campaign up to the last night of the election. Then there is a break of two or three——

Mr. Evarts—The October election, you mean? A. Yes Sir, Oct. 8; then there comes a break of a day or two, or a few appointments.

Q. Never mind? A. Oct. 16, Dover, N. H.; Oct. 18, Lynn, Mass.; Oct. 25, Willimantic, Conn.; Oct. 26, here on a Saturday evening, in Brooklyn, at home; Oct. 28 Keene, N. H.; Oct. 29, Claremont, N. H.; Oct. 30, Bradford, N. H.; Oct. 31, Dartmouth College, and also at Lebanon in the evening of the same day; Nov. 1, Littleton; Nov. 2, Lancaster; Nov. 4, Laconia; Nov. 5, the Presidential election, which brought me home. This list is not entirely accurate; I mean to say by that, that every item in it is accurate, but a few of my engagements are not included here, because I could not get them verified, and have included in this list only such names and places as I have verification of here, but the list is nearly complete.

By Mr. Beach—Well, you mention July 24 or 26 as the period when you commenced your political discussions? A. No, Sir; I commenced my political discussions before the Baltimore Convention; I commenced——

Q. Well, July 24 or 26 you commenced in Maine, is it? A. Yes, Sir; I began my campaign in Maine immediately after the Baltimore Convention was over, July 22, at Bangor.

Q. Well, between that time and the time when you spoke here in Brooklyn, how often was you here or at New-York? A. Well, Sir, I think that I simply came home once in order to get Mrs. Tilton to go back with me

during the remainder of the campaign; I remember being home a day or two.

By Mr. Morris—Can you state about when that was? A. I haven't made any inquiry, Sir; I think probably I could by——

Q. Well, with that exception, you were absent from home continually, or from New-York? A. I believe so; yes, Sir; I can speak positively only as to that which I have now here; but from the Fall of 1871 to the Fall of 1872 I spent a whole year of continuous public speaking, the most laborious year of my whole life, and that was the period at which Mr. Woodley says that I enjoyed the honor of his acquaintance.

Mr. Evarts—No matter about Mr. Woodley.

Mr. Morris—Well, that was the period when Woodley fixes that intercourse at the office.

Mr. Evarts—But that is matter of argument.

The Witness—Yes, Sir; Mr. Woodley says that I was at that office in September.

Mr. Evarts—Well, no matter.

Mr. Morris—It is not a matter of argument, it is a question of fact; he has testified.

Mr. Evarts—He has given us the fact, and that is the end of it.

By Mr. Morris—Now, Mr. Tilton, Mr. Woodley——

Mr. Evarts—Give us the reference.

Mr. Morris—Part 9, page 670.

Mr. Evarts—Give us the page; they are all continuous.

Mr. Morris—607, second column, right hand page. Referring to this interview to which I have called your attion, and to Mrs. Woodhull and Col. Blood, Mr. Woodley was asked this question: [Reading]

Q. What did they say to Col. Blood? A. They told him to do it and that would be the making of him. She says, "Beecher's congregation will pay you $100,000"—Mrs. Woodhull said.

Q. For what? A. For publishing it.

Q. For publishing it? A. No, not for publishing it; but if they published it they would pay $100,000 to have it taken out, or anything. She said; "It is a rich congregation, and they wouldn't have that come out—no how in the world."

Q. Now, was any such conversation as that ever had in your presence? A. Not a word of it, Sir, nor anything like it.

Q. Was the sum of $100,000 or any other sum ever mentioned in connection with the publication of that article by you to Mrs. Woodhull or Col. Blood, or by either of them to you or to any other person in your presence? A. No, Sir, not at all.

CONTRADICTION OF THE WITNESSES GILES, GRAY, AND COOK.

Q. Mrs. Lucy Giles testified, same part, page 618, that on the 4th of July you stayed all night at Mrs. Woodhull's; is that true? A. It is not true, Sir; I stayed at my own house.

Q. You say you stayed at your house—have you any distinct recollection upon that subject? A. Yes, Sir; I was asked by Mr.——

Q. Can you name any circumstance? A. Yes, Sir.

Mr. Evarts—I don't know about the circumstance.

The Witness—I remember that during that Summer I had two or three days of illness, which resulted in my being thrown on my back, and the day on which I was confined to my room, after these two or three days of partial confinement in the house, is identified in my mind by being the day on which the daughter of Mrs. Bradshaw was married; that was July 6; I was that morning sick abed in my house, and I remember that I had been confined to the house, though not to my bed, for a day or more previously; that is the only means I have of identifying it. Mr. Evarts asked me about the 4th of July; I could not remember anything about it as connected with the 4th of July, and my only recollection now is as connected with that wedding day, which was the 6th of July in the morning; then I was at home sick abed, and had been—I had been home, I remember, ill the preceding day——

Q. Did you ever see a sofa bed in Mrs. Woodhull's parlor? A. No, Sir.

Q. Did you ever sleep upon one? A. No, Sir.

Judge Neilson—Sleep upon one there he means.

The Witness—No, Sir; that is what I understood.

Mr. Morris—At Mrs. Woodhull's? A. I have slept on a sofa bed, Sir, in my own house.

Judge Neilson—Yes, but not there.

By Mr. Morris—Not at Mrs. Woodhull's house? A. No, Sir.

Q. Mrs. Giles also spoke of an occasion when you were at Mrs. Woodhull's, she states, and you were up stairs in Mrs. Woodhull's room, and she waited upon you.

Mr. Evarts—What page?

By Mr. Morris—Took champagne and chickens—page 618—up to the room for you. Did any incident of that kind ever occur? A. No, Sir; I never saw a bottle of champagne in that house, never sipped a glass of it there, never ate a chicken there, or anything of the kind.

Q. I was about to ask you, Mr. Tilton, whether you and Mrs. Woodhull were ever served with any refreshments whatever by this person, or any other person, in any room up stairs? A. No, Sir.

Q. Or in any other room in her house? A. No, Sir.

Mr. Beach [to Mr. Morris]—Does he say he never took refreshments there?

Mr. Morris—That he never was served with refreshments by this person. [To the witness.] You took breakfast there? A. I took breakfast; never in any other way than that; I don't remember the woman; I don't remember ever having seen her.

Q. Mr. Gray spoke of your riding out with her in a phaeton with a white horse; did you ever ride out with her in a phaeton with a white horse? A. I never did.

Q. Did you ever know of her having a white horse? A.

Col. Blood told me that in their former days of residence here they had a phaeton and a white horse, but I never saw either the phaeton or the horse.

Q. You never saw it and never rode with them? A. No, Sir, I never did.

Q. The same witness, in speaking of an interview that you had with Mrs. Woodhull [page 615] in reference to Mr. Beecher presiding at Steinway Hall, was asked this question and made this answer:

Q. Who had better? A. Mr. Beecher; that he, Mr. Beecher, had better preside at that meeting, or that she would—[this is the language that she is said to have used in your presence]—that she would make it hotter on earth for him than hell was below.

Did ever any such conversation as that take place between you and her? A. No, Sir.

Q. Or in your hearing? A. No, Sir.

Q. Were you ever in the office—in the back office—when the gas was lighted—in Broad-st.? A. No, Sir; nor any other person; for there is no gas there.

Q. You heard Mr. Woodley describe an incident there of seeing figures upon the glass? A. Not Woodley—Gray.

Q. Mr. Gray I should say? A. Yes, Sir.

Q. Did anything of that kind ever occur? A. No, Sir; it never did.

Q. You say there is no gas in that room? A. No, Sir; never.

Q. Mr. Cook testified that on the 20th of November, 1871, you and Mrs. Woodhull went to Mr. Moulton's together in a carriage. Is that true? A. It is not, Sir; I did not see Mrs. Woodhull on that—at that interview at all.

Mr. Evarts—What page is that?

Mr. Morris—Part 8, page 364. [To the witness.] He also says that you asked him to join *The Golden Age*. Is that true? A. It is not, Sir. He asked me to take him on *The Golden Age*, and I declined the proffer.

Q. He also says that he was asked in your presence by Mrs. Woodhull—I am not certain as to whether he said you or not, but that he was asked to write this scandal, and put it in shape.

Mr. Evarts—What page do you now refer to?

Mr. Morris—Page 365. There is considerable on that subject.

Mr. Evarts—Well.

Mr. Morris—Did you ever hear Mrs. Woodhull ask him or suggest to him the writing of this story called the scandal? A. I never did, Sir.

Q. Did you ever ask him? A. I never did.

Q. Or intimate or suggest that he should do it? A. I did not.

Q. Did you ever hear such an intimation or suggestion from any one made to him? A. No, Sir.

Q. Did you ever hear the subject mentioned in his presence? A. Never once.

Q. Mrs. Palmer says that she became acquainted with you at Mrs. Woodhull's office before *The Golden Age* was established; when did you form her acquaintance? A. Not until several months after *The Golden Age* was established; three months at least.

Mr. Evarts—That is, acquaintance with Mrs. Palmer.

The Witness—With Mrs. Woodhull.

Mr. Morris—Mrs. Palmer says that she formed her acquaintance with the witness prior to the establishment of *The Golden Age*.

Mr. Evarts—And is the answer that he formed her acquaintance three months after the establishment of *The Golden Age*?

The Witness—*The Golden Age* had been running about three months. It was in its third month before I became acquainted with Mrs. Woodhull at all. I was introduced to her by Mr. Andrews.

CONTRADICTION OF MRS. PALMER.

Mr. Evarts—That is not the point. The point is when you became acquainted with Mrs. Palmer.

The Witness—No, Sir; I do not understand it so.

Mr. Morris—Yes.

The Witness—I *never* became acquainted with Mrs. Palmer.

By Mr. Morris—Well, state when you saw her, or met her? A. I have some recollection of seeing her in Mrs. Woodhull's office some time in the Summer of 1871.

Q. That was after *The Golden Age* was established? A. Yes, Sir; long after—long after.

Q. It was after that before you formed the acquaintance of either of them? A. Yes, Sir.

Q. She says that she heard a conversation with you at the office of Mrs. Woodhull concerning the starting of the projected paper, *The Golden Age*—heard you talking about it before it was established. Is that true? A. No, Sir. That is impossible. *The Golden Age* had been established long before I ever saw Mrs. Woodhull.

Q. I will read a question and an answer or two, for the purpose of asking you about them. I read from the testimony of Mrs. Palmer:

Q. Do you recollect an occurrence in the early part of 1872, a considerable time prior to the publication of what is known as the "Woodhull Scandal," when any proofs were exhibited to you? A. Yes, Sir.

Q. Who was present on the occasion? A. Mrs. Woodhull and Theodore Tilton; there might have been somebody else in the room, but I don't remember.

Q. Now, will you state what occurred on that occasion, as far as Mrs. Woodhull and Mr. Tilton were concerned? A. Mrs. Woodhull and Mr. Tilton came in hastily to the private office where I was engaged on my stocking-suspenders, and Mrs. Woodhull says, "I have something to show you, Daniels," and she commenced reading what I afterward heard called, and heard at the time called, the Woodhull Scandal; read a portion of it; Mr. Tilton only stopped for a moment, or a few moments, and went out immediately.

Did anything of that kind ever occur in that office in your presence? A. No, Sir.

Q. In the Spring of 1872, or at any other time? A. No, Sir. It could not have occurred at the time which she assigns, for then I was in the North-West.

Mr. Evarts—Excuse me, Mr. Tilton; I ask to have that struck out, if your Honor please.

Mr. Morris—Well, I will ask the question.

Q. She fixes it in this way [reading]:

Q. Some four or six weeks before May? A. Yes, Sir, in 1872.

Now, where were you at that time, the period at which she fixes it—the period at which she says the conversation took place?

Mr. Beach—Four to six weeks before May, 1872.

The Witness [referring to a memorandum]—May, April, March—well, Sir, I was somewhere between the Ohio River and the Mississippi; here is the list to speak for itself.

Mr. Morris—Very well.

Mr. Evarts [to witness]—I thought you said you got home on the 24th of March? A. I did, Sir; she speaks of six weeks previous to the 1st of May; corrects herself and says six weeks previous to the 15th of April; in other words, six weeks previous to the time when she went into her house.

Mr. Evarts—Well, I am only asking now about the question I have asked.

Mr. Morris—Yes, she did correct herself; she said it was the 15th of April, or about that time.

Mr. Evarts—Let us know what the question is; refer us to the passage.

Mr. Morris—I read this from my scrap-book.

Mr. Evarts—Well, we have got the first place; now, where is the other?

Mr. Morris—It is in Mrs. Palmer's testimony; you will find it——

Mr. Shearman—On the direct or on the cross-examination?

Mr. Morris—I read from the direct examination; the question I read.

Mr. Beach—I drew her attention to that on the cross-examination.

Mr. Morris—It is on the cross-examination that she corrected the date.

Mr. Evarts—Well, let us find the passage.

Mr. Shearman—My question on the direct was this:

Did this take place some four or six weeks before the 1st of May? A. Yes, Sir; 1872.

Then Mr Beach on the cross-examination asked:

I understood you to say that she showed you a proof of the scandal? A. Yes, Sir, but that was later.

Q. When was that? A. That was about two months before I went into my house in Twenty-seventh-st. I went in there on the 1st of May. No, it was the 15th of April; I didn't go into my house in May; I went in on the 15th of April, and it was some weeks before this that Mrs. Woodhull not only showed it to me, but I saw it two or three different times.

Now, that is the question of when Mrs. Woodhull showed it to her; she is not speaking of the time when she saw it in the presence of Mr. Tilton.

Mr. Beach—Oh, yes, she is. She is speaking of the same time.

Mr. Shearman—She speaks of its being shown, but not in the presence of Mr. Tilton.

Mr. Beach—Yes, Sir.

Mr. Shearman—On the cross-examination she says that Mrs. Woodhull showed it to her two or three times. In my examination I only asked her about one time, when it was shown in the presence of Mr. Tilton.

Mr. Beach—This is altogether irregular, your Honor, to argue this question. I first asked her as to the specific time that she spoke of it on the direct examination, and she fixed it as given in her answer, and then added that it was shown to her two or three times.

Mr. Shearman—Oh, no.

Mr. Beach—She did, and your reading shows it.

Mr. Shearman—I read the whole of it.

Mr. Beach—I certainly did ask her, and your reading of it shows that I did. But it is not a matter to be discussed here.

Mr. Evarts—It is a matter to be referred to in the evidence.

Mr. Beach—No, Sir, it is not a matter for us to make counter assertions about, in regard to the effect of the evidence.

Mr. Evarts—Very well. I agree.

Mr. Beach—Very well, if you agree, let us drop the subject.

Mr. Evarts—I understood you to say so—to make an assertion about it.

Mr. Beach—I did not say so until after Mr. Shearman had interjected his argument upon it.

Judge Neilson—Proceed, Mr. Morris.

By Mr. Morris—You say that at the time she fixes, you were absent from the State?

Mr. Evarts—I object to that, if your Honor please. We have this gentleman's absences, which he has been allowed to fix, and he has fixed them, and he says he got home on the 24th of March. Now, whether that is an *alibi* that excludes his having been at Mrs. Woodhull's from four to six weeks before the 1st of May, is a question that can be discussed on these facts. It does not need any other facts. He negatives the interview, and he has given the facts of his absences. The evidence of Mrs. Palmer is already in possession of the Court, and all the rest is matter of argument, not of testimony.

Mr. Morris—Well, it is sufficiently——

Mr. Beach—No, wait a moment; the question is proper.

Judge Neilson—You are entitled, by additional questions, to get any further light you can get on that subject.

By Mr. Morris—Now, where were you at the time when Mrs. Palmer testifies that you had this interview in the office, when the scandal was read?

Mr. Evarts—That I object to. Prove where he was at any date that you please, and then we will compare his whereabouts, as he testifies to it, with Mrs. Palmer's testimony; we are not to take this witness's estimate of Mrs. Palmers's testimony. *There* is her testimony on the record.

Judge Neilson—Still it is competent for any witness to state that, when it is alleged that a certain thing occurred in his presence, he was elsewhere.

Mr. Evarts—That I have not objected to. That he has already stated. He has given us every day and every date.

Judge Neilson—Well, as the witness can state where he was, he can also add whether or not he was at a certain place.

Mr. Morris—He has not given every date when he was absent, Sir. He is unable to give every date. He can go beyond the dates that he has given. He recollects his absence from the city on occasions the dates of which are not given in the list of appointments that he has read. Now, it is competent for him to give his general recollection.

Mr. Evarts—I do not object to your proving any fact as to where he was, in addition to what you have already proved.

Judge Neilson—Where he was or where he was not.

Mr. Evarts—Exactly.

Judge Neilson—One is as admissible as the other.

Mr. Evarts—Exactly. But I want facts.

Mr. Morris—That is what I am trying to give you.

Mr. Evarts—I do not want him to testify where he was "when Mrs. Palmer says he was somewhere else," when the question of what Mrs. Palmer really does say is a matter of estimate or argument. Your Honor has had your attention called to it, as the jury have. She says that a certain occurrence took place somewhere from four to six weeks before the 1st of May.

Judge Neilson—Before the 15th of April.

Mr. Evarts—Well, we say before the 1st of May.

Judge Neilson—She corrected that, and fixed it as the time when she moved into her house.

Mr. Evarts—I do not understand that she did. That is a matter to be debated hereafter. But, assuming that she did, the facts that this witness can introduce are where he was at any dates, not where he was during an ambulatory space of time, as mentioned in Mrs. Palmer's testimony.

Mr. Morris—I will get at it.

Judge Neilson—I think the witness can state the general fact, where he was.

Mr. Evarts—He can state any fact as to where he was at any time. That I do not object to.

Mr. Morris—That is what I am asking.

Mr. Evarts—But not whether he was here at the time that Mrs. Palmer says he was. That is not the proper way to examine a witness. You will compare Mrs. Palmer's testimony with his when you have got them both.

Mr. Morris—Well!

Mr. Evarts—Now, the witness has been allowed to give with entire freedom, and with such information as he has gathered, his whereabouts; I never have objected to that. But as for saying that he was here or there when Mrs. Palmer says that he was somewhere else, that is to be made out by argument, when we compare where he was on his testimony with where she says he was.

Judge Neilson—I think, Mr. Morris, you can very properly ask the witness whether on any day during that space of time before the 1st of May or before the 15th of April, he was at the office and saw Mrs. Palmer.

Mr. Morris—Well——

Mr. Evarts—He has negatived that fact entirely. Now let them show where he was——

Mr. Beach—I propose this question, Sir—for we may as well end this debate and get at some practical result. [To the witness.] Mrs. Palmer testifies that from four to six weeks prior to the 15th of April, 1872, you was at the office of Mrs. Woodhull, and the scandal was then exhibited or produced; where was you at that time? A. I was——

Mr. Evarts—That we deny. We deny that she says that.

Judge Neilson—Well, that is to be considered hereafter.

Mr. Evarts—Undoubtedly; and that is where I am trying to put the whole matter—to limit the witness to the facts and then compare his view of the facts with Mrs. Palmer's view of the facts upon the evidence of each of them.

Judge Neilson—I think he can answer this question, Mr. Evarts.

Mr. Evarts—What is the question?

Mr. Beach—You have been talking about it; you ought to know what it is.

Judge Neilson—The stenographer will read the question.

The Tribune stenographer read the last question as follows:

Mrs. Palmer testifies that from four to six weeks prior to the 15th of April, 1872, you was at the office of Mrs. Woodhull, and the scandal was then exhibited or produced; where was you at that time?

Mr. Evarts—That I object to, as the question assumes that Mrs. Palmer has said what she has not.

Judge Neilson—It is subject to the question or doubt on that point. [To the witness.] You can answer the question. A. I was out West, Sir.

Mr. Evarts—Your Honor will note our exception.

Mrs. Palmer also stated that after the procession of the 17th of December, 1871, broke, you rode with Mrs. Woodhull to her house, and got out of the carriage and went in. Is that true? A. That is not true.

Q. Were you in a carriage during any portion of that procession? A. No, Sir.

Q. Did you go after the procession broke up with Mr. Swinton? A. I went a short distance with Mr. Swinton out of the crowd, and parted company with him, I think, on the corner of Broadway and Fourteenth-st.

Q. I believe you have already stated that you did not see them in the procession at any time? A. I did not.

Q. Either Mrs. Woodhull or Miss Claflin? A. No, Sir; nor was I aware that they were in it until after the whole affair was over.

Mr. Evarts—That is in the original examination.

A HINT THAT DR. STORRS WILL BE CALLED.

By Mr. Morris—Mr. Tilton, at the interview at Mr. Moulton's study on Sunday evening, when Mr. Woodruff and Mr. Tracy and Mr. Moulton and yourself were present, in the early part of November, did you have what has been called the "True Story" there? A. No, Sir; the "True Story" was not yet written.

Q. Nor any part of it? A. No, Sir; no part of it; nor had the idea of it been conceived.

Q. Will you state about when that was written, as near as you can recollect? A. It was written about the middle of December, roughly, and completed from that time onward toward Christmas Day.

Q. That is, you commenced about the middle of December? A. Yes, Sir; just about the middle of December; I do not give that answer trusting to my memory, but I have procured the dates.

Mr. Evarts—Well, Sir, that is not proper.

Mr. Beach—What is it?

Mr. Evarts—He has no right to state——

Mr. Beach—I insist that he has a right.

Mr. Evarts—Not in answer to this question. He is asked for a fact and he has no right to give the sources of his information.

Mr. Morris [to the witness]—Give the data.

Judge Neilson [to the witness]—Go on, Sir.

Mr. Evarts—I object.

The Witness—May I answer, Sir?

Judge Neilson—Yes.

The Witness—I have procured the dates from the diary of the——

Mr. Evarts—I object to that, his procuring dates.

Judge Neilson—From a diary.

The Witness—Mr. Evarts objects, and I understand your Honor to command me to proceed.

Judge Neilson—Go on.

The Witness—I have procured——

Mr. Evarts—I object. The witness can state a fact within his recollection, but he is not allowed to state his sources of information.

Judge Neilson—Oh, yes, he can state, as any other witness could, that it was on a certain day when a certain event occurred, as he finds in the diary.

Mr. Evarts—He can, in answer to a proper question drawing out the fact; but the witness, in answer to this question, certainly has not a right to say what information he has picked up here and there.

Judge Neilson—There is a good deal of license allowed in regard to the question of dates, because dates are the most difficult things to remember.

Mr. Evarts—Well, Sir, but we are entitled to the rules of evidence, that it may not be made the recollection of somebody else other than the witness who is under oath.

Judge Neilson [to the witness]—You cannot take the information from anybody else. The question of the counsel is, whether you have verified the dates by reference to any entries of your own.

Mr. Evarts—The witness is called upon for primary evidence now. He gives it. It is for me to reduce it by cross-examination if I see fit; but it is not for the witness to corroborate his testimony by stating what other persons say.

Mr. Beach—Nobody has asked that.

Mr. Evarts—Or what newspapers he has looked into.

Mr. Beach—Nobody has asked any such thing.

Judge Neilson—He might look at a diary if he kept one, precisely as he might look at a memorandum here if he had it.

Mr. Evarts—If he kept his own diary then he would meet me if I undertook to reduce his testimony on cross-examination; but where the witness speaks of a fact, that is his testimony, and when I undertake to reduce it he may corroborate it by reference to the sources of his information, but not before.

Mr. Morris—I understand your Honor to say that the witness may answer the question.

Judge Neilson—There is no substantial importance, I think, in the question. [To the witness.] What was it you say you referred to?

The Witness—I referred to the diary of the Rev. Dr. Storrs, at whose——

Judge Neilson—That won't do.

Mr. Evarts—Why not, your Honor?

Judge Neilson—Because it is the diary of another party.

Mr. Beach—How does your Honor know but we will produce Dr. Storrs to prove that the diary was accurate?

Judge Neilson—Ah, in that point of view——

Mr. Beach—Yes, Sir.

Mr. Evarts—It will be time enough to confirm this witness by Dr. Storrs, who will be under oath, when you bring him here.

Judge Neilson—I think he can say now, in anticipation of that, that he saw or did not see Dr. Storrs's diary.

Mr. Evarts—Do they say that they are going to bring Dr. Storrs here? Do they say that they are going to bring Dr. Storrs and his diary here? I have not heard that suggestion from anybody.

Mr. Beach—The rule settled by the Court of Appeals, your Honor. is that a witness, with reference to a date or

to refresh his recollection, may refer to a memorandum made by any person, if the memorandum itself refreshes his recollection.

Judge Neilson—Yes.

Mr. Evarts—Well, I would like to see a case that said that.

Mr. Beach—Well, Sir, the case can be very easily produced.

Mr. Evarts—Well, I confess that if I can confirm my testimony by seeing what a man on the other side of the water made a memorandum of, why it is news to me. I have understood that the strictest regulation in introducing a memorandum to enable a witness to aid his memory, was that it had been made by himself and made at the time.

Judge Neilson—That is one quality of it.

Mr. Evarts—When he has made the memorandum he can then recur to that act of his own; that is within his consciousness; that refreshes his recollection; but how under heaven a note of Dr. Storrs in his diary can refresh another man's memory I cannot understand.

Judge Neilson—Neither do I see. Go on, Mr. Morris.

The Witness—May it please your Honor, I am able to swear of my own knowledge that that could not have been earlier than the 15th of December. I went to Dr. Storrs to see how much *later* it might have been. That is all.

Mr. Evarts—I object to that. I object before he verifies it. It is the introduction of evidence that the law does not allow. He says that he has not——

Judge Neilson—We take his recollection, and we stop at that point.

Mr. Evarts—Stop at that point—what he's able to recollect. I ask your Honor to strike out everything else after that.

The Witness—I am able to say also positively that the completed "True Story" came to its completion on Christmas Day.

Judge Neilson—Well.

CONTRADICTIONS OF GEN. TRACY.

Q. Now, at that interview, after stating what you had said upon entering the room, Mr. Tracy says:

Thereupon Mr. Tilton unfolded, as I remember, the writing of a manuscript which he brought with him into the room, and began to read a statement. The manuscript was in loose sheets, detached and much erased and underlined.

Did anything of that kind occur at that interview?

The Witness—May I see that page, Mr. Morris? I think you have read it incorrectly.

Mr. Morris—[Handing the testimony to the witness.] It has been scratched out so much with ink there that I cannot understand one word correctly. It is at the top of the page.

The Witness—Shall I read it?

Mr. Morris—Yes; it is scratched out so much there I cannot see the words.

The Witness [reading]—"Thereupon Mr. Tilton unfolded, as I remember, the covering of a manuscript which he brought with him into the room, and began to read his statement."

Q. Did anything of that kind occur at that interview? A. It did not, Sir.

Q. Did you hear at that interview the Letter of Contrition, as it is called, spoken of by Mr. Moulton as a mere memorandum of a conversation that he had with Mr. Beecher?

Mr. Evarts—One moment, Mr. Tilton. [To Mr. Morris.] I would like to have you follow the language of Mr. Tracy, as you undertook to read it.

Judge Neilson—Yes; make your question as specific as you can, Mr. Morris.

Mr. Morris—I think that is specific.

Mr. Evarts—Mr. Tilton went into this interview fully on his direct examination.

Judge Neilson—Yes; and he has a right now only to correct certain specific statements.

Mr. Morris—That is all.

Judge Neilson—That, I suppose, is the intent of the counsel.

Mr. Morris—That is the object of the question.

Judge Neilson—Whose examination have you got before you, Mr. Morris?

Mr. Morris—I have got the examination of Mr. Tracy.

Mr. Evarts—I don't think you will find it in Mr. Tracy's examination.

THE VAST VOLUME OF THE TESTIMONY MAKES CONFUSION.

Mr. Morris—Oh, yes, I will find the specific language, and ask that question, and recur to it again.

Q. Did Mr. Tracy at any time inform you or notify you that he could or would, under certain contingencies, become Mr. Beecher's counsel, or feel himself at liberty to become his counsel?

Mr. Evarts—One moment, Mr. Tilton. Let us have Gen. Tracy's testimony.

Q. Did Mr. Moulton, in your presence, use this language, or its equivalent?

The Witness—Are you speaking of Mr. Moulton?

Mr. Morris—Of Mr. Moulton. In referring to the Letter of Contrition he says:

It is a memorandum or notes of a conversation I had with Mr. Beecher.

A. No, Sir; I never heard the word "memorandum" applied to it.

Mr. Evarts—Wait a moment. That is the question I objected to. There is not any statement that that was in the presence of Mr. Tilton.

The Witness—Yes, Sir, there is; I stated it.

Judge Neilson—At the interview at Mr. Moulton's house

Mr. Morris—Yes, Sir.

Mr. Evarts—But there was an interview between Gen. Tracy and Mr. Moulton before Mr. Tilton was called in.

Judge Neilson—Yes, he came in.

Mr. Morris—I am asking him if anything of that kind was said in his presence.

Mr. Evarts—Mr. Tracy has not said so.

Mr. Shearman—He did not say it.

Judge Neilson—Although it may have occurred before he came in, I think it is competent for him to say whether he heard it or not.

Mr. Evarts—Gen. Tracy is contradicted, if at all. That is the point of this evidence. Mr. Tracy has said that before Mr. Tilton came in Mr. Moulton said so and so.

Judge Neilson—If he said it before Mr. Tracy came in, that is the end of it.

Mr. Shearman—That is clearly so.

Mr. Morris—That is clearly not so.

Mr. Beach—Here is a conversation between Mr. Tracy and Mr. Moulton as to the time this paper was exhibited, whether before or after Mr. Tilton came in. Two witnesses say there was no conversation and no paper exhibited prior to the time Mr. Tilton came in. Mr. Tracy said otherwise. It is very proper for us to show that no such thing as Mr. Tracy swears was uttered. But, Sir, as my proposition in regard to the decision of the Court of Appeals upon the question of evidence was so strenuously contradicted by my learned friends on the other side, I ask permission to refer to the case of Marcly agt. Shults, 29th New-York, page 351:

It is competent to read an entry made by a witness of any fact material to the issue, if made at or near the time when the fact occurred, and he can swear it was made correctly; and he may say the entry made by himself, or by any other person, was a copy of the entry, if on reading it he can testify that he then recollects that fact to which the entry relates.

I am happy to give my friend some instruction as to the law.

Mr. Evarts—Well, I shall not be wiser for that teaching.

Mr. Beach—I don't think you will.

Judge Neilson—You seem to disagree about that.

Mr. Evarts—I shall not proceed on that law. Now, this is the point which we are now on. Gen. Tracy says:

He (Moulton) handed me the paper. I began to read it. The first thing that attracted my attention was the character of the handwriting, and I said to him, "Moulton, is this Mr. Beecher's handwriting?" He said, "No." I said, "Whose is it?" "It is mine." I went through it in that way, turning the leaves quickly. I said: "How do you write a letter to yourself?" And at the time I went through it that way (illustrating) I said quick, "It is not signed." He said, "Yes it is;" and just at that point my eye caught this indorsement or memorandum at the foot of the sheet, not seeing it as I looked at them first in that way. He said: "Yes, it is signed by Mr. Beecher," and I saw the form of the signature of Mr. Beecher.

Q. What did he say? A. He said in that connection, "it is a memorandum or notes of a conversation I had with Mr. Beecher." I then read the paper over, sentence by sentence, and studied it for some minutes. I don't know how long. He then showed me—the next paper was the retraction of Mrs. Tilton.

And then the conversation went on for some time, and after that Mr. Tilton was brought in.

Mr. Beach—Mr. Evarts, may I say that both Mr. Moulton and Mr. Tracy swore Mr. Tilton came in before the apology or memorandum of January 1 was exhibited to Mr. Tracy?

Mr. Evarts—On what do you state that?

Mr. Beach—I state it upon the evidence, and up on my clear and positive recollection of it.

Mr. Evarts [handing a book to witness]—Now, will you look at that and see what Moulton says on that subject. The point would not make any difference—

Mr. Beach—How do you know that?

Mr. Evarts—I have looked at the record, and am advised of its phraseology. It would not make any difference on this point of contradicting Mr. Tracy.

Mr. Morris—Just preceding that, he says: "I have a faint impression that Mr. Tilton was there also, but of that I would not be certain.

Mr. Evarts—What?

Mr. Morris—Well.

Mr. Beach—Whose is that?

Mr. Morris—That is Mr. Tracy, just preceding this.

Mr. Beach—Mr. Evarts says that is not in regard to this interview.

Mr. Morris—It is in regard to the interview.

Mr. Evarts—Not in regard to this preliminary interview before Mr. Tilton came in.

Mr. Morris—It is in regard to the interview, and preceding the testimony I have read and based the impression upon.

Mr. Evarts—The faint impression that he was in the house.

Mr. Morris—No; "I have a faint impression that Mr. Tilton was there also, but of that I would not be certain."

Mr. Evarts—That is, in the house.

Mr. Morris—He don't say so.

Judge Neilson—It is very clear to me; you can ask the witness whether he heard a certain statement made, although the witness was not there all the time. It would only tend to show, if it was made at all, that it was made before he came in.

Mr. Evarts—How do you contradict Gen. Tracy, who has sworn that when Mr. Moulton and he were alone, Mr. Moulton said so and so, by bringing Mr. Tilton to swear that he didn't say it when he, Tilton, was there?

Mr. Beach—He would not do it if he was.

Mr. Morris—By showing some one else was present at the time that Mr. Tracy and this man of whom he speaks when he swears he and Moulton were alone.

Mr. Evarts—You have not proved that.

Mr. Beach—We have proved it.

Mr. Evarts—How?

Mr. Beach—I have told you two or three times. Look, and you will find it. I am looking. If I can find that evidence of Mr. Woodruff——

Mr. Morris—I can turn to it in a moment.

Mr. Evarts—Mr. Woodruff!

Mr. Beach—Yes, and Mr. Moulton too.

Mr. Evarts—Well, all that would not contradict Gen. Tracy, because Gen. Tracy has not stated anything was said when Mr. Tilton was there. Your point is to contradict Gen. Tracy.

Mr. Beach—We contradict him, I submit, in this way: Mr. Tracy swore that a certain conversation, and certain incidents occurred between himself and Mr. Moulton when Mr. Tilton was not present. There was but one conversation of that kind. It was at a known place, upon a given day, and we proved by two witnesses that upon that occasion, and at the occurrence of that conversation, Mr. Tilton was present, and we then propose to prove by him that no such thing occurred as that testified to by Mr. Tracy. Now, we can contradict Mr. Tracy both as to the persons who were present at an interview and as to what occurred at the interview; and when we show the persons present at that interview we are contradicting him in his relation of what transpired.

Mr. Evarts—Well, we will take one thing at a time. You can show a fact, if you please, that Mr. Tilton was present from the first moment Mr. Tracy came into the room. Very well. Undertake to show that, if you can. That is one thing. You are not engaged in showing that now. You are engaged in contradicting Gen. Tracy in the statement which he made, which is, that when Moulton and himself were alone together, Mr. Tilton was not present—I don't know whether Mr. Woodruff was there or not when Mr. Tilton was not present—before he came into the interview, Mr. Moulton said a certain thing to him. Now, I cannot make it plainer than the mere statement that Mr. Tilton, in whose presence it is not alleged to have been said, don't contradict Gen. Tracy when he says that no such thing was said in his presence.

Judge Neilson—It may not amount to a contradiction; still it is very simple, it seems to me, if a witness states that such a thing was or was not said in his presence.

Mr. Evarts—It is only a contradiction that is open to him. Evidence in chief is not open at all. That is the reason I am speaking to a point.

Judge Neilson—The simple question now is, whether another witness heard that conversation. If he didn't hear it, it is the fault of the suggestion that it occurred before he came in. That is a question for the jury.

Mr. Evarts—Mr. Moulton has said this. He tells Mr. Beecher——

Mr. Beach—What page do you read from?

Mr. Evarts—Page 116. He tells Mr. Beecher—I suppose it is a narrative:

I told Gen. Tracy the fact in the case, and that Theodore Tilton had denounced me for so doing, and had said to me that I had no business to reveal the guilt of Elizabeth to Mr. Tracy without his consent, and that I had pacified Mr. Tilton by telling him that I had considered it my duty to take the best advice I could on the subject, not only for Mr. Beecher's sake—that I did not consult Mr. Tracy as Mr. Beecher's friend at all, particularly, but as the friend of all the parties, as a man capable of advising with reference to that which had better be done. I told him that after a while Theodore was willing to see Gen. Tracy, and that he went up stairs and did see Gen. Tracy in the presence of Mr. Woodruff and myself; and I told him that the first question that Mr. Tilton—the first sentence that Mr. Tilton, or about the first sentence that Mr. Tilton uttered after the usual salutations between gentlemen was, "Mr. Tracy, I do not understand the etiquette of your profession," etc.

There was no cross-examination on that point.

Mr. Beach—Yes, there was; I beg pardon.

Mr. Evarts—Where? Mr. Shearman says you did n't cross-examine him on it. Still, I don't see any impression made on my proposition, that when Mr. Tracy says, "When Mr. Moulton and I were alone together, Mr. Moulton told me so and so," that you can contradict him by bringing Mr. Tilton in to swear that it was not said in his presence. That is the difficulty. That confirms him, so far as the negative goes. It does not prove it was not said to Mr. Moulton; it does prove it was not said to Mr. Tilton.

Mr. Shearman—Mr. Woodruff testifies——

Mr. Evarts—We had not supposed it was testimony at all, that there was a preliminary conversation between Mr. Moulton and Mr. Tracy, and that when the question arose as to this fact, or about Mr. Tilton, that Mr. Moulton said, "I should prefer that Mr. Tilton should state it himself."

Judge Neilson—And then he came in.

Mr. Evarts—And then he came in.

Mr. Beach—On the cross-examination of Mr. Woodruff by Mr. Tracy this evidence was given:

Q. Do you recollect that I went to Mr. Moulton's study on Sunday afternoon, where I was shown the papers, and you were present, and Mr. Moulton? A. I remember we were up there.

Q. Alone? A. For a very short time.

Q. Before Mr. Tilton came in? A. Yes.

Q. Now, were not some papers shown me there, and was not the object of going into the study to show me some of these papers? A. No; I think this occurred: I think Moulton talked with you, and after a moment went down stairs for Mr. Tilton, and he came up. I don't think that the papers were shown you until after Tilton came into the room; that is my recollection.

Q. Don't you remember that what was called the Letter of Apology was shown me on my first going into the room? A. No, Sir; I don't think that was shown you until after Mr. Tilton came up; that is my recollection.

Mr. Evarts—That is Mr. Woodruff.

Mr. Beach—It is just as good coming from Mr. Woodruff as from any one else.

Mr. Evarts—We agree Mr. Woodruff has a right to make his statement about it. How does that make it a contradiction of Gen. Tracy, to ask him whether this was said in Mr. Tilton's presence, when Mr. Tracy has said it was not said in his presence? I don't object to your proving by Mr. Tilton, or any competent witness, that Mr.

Tilton was present from the first moment, and so contradict Gen. Tracy on a fact. That is what I am talking about.

Mr. Morris—We agree this was not said in Mr. Tilton's presence. It was not said in any one's presence.

Judge Neilson—You simply wish to prove it was not said in his presence, which I think is competent. You may do that, I think.

Mr. Evarts—That we object to, as not being rebuttal or contradiction.

Judge Neilson—Yes. I don't express an opinion whether Mr. Tracy is right, or Mr. Woodruff.

Mr. Evarts—No, I understand that; but our objection to the question is, it is not competent, not being in rebuttal.

Judge Neilson—It may have occurred before he came in.

Mr. Evarts—There being no statement by Mr. Tracy that it was said in Mr. Tilton's presence.

Judge Neilson—Now, what was said in your presence?

By Mr. Morris—Now, Mr. Tilton, did Mr. Moulton, in your presence, at that interview, say (when referring to the Letter of Contrition), "It is a memorandum of notes of a conversation I had with Mr. Beecher——"

Mr. Evarts—"Or notes."

Mr. Morris—"Or notes of a conversation I had with Mr. Beecher?" or anything equivalent to that? A. No, Sir; he never characterized it by any such name, or gave it any such designation.

Q. Last Summer did Mr. Tracy say to you, in Dieter's saloon, or at any other place, or notify you that in case you made a charge of adultery against Mr. Beecher that he would feel at liberty to act as Mr. Beecher's counsel?

Mr. Evarts—Wait a moment, Mr. Tilton. [To Mr. Morris.] Won't you refer to the passage?

Mr. Morris—I asked him that from my recollection. Mr. Evarts. It is the one notice that I have not a reference of to the testimony.

Mr. Beach—We say, "Here or at any other place?" That was the question.

Mr. Morris—"Or at any other place?" That was the question.

Mr. Evarts—I want to see his language.

Mr. Beach—You must look it up; we are not bound to look it up for you.

Mr. Evarts—I ask you to wait.

Mr. Beach—We will wait.

Mr. Morris—Your Honor will recollect the language, certainly.

Mr. Evarts—If his Honor recollects Gen. Tracy's language, and can give us the language, I will take it. I want the language before a man is contradicted.

Judge Neilson—It is proper, undoubtedly, to get the exact statement.

Mr. Morris—I have given it exact, as far as its effect is concerned.

Judge Neilson [to the jury]—Gentlemen, get ready to retire; please be in your seats at 2 o'clock.

The Court here took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment. Theodore Tilton was recalled, and his direct examination resumed.

By Mr. Morris—Mr. Tilton, I was asking you before the recess a question in regard to Mr. Tracy's notification to you of his intention, or feeling himself at liberty to act for Mr. Beecher. I have now the evidence before me and will read it and call your attention to it. In speaking of this interview—a question by Mr. Evarts:

Mr. Evarts—Where did it occur, the interview or the conversation? A. I think it occurred at the Club.

Q. The Brooklyn Club? A. The Brooklyn Club—it may have been at my office; Mr. Tilton was in the habit of dropping in at my office frequently; and he was also in the habit of dropping in at the Club when I was taking lunch or dinner; and I met him in the street often. We had casual conversations. * * * * * *

Q. Well, what passed between you—how was the matter introduced? A. Referring to the conversation in 1872, I said to him: "Mr. Tilton, as long as you adhere to the case that you then stated to me, I shall adhere to the promise I made you; but I desire to say to you that when you change your case against Mr. Beecher, if you ever do, and state a different case from what you stated to me, I shall not regard my promise then made to you as binding upon me."

Did any conversation of that kind ever occur between you and Mr. Tracy prior to your meeting him before the Committee? A. No, Sir; Mr. Tracy never gave me any such notification.

Q. And you have related what occurred before the Committee on that subject? A. Yes, Sir.

Q. Either at the Brooklyn Club, or at his office, or anywhere else, prior to that time? A. Never, Sir; never anywhere.

Q. Mr. Belcher in his testimony speaks of an interview he had with you at your house, when he walked with you from the ferry, at which you read him a statement. He says it was not the "True Story" that you read to him at that time. State what it was that you read. A. I read to him, Sir, precisely the same document which I read to Mr. Harman and Mr. Bell and Dr. Storrs, and to others. It never was called by me the "True Story;" other people have put that designation upon it. It is the same document.

Q. It has come to be designated in that way? A. It was the paper known in this trial as the "True Story;" I read him no other paper.

Q. A portion of that has been put in evidence here? A. Yes, Sir; or a portion of an imperfect copy.

Q. And you read from no other paper to him? A. From no other paper to him; yes, Sir.

Q. Now, in that statement was there an extract from the statement known as "The Storrs Statement," in

which it was stated—in which Mrs. Tilton said that Mr. Beecher had solicited her to become a wife to him, with all that that term implies? A. Yes, Sir; the first sentence of that statement or letter by Mrs. Tilton, addressed to Dr. Storrs, and dated Dec. 16, 1872—the first sentence of that document was incorporated accurately in the narrative known as the "True Story."

Q. And which you read to him at that time? A. Yes, Sir.

Q. Or a portion of it? A. Yes, Sir.

Q. And you read that portion to which I have called your attention to him? A. Yes, Sir; I presume I did, for I read him the narrative called the "True Story."

Q. And you read from no other document? A. I read from no other document.

CONVERSATIONS WITH MRS. OVINGTON.

Q. On that occasion I read you a brief statement of Mrs. Ovington's, and will ask you a question in regard to it. It is No. 6, page 131. Speaking of an interview that you had with her, she was asked this question:

State what was said upon that subject? [It is not necessary to refer to what precedes, because the answer will indicate it.] Oh! When he spoke of the fiction, I think it was, he said: "Elizabeth will lie for me. She would tell any number of lies to clear me. She loves me." He said, "Even if I were on trial for the Nathan murder, and she had seen me commit the act, do you think that she, if called upon to testify—do you think that she would tell the truth, and have me convicted?" He said, "No, she would not." Said he, "Would you?"

Q. And then she gives her reply. I will divide the question. Will you explain that part, whether you used that language to Mrs. Ovington—the language that I have read in that interview as given here, and in the sense that is used here? A. The language that you just read?

Q. Yes. A. Well, Sir, I should not know how to answer that, because it has passed from my recollection. Now that you read it, it does not come up to my mind as having passed between us. I should not like to say that it did not.

Q. She spoke about Mrs. Tilton having let out the only cool rooms that you had in the house, and your using some expression of this kind, "Why don't Mr. Beecher take care of her?" or "Why does he let her do that?" Will you explain that statement? A. I recollect something on that subject. The circumstances were these: I was sitting with Mr. and Mrs. Ovington on their back piazza, and I chanced to make a remark to this effect, that I was sorry that the piazza on my house was in the front, and not in the rear; that my piazza was practically of no advantage to the family, because in order to sit there we must expose ourselves to the street, whereas in Mrs. Ovington's house they could enjoy the comfort of their piazza, and still maintain their family seclusion. Mrs. Ovington made some remark, however, about my house being very cool and comfortable in the Summer, in consequence of Gallatin-place opening perpendicularly just in front of it. I then made a remark that that was true, but that I was very sorry that Mrs. Tilton had been compelled to yield up the pleasantest and coolest room in our house, which was the second-story pair of front rooms, to Mr. and Mrs. Taylor, who were then occupying them; and I added, perhaps in a satirical vein, "This is one of the consequences of the scandal, and unless I defend myself against the accusations brought against me, I presume I shall go to complete ruin." Some such conversation passed between Mrs. Ovington and myself.

MR. TILTON'S COUNTERPART—THEODORE H. TILTON.

Q. Mr Beecher spoke of a conversation that he had had with Mr. Moulton, in which Mr. Moulton related an interview that he had had with Mr. Bowen at his house in Clinton-st., and at which Mr. Bowen turned, he said, to his picture hanging on the wall, and said—made a remark: "How can I ever be reconciled to that man?" referring to Mr. Beecher's portrait. Was Mr. Beecher's portrait ever in that house in Clinton-st.—Mr. Moulton's house? A. No, Sir.

Q. How? A. No, Sir; during the time that Mr. Moulton resided in Clinton-st. that portrait was in my house, and it did not pass into Mr. Moulton's possession until months afterward, after he had gone to reside in his Remsen-st. house.

Q. Mr. Beecher referred in his testimony to his interview with Mr. Bowen. He said you attempted, as he was informed by Mr. Bowen, to excuse some of the stories that had been told concerning you, by stating that they referred to Theodore H. Tilton.

Mr. Evarts—Who says that? Mr. Beecher?

Mr. Morris—Yes.

Mr. Evarts—He didn't give his initials.

By Mr. Morris—Theodore H. Tilton. Do you know, or have you ever seen Theodore H. Tilton? A. I have, Sir.

Q. And about the Spring of 1871 did you hear anything concerning Theodore H. Tilton? A. Not at the time Mr. Beecher mentions.

Q. No, but subsequent, or at about that period? A. Yes, Mr. Theodore H. Tilton was divorced——

Mr. Evarts—Well, what have we to do with this?

The Witness [continuing]——on the 9th of June, 1871.

Mr. Evarts—We don't care anything about it.

Mr. Morris—Well, we do.

Mr. Evarts—We don't care anything about Mr. Theodore H. Tilton.

Mr. Morris—Yes, we want to show that as he has been referred to by Mr. Beecher, and as he said Mr. Bowen stated that Mr. Tilton attempted to excuse some of these stories, or to explain them, on the ground that they related to Theodore H. Tilton, the argument will be, and the inference intended to be drawn from that, that that was a mere pretext, that there was no such person as Theodore H. Tilton, and it was a mere subterfuge. Now

we want to show, propose to show, that there was a veritable Theodore H. Tilton, and that about that time he had obtained a divorce from his wife, and that he had become somewhat talked about, and that Mr. Tilton's allusion to him was of a date subsequent to that.

Mr. Evarts—The point in Mr. Beecher's testimony is this—it was what was said by Mr. Tilton to himself, not by Mr. Bowen—directly by Mr. Tilton to Mr. Beecher.

Mr. Morris—Well, Sir, that makes it still stronger.

Mr. Evarts—[Reading]:

He said the stories of his going with this woman in Winsted were absolutely false, had no foundation in fact, and he could not understand how they should have started except that there was another Tilton bearing the same initials as his, who was a dissolute man and an intemperate man, and had been about the country, and that this story was probably true of him, and had been transferred by those that did not know the difference of personality to him.

That is the point of Mr. Beecher's testimony.

The Witness—I had no such conversation with Mr. Beecher.

Mr. Evarts—Well, that you have not been asked. There is time enough—I ask to have that struck out; that is not a question that has been asked.

By Mr. Morris—Did you ever speak——

Mr. Evarts—I ask to have that struck out, if your Honor please.

Judge Neilson—Yes.

Mr. Beach—Ask him whether he ever had any such conversation with Mr. Beecher as Mr. Evarts has just read.

By Mr. Morris—Did you ever have any such conversation with Mr. Beecher as has just been read by Mr. Evarts from Mr. Beecher's testimony? A. I did not, nor had the facts on which such a conversation could have been based then occurred.

Mr. Evarts—That we have nothing to do with. You are asked whether you had the conversation; that is all. I move that the rest be struck out.

By Mr. Morris—Did you ever have any conversation with Mr. Beecher in reference to Theodore H. Tilton? A. I don't remember, Sir, that Theodore H. Tilton's name ever occurred in any conversation between Mr. Beecher and myself.

Q. When did you first learn the facts in reference to Theodore H. Tilton?

Mr. Evarts—That I object to. We have not introduced any facts about Theodore H. Tilton. We have no interest in the facts relating to him. The whole question is whether Mr. Tilton told Mr. Beecher this. Mr. Tilton says he did not.

Mr. Beach—That is the whole question, Sir; but there are several branches to it, and several modes of proof by which we reach the fact to determine the question. Mr. Beecher says that in a certain conversation of a certain date Mr. Tilton made this reference to his namesake, or near namesake, a person bearing nearly the same name, and who was obnoxious to public reproach and rumor, and referred to him and his character and reputation as the probable source of some of the imputations upon himself. Now, Mr. Tilton denies that, and in confirmation of his denial, Sir, there being this contradiction between Mr. Beecher and Mr. Tilton, we propose to show that at the period at which Mr. Beecher locates this reference to this other person, Mr. Tilton had no such information of his character, and that the rumors against him had not then transpired. That is the point that we purpose to give in evidence.

Mr. Evarts—Well, that has been expressly ruled that it cannot be done. You may contradict whether he said so or not. You cannot give in confirmation or argument that he did not say so that it would not be true. There is nothing new in this proposition; it has been exploded over and over again.

Mr. Beach—I would like to see where the explosion occurred.

Mr. Evarts—Whether a man says so or not is the question that is in dispute, and he cannot prove whether, if he said so, it would have been a lie, and therefore he did not say it, or that he could not have said so because it was not true.

Mr. Beach—Can't he be asked whether it is true or not?

Mr. Evarts—No, he cannot be asked whether it is true or not.

Mr. Beach—Well, let us see about that.

Mr. Evarts—Then we could bring other people in here to prove that it was true, and we should try this namesake of his, and the date of his knowledge of it. The point is that the contradiction is between the statements of what a witness said—as to what a witness said, and it is settled that you cannot prove the probability or improbability of his having said it by proving one way that it was true, or the other way that it was untrue.

Mr. Beach—Now I deny, Sir, that that is settled.

Judge Neilson—I think this is perfectly clear. If one witness states that another made a certain statement, that other witness could deny that he made the statement and could add the fact that he did not know the party, the other witness, until after that time.

Mr. Evarts—Well, Sir, I understand exactly not.

Judge Neilson—Well, I don't see the reason of the decisions, if that is so.

Mr. Evarts—The reason is that the contradiction is as to the statements, and whether it was true or not when he said it would not have any bearing on the question. It would involve you into an inquiry wholly collateral, whether it was true or not, whereas the only issue is whether he said it or not.

Judge Neilson—That is the primary issue.

Mr. Evarts—It is not an argument that a man did not say a thing because it was not true. There are a great many men tell lies.

Judge Neilson—That may be. I don't know. [Laughter.]

Mr. Evarts—Your Honor has been very fortunate in your judicial experience if you have not noticed that.

Mr. Beach—That is not the proposition, Sir, which we submit to prove, that it was, or was not, true. We purpose to show a circumstance, a fact, connected with the transaction, which confirms the testimony of Mr. Tilton; as the one supposed by your Honor——

Mr. Morris—Supposing he was in Europe at that time.

Mr. Beach—Yes, suppose that circumstance, as suggested by Judge Morris.

Mr. Evarts—It would bear on the question of whether he made the conversation.

Mr. Beach—Well, this bears on the question of whether he made the conversation, whether he had ever heard of this Theodore H. Tilton at that time. Suppose we should show that no such man as Theodore H. Tilton ever existed, why, to be sure, the gentleman might reason that it is not absolute proof that Mr. Tilton did not invent that story, and tell it to Mr. Beecher; but we are not to presume falsehood upon the part of either, and, if any confirming circumstance can be shown sustaining the confirmation of either of these parties, why it would be a most extraordinary rule, Sir, which should exclude that.

Mr. Evarts—Well, this is the rule; I will ask your Honor's attention to it; and it would involve in every case a trial of the truth or falsity of the statement; and I can go into testimony to prove that Theodore H. Tilton before this time had come to this opprobrious imputation.

Mr. Beach—Undoubtedly you can.

Mr. Evarts—And that Mr. Tilton knew it.

Mr. Beach—Undoubtedly.

Mr. Evarts—Very well; now that shows that it is wholly collateral. [Reading]:

A witness having testified to negotiations for exchange of horses, another witness was called to prove that the former witness had previously given a very different account of what was said at the time referred to. The former witness was then recalled and explained that the circumstances testified to by the second witness were those of another exchange, a different occasion. *Held*, that it was not competent to corroborate him by proof that the other exchange, thus referred to, actually took place.

You cannot prove the fact that is the basis of the statement, or the absence of the fact that is the basis of the statement, as either confirming or discrediting the probability of the statement having been made.

Judge Neilson—Is that a Massachusetts case?

Mr. Evarts—It is the case of Edgerton agt. Wolf, in 72 Mass., the 6th of Gray.

Judge Neilson—That collateral question isn't to be tried, of course.

Mr. Evarts—Then no evidence can be given concerning it. There is not any law that one side can give evidence on it and the other not. Now, of course, we have not shown Mr. Tilton's statement on this subject with any notion that there was any truth in it; not the least. It was his statement concerning a matter in regard to which other proof has been given, that is, this Winsted affair; therefore, the truthfulness of his statement about the Winsted affair is not a matter that is to be assumed at all in our giving of the evidence, but they undertake to show that Mr. Tilton did not or could not—did not or could not have said that Mr. Theodore H.—if that is his name; Mr. Beecher does not seem to have named him—that Mr. Theodore H. Tilton, if that were his name, was the other Dromio: if he said that, why, the fact that there was not any such man would not tend to prove he had not said so; at any rate, that is the very point. You cannot go into the trial of whether or no there was such a man as Theodore H. Tilton or not, nor any minor fact or more specific detail in the career of Theodore H. Tilton. I believe there is no authority to the contrary of this proposition to be found anywhere.

Mr. Beach—Your Honor will permit me respectfully to state that this remark, that that collateral issue could not be tried, seems to me inaccurate. One party asserts that at an interview between himself and the opposite party, a certain statement was made, by one to the other. The party alleged to make that statement denies it, and says that "at the time of that alleged interview I was in Europe." Can't we prove that he was in Europe at that time, and cannot the gentlemen give evidence to show that he was here at that time, and isn't it equally a collateral fact with the one involved in the proposition now submitted to your Honor?

Mr. Evarts—I don't think it is.

Mr. Beach—Well, I was addressing the Court, and did not either solicit, nor do I value the opinion of the gentleman upon that point. The question is from Mr. Tilton, whether at the time when Mr. Beecher says he made the allusion about the other Tilton—whether Mr. Tilton then knew of any of the rumors or circumstances affecting the character or the reputation of this other Mr. Tilton, and it is a circumstance to go to this jury upon the question of credibility as between these two witnesses. If Mr. Tilton at that time did not know the other Mr. Tilton, or, if he did know him, was not aware that there were any impeaching circumstances relative to his character, why that is a circumstance affecting the probability of his having made the allusion to that gentleman which is alleged to have been made by Mr. Beecher. Now, that does not prove, Sir, the truth of the fact, whether or not these public allusions were due to the reputation of this other Mr. Tilton, and that is what this Massachusetts proposition sustains, that in the circumstances now presented to your Honor, we could not prove the truth of the allegation of Mr. Tilton that these rumors originated from the synonymous names of these two parties, or originated from the reputation of the other Mr. Tilton. That would be prov-

ing the truth of the fact which was alleged in the communication. That we do not undertake to do, but the question is, is Mr. Tilton truthful or Mr. Beecher? We say Mr. Tilton is truthful, because at that time he did not know Mr. Tilton; at that time he had no intimation of the character of Mr. Tilton; for aught he then knew this other Mr. Tilton may have been irreproachable in reputation and in position. Well, Sir, it affects only the probability of the truth of his statement, and, I repeat, infringes in no degree upon the principles stated in the Massachusetts decision cited. Now, Sir, it would be very singular, it seems to me, if a circumstance of that character could not be proved; and it is exemplified in the simple illustration which I presented to your Honor, and it is an illustration which has occurred again and again in this case, and in various other cases before your Honor. Mr. Tilton says: "This conversation did not occur with Mr. Beecher, because I was absent," if you please. He has given that testimony, Sir, upon his present examination in regard to the alleged conversation with Palmer, and in regard to the alleged truth of the conversation related by Woodley; it is sprinkled all through this case. Mr. Beecher gave the same evidence in regard to an alleged conversation between himself and somebody else—Mrs. Moulton, that he was absent at Peekskill. Why, the gentleman says you can prove that fact. He has brought half a dozen witnesses to prove it.

Mr. Evarts—I have not said that. Good gracious! I have never said anything of that kind.

Mr. Beach—Well, good gracious; the gentleman has not said those very words, but he has said the principle which would have excluded that very evidence.

Mr. Evarts—Nothing like it.

Mr. Beech—I say it is like it, Sir, and that is a matter of argument between counsel and myself. And why isn't it like it, Sir? He proves that Mr. Beecher was at Peekskill. I prove that Mr. Tilton did not know this other Tilton at that time when Mr. Beecher says Tilton appropriated to him the credit of these rumors against himself.

Judge Neilson—I think the analogy holds that far.

Mr. Beech—Well, Sir, then if it holds, we certainly must be entitled, upon the same principle, to give this proof.

Judge Neilson—You may ask him that question.

Mr. Beach—Well, Sir, if we ask him that question whether he knew Mr. Tilton at that time, suppose he answers that he did know the man.

Judge Neilson—Or knew of any reproach against him.

Mr. Beach—Well, Sir.

Mr. Morris—I think I can obviate this by a question that I will ask him now, if you please.

Mr. Evarts—When a witness is asked whether he made a statement to another at an interview located in place, and defined in time, proving that he was in London, is direct proof that he did not make the statement; it is the best proof. It is not only proof that nothing of the kind was said, but it is proof that nothing was said; it is not only proof that nothing was said, but that no interview took place; not only that none took place, but that none was possible.

Mr. Morris—Would not that raise the issue——

Mr. Evarts—And is direct evidence, and of course it can be contradicted by proving that he is here, because it is on the direct point of whether he told him so. But my friend can find no case that pretends to show that the question of whether the statement alleged to have been made, would have been, if made, untrue, can be brought as evidence that it was not made—not the least.

Mr. Beach—Suppose this case, Mr. Evarts——

Mr. Evarts—Nor can you, on the other side, confirm the probability on our part that Mr. Tilton did make this statement to Mr. Beecher by proving that there was a scapegrace of the same name that fathered upon him some of his misdeeds. You cannot go into that, and I certainly do not need to argue against the proof of an alibi as being of that nature. The alibi contradicts the interview, in which interview the statement is said to have taken place. Now, the familiar case is where a statement of payment—a man who had made a statement of payment—is not permitted to be corroborated by showing that he had the means of payment.

Judge Neilson—Well, he might apply his means to other sources—uses.

Mr. Evarts—The case of Collins agt. Stevenson, in 74 Massachusetts, is to the same effect.

The testimony that certain statements were made to a witness cannot be contradicted by evidence that the statements to which he testified were not true.

Now, this is an argument that a statement was not true, would not have been true, and that he did not know anything about the facts that he stated, and it comes directly within the rule.

Judge Neilson—We could not take testimony that it is true by inquiring whether this other Mr. Tilton was a man of good or bad character, or anything of that kind.

Mr. Evarts—Or whether Mr. Tilton knew it.

Judge Neilson—Well, that is the point. I think you may interrogate him, whether he then knew what the character and reputation of this other Mr. Tilton was; that is as far as you can go.

Mr. Evarts—Does your Honor admit it?

Judge Neilson—That far; that one question.

Mr. Evarts—What one question is that?

By Mr. Morris—I will see if this question covers it. How are you enabled to state that you did not state to Mr. Beecher anything in regard to Theodore H. Tilton at the time when Mr. Beecher says you did.

Judge Neilson—No; that is too much in the way of argument.

Mr. Evarts—I object to it.

Mr. Beach—Well, we propose this question: At the time of which Mr. Beecher speaks of an allusion made by

you to a Theodore H. Tilton, or any other person bearing your name, were you acquainted with that person, Mr. Tilton?

Mr. Evarts—That I object to.

Mr. Beach—Or were you acquainted with his character?

Mr. Evarts—Well, either or both?

Mr. Beach—Yes, Sir.

Mr. Evarts—I object to the whole question, or either branch.

Judge Neilson—I think he may answer that; say you were or were not.

The Witness—I simply knew that there was such a person, and never heard anything against his character until two or three years later.

Judge Neilson—Very well; that covers it.

The Witness—Your Honor, I don't wish to sit in this chair and be the accuser of any man, and all I brought with me, Sir, was simply the record of a court.

Judge Neilson—No; we are not trying that other man at all.

The Witness—No, Sir; I do not wish even to accuse him.

Judge Neilson—No, Sir.

Mr. Evarts—This does not go into the evidence—this passage?

Judge Neilson—No, Sir.

THE RED LOUNGE INTERVIEW DENIED IN TOTO.

By Mr. Morris—Mr. Tilton, Miss Turner spoke of an interview that you had with her, an alleged interview up stairs in your bedroom, a long interview in which you referred to the red lounge in your house.

Mr. Evarts—Will you give us the page, Mr. Morris?

Mr. Morris—Four hundred and eighty; but I will withdraw the question.

Mr. Beach—Well, I want to know—I want him to contradict her on those interviews.

Mr. Morris—Well, then I will turn to the page, page 480—a long interview, as she relates it. I will not read the whole interview.

Mr. Shearman—What page, Mr. Morris?

Mr. Morris—Page 480, part 9.

By Mr. Beach—Well, have you heard her account of that interview, as given in the evidence?

By Mr. Morris—A long interview that she relates upstairs in the back bedroom? A. I have heard it and read it, both.

Q. Well, did any such interview as she relates on that occasion take place between you and her? A. No, Sir.

Mr. Shearman—What interview is this?

Mr. Fullerton—There was only one interview in that bedroom.

Mr. Shearman—Is that the interview when she mentioned Mrs. Tilton was very sick—is that the one?

Mr. Morris—The interview in which she spoke of the red lounge.

Mr. Shearman—That is on page 478.

By Mr. Morris—And also the interview on page 480; I call your attention to both interviews, if you recollect the interviews as she related them? A. I have a——

Mr. Shearman—Wait a moment.

Mr. Beach—Really, counsel don't want us to read that, [to defendant's counsel] do you? We tell you what it is, to commence with.

Mr. Evarts—We didn't know what the interview was.

Mr. Morris—On page 477 and page 480.

Mr. Beach—Well, read it, read it.

The Witness—I know the interview, Mr. Morris, very well, which you refer to.

Mr. Morris—Well, I can read sufficient of it to identify it without reading the whole of it; 480 and 481 it is. The interview was after she stated the conversation that you had had with your wife in the parlor, in which she said you knocked her down; that subsequent to that on that day you called her up stairs into the bedroom and then related, as she says, to her the——

Mr. Evarts—You can mark it and show it to the witness, and just mark our book.

Mr. Morris—We don't want to put the whole in evidence. I will read this part of it, Mr. Tilton; probably that will be the better way. The question was asked of Miss Turner what took place then. I read now from page 477:

He then changed the subject entirely, and he said—he said, "Oh!" he was sitting down in the chair, and he says: "Oh, Bessie, my dear, it is no wonder my gray hairs are going down with sorrow to the grave," and took out his handkerchief and was wiping his eyes; he says, "No, my dear, you are mistaken in the woman you place so much confidence in;" Mrs. Tilton then got up off the piano-stool, and said: "Why shouldn't Bessie place confidence in me? she has no confidence in you; she has no protector in you; you have offered to ruin her."

Q. Did any conversation of that kind occur between you and Bessie Turner and your wife when she was present? A. I never had with Bessie Turner any conversation, at any time or in any place, concerning any such subject as the criminal relations of Mr. Beecher and Mrs. Tilton, nor any subject kindred to it; I never exchanged a word with her on any topic however remotely related to that.

Q. You recollect of her coming in the room when you and Mrs. Tilton—you and your wife—were having a conversation upon the subject? A. I do, Sir.

Q. And that she came in the room unobserved by you? A. Yes, Sir; her presence there was a great surprise to me; as soon as I detected her there I ordered her out of the room.

Q. Yes, and after you observed her presence in the room, no conversation whatever upon that subject occurred between you and her, or between you and your wife?

Mr. Evarts—Wait a moment, Mr. Tilton. What does all this relate to—this interview?

Mr. Morris—The same interview.

Mr. Evarts—Why, it is the same we have been having, then?

Mr. Morris—No; he had an interview with his wife, and he has testified that during that interview Bessie Turner came in the room unobserved by him, and when he saw her he ordered her out, and after that—the question is whether after—she came in the room you had any conversation with your wife or with Bessie Turner upon that subject whatever.

Mr. Evarts—Well, that is what I want to get at.

The Witness—I did not.

Mr. Evarts—Bessie Turner has not given any such testimony about being ordered out.

Mr. Beach—Yes, Sir; about being ordered out.

Mr. Evarts—Well, it is another interview then; what page is that?

Mr. Morris—477. It is the interview that I have read a part from. It is in the other interview, I think, where she says he ordered her out of the room. I will turn to that. It is not in that interview she relates that. I will find it.

Mr. Evarts—Find it, Sir.

Mr. Beach—If you will let me take it a moment, I will get it. [Taking book.]

Mr. Evarts—Well, it is the first column of page 477, I suppose.

Mr. Morris—Yes; that is the interview. [Reading:]

He said: "Leave the room." Said I: "I won't leave the room." Said he: "Damn you, leave the room." Said I: "I will not leave the room, and I will stand by Mrs. Tilton if I die in the attempt."

Q. Did anything of that kind occur? A. No, Sir.

Q. Now, then, Mr. Tilton, I ask you the question again, whether at that interview, after you observed Miss Turner's presence in the room, any conversation upon that subject was had at that time? A. Not a word, Sir.

Mr. Evarts—Well, that is not admissible, if your Honor please; if he is contradicting the witness, he must bring to the present witness's attention the statements of the other witness that he wishes to contradict.

Mr. Morris—Now, I will read the other interview.

Mr. Beach—Mr. Morris, they are marking the particular points that you call attention to, and I think, if they require it, you must go through the whole of these and ask whether they occurred.

Mr. Morris—Then I will go on if you desire it.

Mr. Beach—It must be done; if it is in that interview that he referred to the red lounge, and charged that he had seen them time and time again.

Mr. Morris—[Reading]:

"He then gave me a terrible blow that hurled me"——

Mr. Beach—You don't commence at the commencement

Mr. Morris—I commence where I left off.

Mr. Beach—Well, there is a sentence before that, if you please.

Mr. Morris—[Reading]: "I won't leave the room ——"

Mr. Beach—No. "You have brought that girl on to use against me." It is just above where you are.

Mr. Morris—I see it; I have got it. [Reading]:

Q. When you went into the adjoining room, what did you do—you went into the back parlor from the dining-room? A. I stood at the folding doors; they were open on a crack; and I saw Mr. Tilton right over near Mrs. Tilton, with his fist going this way.

Is that true? A. No, Sir; I cannot say as to where she stood; I can only say about the fists; I am responsible not for where she was, but for where I was.

Q. [Reading]:

Talking very angrily; and when I heard him say, "You have brought that girl on to use against me, and, damn it, she shall leave this house"——

Did you say anything of that purport? A. Not at all, Sir.

Q. Now, I will go on below where I left off before. [Reading]:

He then gave me a terrible blow that hurled me to the opposite side of the room, and I fell, striking my head violently against the door.

Is that true? A. No, Sir; I never struck her in my life, and never showed her any—but kindness.

Q. [Reading]:

He came forward perfectly bland—you would think nothing in the world had ever happened—so composed and so calm. "Why," he says;" "why, Bessie, my dear, you tripped and fell, didn't you?"

Did you say anything of that kind to her? A. No, Sir; nothing of that kind occurred.

Q. [Reading]:

I turned around to him; said I, "Theodore Tilton, are you a fool, or do you take me for one?"

Did she make any reply of that kind to you? A. No, Sir; if she did I don't remember it.

Q. [Reading]:

What then took place? A. What, Sir?

Q. What took place then? A. He then changed the subject entirely, and he said—he said, "Oh!"—he was sitting down in the chair, and he says: "Oh, Bessie, my dear, it is no wonder my gray hairs are going down with sorrow to the grave," and took out his handkerchief and was wiping his eyes.

Anything of that kind occur? A. No, Sir; and I had no gray hairs at that time. [Laughter.]

Q. [Reading]:

He says, "No, my dear, you are mistaken in the woman you place so much confidence in." Mrs. Tilton then got up off the piano-stool and said: "Why shouldn't Bessie place confidence in me? She has no confidence in you; she has no protector in you. You have offered to ruin her."

Did Mrs. Tilton say anything of that kind? A. No, Sir.

Q. To you in Miss Turner's presence? A. No, Sir.

Q. [Reading]:

He then stood up and straightened himself very straight, and put his fingers under his coat *this* way [illustrating]; said he, "Bessie, my dear, did I ever attempt, in any word, shape or form to ruin you, or take any improper liberties with you?" Said I, "Yes, you did."

Did anything of that kind occur? A. No, Sir.

Q. [Reading]:

You remember that time you was talking about affinities and the time you lifted me out of my bed and carried me into your bed?

Did she say anything of that kind to you? A. No, Sir.

Q. [Reading]:

"Oh, my dear," he says, "you are excited; you are laboring under a false—mistake."

Did you make any such reply to her as that? A. No, Sir.

Q. [Reading]:

"No," said he, sitting down in the chair—said he, "the fact is this: Elizabeth is so in the habit of having men fondle her bosoms and her legs, that she judges me by herself."

Did you say anything of that purport to her? A. No, Sir.

Q. [Reading]:

He then got—he then turned over to this side of the room and said he, "Do you see that red lounge? Time and time again have I seen Elizabeth and Henry Ward Beecher having sexual intercourse on that red lounge; and not only the red lounge, but he spoke of the chair.

Did you say anything of that kind to her? A. No, Sir.

Q. [Reading]:

Mrs. Tilton looked very earnestly at him and said, "Oh! Theodore, Theodore! How can you tell that child such base lies?"

Did anything of that kind take place? A. No, Sir; no, Sir.

Q. [Reading]:

He then asked me if I knew what sexual intercourse meant, and if I did not he would tell me.

Did you say anything of that purport? A. She never asked me such a question in her life, Sir, and I never had a word with her on any such subject.

MR. TILTON DENIES TELLING BESSIE TURNER OF HIS TROUBLES.

Q. Well, that substantially covers it; now, she says that after that you called her into the back bedroom, up-stairs, and repeated this conversation.

Mr. Evarts—Well, let us have the passage.

Mr. Beech—Page 478.

Mr. Morris—[Reading]:

Then he came to me and said he wanted to see me, Mr. Tilton did, and he took me in the second story back room, in his room, and related this story over and over again about the lounge and the chair, and added that not only with Mr. Beecher had she done so, but mentioned three gentlemen's names in connection with Mr. Beecher.

Is that true? A. It is not true, Sir.

By Mr. Beach—Or any part of it? A. Not any syllable of it, Sir. Those three gentlemen are very thoroughly respected and honored friends of mine.

Mr. Beach—Well, did you ask her up stairs, and repeat any conversation of the character which she gave? A. No, Sir, I did not either then or at any other time, at that or any other place; I never had such a conversation with her.

By Mr. Morris—In this connection, Mr. Tilton, will you just describe that second floor of your house, the second story; the situation of the rooms?

Mr. Beach—There are two front rooms.

A DESCRIPTION OF THE TILTON HOUSE.

By Mr. Morris—The two front rooms, and how they were connected? A. My house is cottage built, very wide, 29 feet wide, which is much wider than ordinary city houses. There are four windows on the front and four windows in the rear. The front of the house is divided into two rooms separated by folding doors, two windows to a room. The rear of the house is divided into two rooms separated by a solid wall or partition—very simple house.

By Mr. Fullerton—Well, the hall? A. And the hall between them.

By Mr. Fullerton—Between what? A. Between the front rooms and the back rooms; on the one side of the hall is a bath-room, and on the opposite side of the hall, fronting the bath-room, is a dark closet—dark room; but the main divisions of the second story of the house are these two front rooms running the whole front of the house, and the two rear rooms running the whole rear of the house.

Q. And the hall is a short hall between those two divisions? A. Yes, Sir.

Q. With a bath-room on one side and a dark room on the other side? A. Yes, Sir.

Q. And a stairway going to the third story on one side? A. Yes, Sir.

Q. And the stairway coming up from the first floor on the other? A. Yes, Sir.

Q. Now, which room was fitted up for Mr. Greeley and did he occupy when he was there? A. Mr. Greeley occupied the two front rooms; that is to say, the whole front of the house on the second story, the left hand room fronting the street being his bedroom, and the right hand room being his writing-room.

Q. And which room did you occupy? A. I occupied the room on the rear of the house, directly opposite Mr. Greeley's room—directly opposite his bedroom.

Mr. Fullerton—Sleeping-room? A. Sleeping-room.

Mr. Morris—On the left hand side of the house? A. On the right hand side of the house as you face the rear of the house.

Mr. Beach—Suppose you faced the front of it, then it is on the left hand side? A. Yes, Sir.

Mr. Beach—The same description as you gave to Mr. Greeley's bedroom? A. Yes, Sir.

Q. Where was Bessie Turner's room? A. Bessie Turner's room was in Keyport at that time.

Q. Where was the room she occupied at the time she says you took her from the bed? A. She says that she occupied the next sleeping room to mine, which would have corresponded with the room opposite Mr. Greeley's sitting-room; I was in the room opposite Mr. Greeley's bedroom; she says that she occupied the room opposite Mr. Greeley's sitting-room.

Q. That is, the rear room on the right hand side of the house, fronting the front? A. Fronting the front, yes, Sir.

By Mr. Morris—Now, will you describe the folding-doors between the front sitting-room and the front bedroom? A. They are ordinary doors, Sir, that come together—at least, they come almost together; there is a bend in the floor which prevents their coming together at the top.

Q. The doors, when they are pulled together, stand a little apart at the top? A. Yes, Sir, my house is a very old house.

Q. Any key to the folding-doors? A. There never has been a key in those doors since I occupied the house; they have never been locked; you can't lock them; I don't know but perhaps a locksmith might; they have never been locked.

Q. And are they in the condition— A. I have been informed by members of my family that there has never been a key in them.

Q. And you have never seen one? A. No, Sir, nor has my—

Q. And you say they don't shut? A. No, they don't come together,

Q. Are they in the condition now—

Mr. Evarts—That observation about members of his family I move to strike out.

Judge Neilson—Yes.

By Mr. Morris—Oh, certainly. Are they in the same condition now, or about the condition now, that they were at that time that Mr. Greeley was there, in reference to their coming together, closing? A. Well, Sir, I did not make any accurate observation at that time; I presume they are, because the house is a very old one; it has never been painted since 1866, and I have made observation, since Miss Turner's statement, of the lock. The same coat of paint is on the door which it carried when I purchased the house ten years ago, and the little bolt—I don't know the technical name for that part of the lock—the tongue of the lock, is it? or the bolt, which is in the margin of the door, has never been thrust out through the paint; it has never been turned, and my daughter and other members of my family say that it has never been ——

Mr. Evarts—Oh, no.

Mr. Beach—Never mind that.

The Witness—I know that in the night repeatedly, in order to have the doors closed, I have taken my handkerchief and wound it round the two knobs; never with the——

MISS TURNER ABSENT DURING MR. GREELEY'S VISIT.

By Mr. Morris—Now, you say that Miss Turner was in Keyport at that time; how do you know that? A. Well, Sir, I know by consulting the family letters, as well as by my own recollection; correspondence, I mean, which passed between Mrs. Tilton and myself at that time.

Q. And during the whole of Mr. Greeley's stay at your house at that time? A. Yes, Sir.

Q. Just see if *that* is the letter which you wrote to your wife. A. Yes, Sir, this is a letter that I wrote to my wife Aug. 2, 1869.

Q. And is that the day that Mr. Greeley left—I mean Miss Turner and Kate McDonald, or the day that either of them left? A. The letter speaks for itself, Sir.

Mr. Beach—Well, you can answer.

By Mr. Morris—Just say whether that was written on the day of their departure for Keyport.

The Witness—Do you hand me the letter of the 2d?

Mr. Fullerton—That is the one.

The Witness—Yes, Sir; shall I read the letter?

Mr. Evarts—No; the witness is allowed to look at this letter——

Mr. Morris—Was Mr. Greeley there when you wrote that letter—had he arrived yet? A. No, Sir; Mr. Greeley did not come to my house in August, 1869, until after Miss McDonald and Bessie Turner went to Keyport.

Q. They were both gone? A. They were both gone before Mr. Greeley came, and Miss Turner was not in my house in '69 during Mr. Greeley's visit, and the circumstance which she alleged to have occurred never did take place.

Mr. Beach—You hold in your hand a letter written by you of Aug. 2.

Mr. Evarts—The last I ask to have struck out.

The Witness—I do, Sir.

Mr. Beach—Which confirms—refreshes your recollection? A. Yes, Sir; there is the distinct statement.

Mr. Beach—I offer the letter in evidence.

Mr. Evarts—I object to its being offered in evidence.

Mr. Fullerton—You can't object to its being offered; you may object to its being read.

Judge Neilson—The witness has a right to refer to the letter to refresh his recollection; that is sufficient. That answers the purpose of reading the letter.

Mr. Evarts—He has a right to refer to it to refresh his recollection.

Mr. Morris—Did you write that letter to your wife? A. Yes, Sir.

Q. What is the date of it? A. August 5, 1869.

Q. Now state what day Miss Turner and Miss McDonald went to Keyport—what day of the week. Will you look at the letters for the purpose of refreshing your recollection? A. Give me the other one; Miss Katie McDonald and Bessie Turner were sent by me to Keyport on Monday, August 2. 1869.

Q. Now state how you are enabled to fix those dates? A. I am enabled to fix the date in this way, because this letter, dated New-York, August the 2d, 1869, written by me in Brooklyn to my wife in Monticello, says: "Kate and Bessie go to Keyport to-day. I have charged them to send my father to join Mr. Greeley and myself." The previous part of the letter states that they were—that Mr. Greeley was to come that evening. I am further enabled to state the date by a letter written Aug. 5, 1869, to my wife, that being Thursday of the same week in which this statement is made. "On Monday I sent Kate and Bessie down to Keyport to stay. On Tuesday morning"—that is, the next day—"in response to my earnest request, Grandpa Tilton"—that is, my father—"came up, and, after dining in New-York, went fishing at Gowanus. Although we caught no fish, we had a very delightful time, and it reminded me of the times before his head was white. We returned from our excursion in time for a late tea, after which Mr. Greeley came trundling in. I was very glad my father had such an opportunity to meet him. Our breakfast next morning was"—and so on.

Q. Now, state what day Mr. Greeley arrived at your house? A. Mr. Greeley arrived on Tuesday night at my house; Bessie Turner and Miss McDonald went away on Monday morning or Monday afternoon; I wish to state distinctly that Bessie Turner was not in my house at any time, not for one moment, during Mr. Greeley's visit in 1869.

Q. How long did Mr. Greeley remain there on that visit? A. Well, Sir, by reading these daily letters carefully I can answer that question; but I am unable to do so unless—he stayed there a few days, coming and going. His visit was interrupted by an occasional call out of town to make a speech somewhere; and during the time that he stayed at my house very many friends came; he received many guests.

Q. When did he finally leave? Can you state about when? A. I should have to hunt through these letters—I should think that——

Q. Did he leave before Bessie Turner returned from Keyport? A. Yes, Sir; three weeks before.

Q. Three weeks before? A. I won't make that statement positively; but certainly as much as three weeks.

Q. And was it before Mrs. Tilton had returned from Monticello that she came? A. Mrs. Tilton had returned from Monticello and been more than a week at home before Bessie returned from Keyport. I think Bessie testified to that herself. During Bessie's absence at Keyport she never came back to Brooklyn. Katie McDonald, who has been on the stand, returned to Brooklyn two or three times to look after the house in the interval.

Q. Now, Mr. Tilton, I will ask——

The Witness [interrupting]—I desire—I ought to say, perhaps, that I should not be so positive in these statements were it not for these letters. I should not trust my own mere recollection, except as that recollection is refreshed by referring to these daily letters.

Q. Do they enable you to speak positively? A. Yes, Sir; I wrote a letter every day, or almost every day, during Mrs. Tilton's absence at Monticello, and these letters I have brought into court if they are desired by anybody [holding up the package].

Q. That is sufficiently definite. Now, Miss Turner spoke of a couple of letters which she wrote, and which you have seen here in evidence; she says that you dictated one of those letters; is that true? A. It is not true, Sir; I had nothing to do with its composition; I knew nothing about the writing of it until after it was done and handed to me; I did not suggest it in any way; I had nothing more to do with it than any stranger.

Mr. Evarts—What letter is that?

Mr. Morris—The short letter.

The Witness—[In reply to a remark by Mr. Evarts about one of the letters already produced.] I think, Mr. Evarts, you have only part of that letter. It is quite a long one. Here are the other sheets of it [offering them].

Mr. Beach—When they ask for them, you can give them.

The Witness—Very well.

Mr. Evarts—We would like to have them.

Mr. Morris—You would like to have them?

Mr. Evarts—Yes.

Mr. Beach—Whatever they call for, let us know, so that——

Mr. Evarts—That one that he refers to to refresh his recollection.

OLIVER JOHNSON CONTRADICTED.

By Mr. Morris—I call your attention to a statement made by Oliver Johnson upon the stand, that you told him a circumstance on one occasion, of having been in bed with a woman and remaining virtuous. Did you ever tell Oliver Johnson anything in substance to that effect? A. Well, Sir, I deny the bed and admit the innocence.

Q. My question is, did you ever say to him anything of that kind? A. Nothing of the sort, Sir; I don't know what Mr. Johnson alludes to.

MR. BEECHER SITS ON MR. TILTON'S KNEE.

Q. Do you recollect an interview at your house that you had with Mr. Beecher—he places it about May 20, '71, I think—when he sat upon your knee; was

there any such interview, or any such circumstance, or did anything of that kind occur at that time or at that interview? A. I heard Mr. Beecher give that description, and the interview, though not correctly described, rose vividly in my mind as having occurred about ten years ago. I remember a scene of that sort, except the kissing all round—I don't remember that circumstance—but about ten years ago there did occur a little incident of that sort, growing out of a pleasant little discussion that we had over the construction of a sentence in a little book that I had then published called "Golden Haired Gertrude."

Q. But, did any incident of that kind occur in May, 1871? A. No, Sir; nor at any time after the troubles came upon our house.

Q. I call your attention, Mr. Tilton, to this statement by Mr. Beecher. In speaking of the interview of Dec. 30, he says:

I don't recollect that I talked; but he drew from his pocket a strip of paper about that—[producing a paper about five inches by one and a half]—like that, and read to me what purported to be the statement of his wife to him that Mr. Beecher had solicited her to become his wife to all the intents which were signified by that term, or substantially that.

Did you read or make any such statement as that to Mr. Beecher? A. No, Sir; I read quite a different statement from that.

Q. What was it?

Mr. Beach [to Mr. Morris]—That you have got on the direct. [To the Court.] I suppose, Sir, where a witness is called, as Mr. Tilton is recalled upon this occasion, your Honor has intimated that we are not at liberty to prove what has been already established by the previous examination.

Mr. Evarts—Of course!

NOTHING SAID AT THE ARBITRATION ABOUT BURNING PAPERS.

By Mr. Morris—At the time of the arbitration did you hear anything said by either of the arbitrators about "burning the papers?" A. I did not, Sir.

Q. Was anything said by either of them to your knowledge? A. It was not, Sir. The only recollection I have of such a phrase was in a letter by Mr. Wilkeson, asking for the burning of the "Letter of Contrition."

Mr. Evarts—That last we move to strike out. It has nothing to do with the question.

Judge Neilson—Yes.

By Mr. Morris—Was anything said before the arbitrators in your presence concerning your difficulties with Mr. Beecher, or concerning this scandal, or anything about the Letter of Contrition, or the papers connected with it? A. I do not recall a solitary word referring to that subject however remotely.

Q. Was anything said before the arbitrators in your hearing except with reference to your money differences with Mr. Bowen? A. Nothing at all.

Q. That was the sole subject of conversation so far as you understood? A. Yes, Sir.

Q. Was anything, by you and Mr. Beecher, submitted to those arbitrators to be determined? A. No, Sir; not with my knowledge; I never supposed that Mr. Beecher had anything to do with the arbitration.

Q. Was anything between you and him—anything of whatever nature between you and Mr. Beecher—submitted for their determination? A. Nothing at all, Sir.

Q. Or submitted to the authorities in any way? A. No, Sir. The arbitration was confined to its own terms. The arbitrators were to arbitrate between Mr. Bowen and me.

Q. According to the submission that had been made? A. Yes, Sir.

Mr. Evarts—The witness has stated generally what took place on his direct interrogation.

THE DATING OF THE COVENANT.

By Mr. Morris—The "Tripartite Agreement" appears to be dated April 2, and the arbitration was on the 3d?

Mr. Evarts—That was all gone into before.

Mr. Morris—By Mr. Tilton?

Mr. Evarts—Yes, the whole history of that.

Mr. Beach—No, no. The question is as to the date.

Mr. Evarts—That was gone into.

Mr. Beach—No, it was not gone into.

Mr. Evarts—Yes, the whole of it.

By Mr. Morris—Can you account for the fact that the covenant is dated April 2, when it was not executed until after the arbitration? A. Yes, Sir.

Mr. Evarts—That, you know, assumes a good deal.

By Mr. Morris—Well, how do you account for its being dated April 2?

Mr. Evarts—It *is* dated April 2. The history of the arbitration and of the "Tripartite Agreement" have already been given by this witness as well as by others.

Judge Neilson—Except on the point of date.

Mr. Evarts—Well, on the point of date.

Mr. Beach—No, Sir.

Mr. Evarts—The date of it was in evidence.

Judge Neilson—The mere date; but the relative dates of the arbitration and the covenant—I don't think attention was called to that.

Mr. Beach—This is the question that we propose——

Mr. Evarts—How is it competent evidence?

Mr. Beach—Please hear our question, and then make your comments. This is the question: You have said that the "Tripartite Covenant" was not executed until after the arbitration of April 3; how do you account for its bearing date on April 2? That is the question.

Mr. Evarts—That we object to. I don't care whether he can account for it or not.

Mr. Beach—Well, I do.

Mr. Evarts—Well, it is not a proper subject of evidence.

Mr. Beach—That is the question.

Mr. Evarts—It does not necessarily require a very great accounting, that a paper should not be executed until the day after its date. You would not expect it to be executed *before* its date. But the whole matter, so far as it is competent evidence, dealing in facts, has been already produced. Mr. Wilkeson, who drew it, has told you how he drew it, and when he drew it, and the date was a part of the draft. Then the history of it, in respect of the emendations, the reëngrossing of it, and its being a reproduction of the original, except as to the modifications, is all in evidence.

Judge Neilson—Yes.

Mr. Evarts—And the whole matter of the delay to sign is in evidence?

Mr. Beach—We admit all that, Sir.

Mr. Evarts—That has all been gone into.

Mr. Beach—We admit all that.

Mr. Evarts—Now, to ask the witness how he accounts for it is not producing evidence. My learned friend can account for it, or anybody else can. The facts have all been given.

Judge Neilson—Well, the fact of the date, or the fact that it was dated back, or the fact that the draft having been dated, the document remained of that date, no one has spoken to.

Mr. Evarts—That is already produced in evidence, and now the witness is asked to argue.

Judge Neilson—That may be; but nobody has spoken as to that circumstance, of its being dated earlier than its execution.

Mr. Evarts—The whole thing has been told in all its facts, and now the witness is asked to reason on these facts.

Judge Neilson—He should not reason.

Mr. Evarts—Well, that is all that he is asked to do.

Mr. Beach—That shows, Sir, the unwarranted assumption of the counsel. How does he know that all has been told on the subject? How does he know but this witness can swear that it was antedated at the time of the execution? I do not know what he will swear upon that subject; nor does the learned counsel. Now, if he shall give only the explanation that the date of the executed "Tripartite Covenant" followed the antedated date of the draft, why then he gives nothing new; but we call for any information he may have upon that subject. I do not know whether my colleague has talked with him or not. I have not. I don't know whether he has got any information on the subject.

Mr. Evarts—That I object to. The whole matter, so far as evidence is concerned, has been exhausted by this witness in his narrative. We have, then, given the narratives of Mr. Wilkeson and of the arbitrators to some extent, and Mr. Bowen has been examined on their part, and the facts are all in. Now, if this is intended to introduce any new facts concerning that interview, concerning that transaction, why, it is not competent, because it is not rebutting; and if it is introducing reasoning it is not competent, because reasoning is never admissible.

Mr. Beach—It is not reaffirming evidence, Sir. This is the first suggestion that has been made on that point, or I should not venture to speak to your Honor again. It is not affirmative evidence, or what should have been given on the opening. They proved upon their defense that the "Tripartite Covenant" was united with the arbitration, was a part of the arbitration. We denied that upon our cross-examination. We now, upon our reëxamination, propose to answer the theory which they presented in their affirmative defense, that these two proceedings, the arbitration and the covenant, were united; and to do that, it turns out that we must explain the fact that the "Tripartite Covenant" bore date on April 2, whereas we say, and have said, it was not executed until April 4th or 5th, if you please, or any other subsequent date. Now, this is a part of the explanatory evidence we seek to give in answer to the affirmative defense which they have produced.

Judge Neilson—I think this witness may account, if he can, in respect to the date; may state whether it was dated back or executed days after its date. I see no objection to that.

Mr. Evarts—I object to the question, if your Honor please, that as matter of evidence it is not in rebuttal, and as matter of reasoning it is not admissible at all. Your Honor will please note our exception.

Judge Neilson—It is in answer to some matter you have proved.

Mr. Morris—Go on and answer, Mr. Tilton.

The Witness—The first draft of the Covenant was made by Mr. Wilkeson, and it was made bearing date April 2. That draft was torn to pieces by Mr. Bowen and by me, and Mr. Wilkeson afterward made a new draft, incorporating into it Mr. Bowen's alterations and mine, and when the new draft came to be engrossed in the form in which it now appears, Mr. Wilkeson copied accurately what he saw on the papers, the original date included; and the paper as thus copied was not signed by the three parties—what you technically call executed, I believe—for several days afterward—I rather think a week, possibly, or ten days.

Judge Neilson—But it was executed finally, without the date being changed.

The Witness—Executed without any change of date.

Mr. Morris—You speak of its being "torn to pieces," you mean by the alterations that you made? A. Figuratively speaking, Sir.

MR. WILKESON'S TESTIMONY DISPUTED.

Q. I call your attention to an interview to which Mr. Wilkeson testified, in which he spoke of your going to his house on April 2, and in an angry tone stating that Mr. Beecher had been taken care of, and Mr. Bowen had been taken care of, but that your money had not been paid, and the suit would have to go on?

Mr. Evarts—Won't you refer us to the page?

Mr. Morris—This is the testimony.

It was 11 o'clock in the forenoon of April 3, and he came into my office. He was angry. He said: "I want a copy of my portion of the 'Tripartite Agreement!' I am not going to sign it. It has got to be altered before I sign it." I asked him what happened. Well, he said, enough had happened to induce him to come to that determination, that he should not execute it. I asked him what happened to change his purpose. He said Mr. Bowen had been well taken care of by Mr. Claflin in this affair, and that Mr. Beecher had been well taken care of by me in this affair, but no one had taken care of him, and he was to be left out in the cold and his money unpaid, and he said, "I won't sign that agreement." He said, "Let me have my portion of it to alter." I took the agreement out of my safe and I made a copy of his portion of it and handed it to him. He sat down at a table in my room and commenced to scratch it and alter it. I remonstrated with him for going back on his agreement. I said he ought not to change the arrangement that had been made; that he ought to adhere to it like a man. He said that he would never sign that agreement nor never sign any other agreement that prohibited him from pursuing Henry Ward Beecher; and he kept at his work of scratching and erasing the manuscript copy that I gave him of his share of the "Tripartite Agreement," but without concluding it, he grabbed the work up in his hand, put it in his pocket, and stalked out of the room and went away.

Now, did any interview as related there by Mr. Wilkeson take place between you and him on that occasion?

Mr. Evarts—Was not an interview of this kind stated by Mr. Tilton—that is, an interview on that occasion? The interview on this day was gone into by Mr. Tilton, and Mr. Wilkeson gives a narrative—

Judge Neilson—Anything new that Mr. Wilkeson introduced may be contradicted.

Mr. Evarts—Any specific contradiction of anything new.

Judge Neilson—Yes; that they can introduce.

Mr. Evarts—Any specific contradiction of what the witness said.

Judge Neilson—Yes; I suppose that is all they want.

The Witness—Well, Sir, it would be difficult for me to——

Mr. Morris—I had better ask this specific question——

Mr. Fullerton—Oh, no. Your Honor will recollect this interview was asked by the other side, what took place with Mr. Tilton, not for the purpose of contradicting him as a witness alone, but for the purpose of fixing certain facts against him as a party as well as a witness. Now, we are not obliged, therefore, in reëxamining Mr. Tilton, to put in the language of the witness who gave the evidence, Mr. Wilkeson, to know whether it is true or false, to know whether he contradicts it, because it is to be used for other purposes than that of contradiction. He is a party to the case.

Judge Neilson—My view is this: That Mr. Tilton, having on his examination stated the substance of this interview, as he then remembered it, and Mr. Wilkeson afterward having done the same thing according to his memory, the appropriate course now would be to have Mr. Tilton correct or contradict any new statement which Mr. Wilkeson brought in.

Mr. Fullerton—Yes, they asked Mr. Tilton when he was on the stand upon cross-examination whether some things were not done, and some things said, at the interview between himself and Mr. Wilkeson, and he answered as the fact was, either yes or no. Now, your Honor will perceive, therefore, that he was limited in his answer in that way.

Judge Neilson—Yes.

Mr. Fullerton—He was not at liberty to tell what did take place; but they put Mr. Wilkeson on the stand and asked him to narrate what took place on that occasion. Having done that, and Mr. Tilton being a party as well as a witness, we have a right to ask him what took place and have him to state the interview at length.

Judge Neilson—Although it repeats parts of his former examination.

Mr. Fullerton—Certainly.

Mr. Evarts—The re-direct is the place to bring that up, if you wish to. The interview forms the subject of testimony on the original inquiry; that is plain enough, and to say whatever you wish to say about it.

Judge Neilson—We are here now to correct any new matters, so I think you will have to interrogate him as to any specific statement Mr. Wilkeson made changing its character. It comes to the same thing.

Mr. Fullerton—It comes to the same thing so far as the testimony is concerned, but it does not come to the same thing as far as the consumption of time is involved.

Mr. Evarts—Yes.

Mr. Fullerton—Oh, no; it is much longer.

Mr. Evarts—We are getting on very well.

Mr. Fullerton—I am taking a note of how you get along now.

Mr. Morris—Now, I will ask you, Mr. Tilton, in the first place——

Mr. Evarts—What page?

Mr. Morris—Page 302—whether you were at Mr. Wilkeson's office on the 3d of April? A. Mr. Wilkeson has changed, as you remember, the date of his letter, which bore date April 2; he changed the date to April 3, in his testimony. I have no means at hand of saying out of my mere recollection whether I was there April 3, or any other specific date. My recollection is not of the dates, but what took place.

Q. You recollect the circumstance? A. I recollect the circumstance of an interview with Mr. Wilkeson.

Q. Now, I will ask you, in the first place, whether you were angry? A. Well, I don't know; I think, perhaps, I was, being solicited to sign the first draft of that covenant. I don't recollect being angry, but I would not like to deny it. It is very hard to be angry at Sam Wilkeson, for every one likes him so well. I was not angry with him.

Q. You say:

I want a copy of my portion of the Tripartite Agreement; I am not going to sign it; it has got to be altered before I sign it.

That, you think, is correct? A. I know that, in substance, is correct.

Q. He says he asked you what happened, and you replied:

Well, he said enough had happened to induce him to come to that determination, that he should not execute it. I asked him what had happened to change his purpose. He said Mr. Bowen had been well taken care of by Mr. Claflin in this affair, and that Mr. Beecher had been well taken care of by me in this affair, but no one had taken care of him, and he was to be left out in the cold, and his money unpaid.

Did you say anything in substance to that effect? A No, Sir; that is an entirely incorrect statement; there had been no difficulty as to the payment of money; the money had been paid on the spot; I made no complaint to Mr. Wilkeson.

Q. The money had been paid prior to this interview at his office? A. I won't be positive about that, because there has been some rearrangement of dates by this examination. The money was paid on the night of the arbitration, within the first half hour.

Q. There was no difficulty at the time you had this interview with Mr. Wilkeson at his office about the payment of the money? A. No, Sir, there was no question of money.

Q. Nor about the arbitration? A. Nothing at all.

Q. Or about the proceedings of the arbitration? A. Not in the slightest degree. The complaint I made to Mr. Wilkeson was that I would not sign the paper when——

Mr. Evarts—One moment; the question was whether you said that to Mr. Wilkeson, and if you answered that, I suppose that is the end of it.

The Witness—I wish to admit part and deny part.

Judge Neilson—That you have a right to do.

Mr. Evarts—That he has a right to do. He has a right to say he said so much, and to deny he said so much.

The Witness—I told Mr. Wilkeson very distinctly I would not sign that agreement, but I did not tell him that it was because of trouble concerning the money, because there had not been trouble about that.

Mr. Evarts—I ask to strike out the latter part of that answer "because there had not been trouble about that."

Judge Neilson—I think we will hold that. It goes to the point.

Mr. Evarts—What he says he did n't say to Mr. Wilkeson is good evidence; but his reasons for it, because it was not so, is not good evidence. He does not say he said to Mr. Wilkeson this reason. The witness, besides saying "I did n't say so to Mr. Wilkeson," says, "for it was not true."

Judge Neilson—If there was no trouble about the money; Mr. Wilkeson gave him to understand there was trouble about the money.

Mr. Evarts—I ask to have that struck out.

Judge Neilson—Let it stand.

Mr. Evarts—For there was no trouble about the money.

Judge Neilson—I learn from Mr. Wilkeson there was trouble in some sense about the money, therefore I think it is proper to retain the statement, so as to show there was no trouble about the money.

Mr. Evarts—Your Honor understands you have limited this witness to saying whether he did or did not say certain things to Mr. Wilkeson.

Judge Neilson—That is the primary object.

Mr. Evarts—He says he did say some part of it, and the other part he did not say, and he follows the last statement by saying, "For there was no trouble about the money"—that is, his money.

Judge Neilson—It is argument by the use of the word "for." If that is left out, we have the simple, naked fact.

Mr. Evarts—It is a fact which has nothing to do with the question.

Judge Neilson—We will let it stand.

Mr. Evarts—Your Honor will be so good as to note my exception.

Judge Neilson—Interrogate him specifically, Mr. Morris.

Mr. Morris—Yes, Sir. [To the witness.] I will call your attention to this statement:

Q. Now, did anything occur at that time in the presence of Mr. Tilton and Mr. Moulton with reference to this "Tripartite Agreement"—this paper—anything further that you now recall? A. I do not recollect that anything did, except that I made the point that all the papers in the possession of either Mr. Moulton or Mr. Tilton should be destroyed; I again pressed that they should be destroyed.

Did you have any interview of that kind, you and Mr. Moulton and Mr. Wilkeson, when he insisted on the destruction of all the papers? A. No, Sir; the only suggestion Mr. Wilkeson ever communicated to me was by letter.

Mr. Evarts—No matter about any new evidence. It is only whether you said this.

Judge Neilson—Leave out all he said about the letter.

Mr. Morris—Did Mr. Wilkeson, personally to you, or at any time in your presence, make any such request or suggestion, or insist that the papers should be destroyed?

A. I have searched my memory ever since Mr. Wilkeson's statement, and there is no trace in it of any such conversation, nor indeed of any conversation about any such papers.

Q. Mr. Wilkeson speaks of an interview he had with you at the Ebbitt House, Washington, in 1864 or 1865; he says:

I was in the dining-room of the Ebbitt House, and he came to my chair, occupied a seat next to my own. After dinner, talked with me—after his own dinner—talked with me while I was eating mine. I think that he took out of his pocket and gave me a photograph of his children, with their mother. He asked me if I knew his wife. I told him I had never seen her. He told me that I would be disappointed in her, that she was a small woman, without presence, without port—not a woman of society, not a woman of culture.

A. I had an interview with Mr. Wilkeson in the Ebbitt House, perhaps in that year; and, if I should state it exactly as it occurred, it would be a personal injury to that gentleman. I will state it if asked to do so; but it occurred after dinner——

Judge Neilson—The question is whether you said that about your wife.

The Witness—No, Sir; I did not.

By Mr. Beach—Did you show him a photograph of your wife? A. No, Sir; I showed him a photograph of two of my children, one of whom he mistook for my wife, and he made it the opportunity to make some incoherent——

Q. Which of your daughters? A. It was my daughter Florence, and Alice and he apostrophised the card of Florence, supposing it to be a card of my wife, over a glass of wine.

Judge Neilson—That is not the question.

By Mr. Beach—Did you say anything such as he represents to you in regard to the qualities of your wife? A. I did not, nor to any other human being.

Mr. Evarts—That last I ask to have struck out.

Judge Neilson—"I did not," is the answer.

Mr. Morris—Now, I call your attention to this paragraph, Mr. Tilton. He is asked for a conversation that he had with you, and he says:

Oh, no; he did n't say it in that way. He said to us—his words precisely—he said that there was not a particle of truth in any of the statements that had been made about Mr. Beecher's adulterous connection with his wife—not a particle of truth in them; that the utmost that Mr. Beecher had done was to address improper language to Mrs. Tilton, and that for that an ample and written apology was in his keeping. Those were his precise words.

Q. Did you have such an interview as that—Mr. Wilkeson? A. No, Sir; Mr. Wilkeson and I had no conversation on the question of the criminality of these two parties, and he never asked me a question whether Mrs. Tilton had been guilty of adultery; there have not been half a dozen men who ever asked me that question.

Mr. Evarts—I move to have the last part of the answ struck out. It is only what Mr. Wilkeson said.

Judge Neilson—Yes.

CROSS-EXAMINATION OF MR. TILTON WAIVED.

Mr. Morris—That is all.

Mr. Evarts—I have nothing to ask.

Mr. Beach [to Judge Neilson]—Shall we put anothe witness on the stand now, Sir?

Judge Neilson—I think you had better, to identify hin

Mr. Beach—Well, we can identify him by announcing i is Mr. Moulton, but he is not here.

Judge Neilson [to the jurors]—Gentlemen, get ready t retire. Please attend to-morrow at 11 o'clock.

The Court then adjourned until Wednesday at 11 o'clock

EIGHTY-FOURTH DAY'S PROCEEDINGS

CLOSE OF THE REBUTTAL TESTIMONY.

MRS. WOODHULL SUMMONED TO PRODUCE LETTER IN HER POSSESSION—SHE DESIRES INSTRUCTION FROM THE COURT, AND MAKES A LITTLE SPEECH IN REGARD TO THE LETTERS—COUNSEL FOR THE DEFENSE DESIROUS TO QUESTION MR. TILTON FROM THESE LETTERS—THEY ARE GIVEN INTO THEIR HANDS—FRANCIS D. MOULTON GIVES BRIEF REBUTTAL EVIDENCE—BEGINNING OF THE SUR-REBUTTAL—JAMES FREELAND CONTRADICTS MR. BOWEN, AND MRS. OVINGTON DENIES STATEMENTS MADE BY MR. MARTIN.

WEDNESDAY, May 12, 1875.

The court had just been called to order to-day, and the plaintiff's counsel were on the point of calling Mr. Moulton to the witness chair, when Mr Evarts interrupted them, saying that he was expecting some papers in regard to which he might wish to question Mr. Tilton, and that he preferred not to have another witness put upon the stand until they came. About 25 minutes before 12 o'clock, Mr. Shearman entered the court-room by the door leading from Chambers. Closely following him was a lady who was immediately recognized by many as Mrs. Victoria C. Woodhull.

Mr. Shearman stated that Mrs. Woodhull possessed letters which she declined to produce without receiving instructions from the Court. Judge Neilson declined to give any instructions, and, after considerable discussion, principally between Mr. Fullerton and Mr. Evarts, Mr. Shearman said: "Mrs. Woodhull, we call upon you for these letters of Mr. Tilton." Mrs. Woodhull arose and came forward quietly, and stood in the midst of

ıe group of lawyer's chairs. Mr. Evarts and Ir. Shearman conversed with her in low tones for ·veral minutes. Mrs. Woodhull's gestures showed ıat she was speaking very earnestly, and the result f the conference was awaited amid dead silence in ıe court-room. The counsel for the plaintiff ap·eared to regard these proceedings with suspicion, ıd Mr. Fullerton asked Judge Neilson to inform Irs. Woodhull that she was not called upon by the ourt to produce the papers. Presently Mr. Shear·ıan said that Mrs. Woodhull desired to say some·ıing to the Court.

Mrs. Woodhull then turned, and bowing to Judge eilson, she spoke in a low voice, saying in sub·ance that the letters which she held were entirely ·editable both to herself and to the gentleman who rote them, and that she had no disposition to keep ıem from any court of justice. During her impris·nment for publishing the scandal, she said, er office had been ransacked and her pri·ate letters taken away. In her opinion some f them were in the hands both of the counsel for the laintiff and for the defendant. With this explana·on she was perfectly willing to give the letters. udge Neilson bowed. and when she had finished, id, "Well?"

Mrs. Woodhull then took out her pocket-book, om which she produced several letters, which she nded to Mr. Shearman. Mr. Evarts put on is spectacles, and taking the letters from his nior counsel, carefully inspected them. Then they ere handed all around among counsel for both sides. fter a short conference with his colleagues Mr. Evarts id that he would not require Mr. Tilton to take ıe stand at that moment. The plaintiff's counsel bjected to having the matter deferred, and Judge eilson finally said that if the defendant's counsel ıereafter recalled Mr. Tilton they must have Mrs. oodhull in attendance. Mrs. Woodhull remained in ourt only a few minutes after delivering the letters.

Francis D. Moulton was the last important wit·ess, as he was the first, produced for the plaintiff. e sat stroking his mustache while Mr. Morris oked up the matter for questions from a scrap·ook. Mr. Moulton's first answer was start·ngly short and emphatic. He had been ked if he had used certain language scribed to him by Mr. Beecher. Taking his hand om his mustache, Mr. Moulton brought it down ickly upon his knee and ejaculated "No." The cisiveness of this negation drew every eye upon ıe witness. Mr. Morris read from Mr. Beecher's testimony various other passages, which the witness promptly, and in nearly every case unqualifiedly, contradicted in the same laconic manner. He also contradicted some of the statements of Gen. Tracy. The examination of Mr. Moulton was brief, and Mr. Evarts, who had held Mr. Morris very closely to the specific matter in the testimony of the defendant's witnesses which it was desired to contradict, declined to cross-examine him.

THE PLAINTIFF RESTS AND THE SUR-REBUTTAL BEGINS.

Only two witnesses, besides Mr. Moulton, were called by the plaintiff's counsel to-day before they rested their case. John N. Longhi, who is employed at Delmonico's restaurant in Broad-st., gave some minor evidence about the distance between the entrances to Delmonico's and Schedler's restaurants in Broad-st. Stephen Pearl Andrews was the second witness. In connection with the recalling of Mr. Andrews, Mr. Fullerton introduced a piece of new evidence in the shape of a lease of two offices in the building at No. 48 Broad-st. to James H. Blood, the husband of Mrs. Woodhull. The lease was dated May 23, 1872, and Mr. Andrews testified that Mr. Blood and Mrs. Woodhull did not occupy the premises until some time in the latter part of May.

Mr. Beach announced that the plaintiff had intended to recall Mrs. Moulton, but as she was sick she would not be called. He had been assured by her that she would deny, if summoned to the stand, the statement of Mr. Beecher that she had said to him, "Mr. Beecher, I don't believe the stories they are telling about you; I believe you are a good man," or anything equivalent to that. Mr. Beach further stated that the counsel for the defendant had agreed to accept his assurance of what Mrs. Moulton would say, and were willing to take it as if a denial of that character had been sworn to by Mrs. Moulton.

As soon as Mr. Beach had uttered the words "We rest," after dismissing Mr. Andrews from the stand, Mr. Evarts began the sur-rebuttal by recalling James Freeland. Mr. Freeland denied that on Dec. 26, 1870, Mr. Bowen and Mr. Beecher had had an interview at his house. These gentlemen, he said. had been at his house together in January, 1870, but not at any other time. Mr. Freeland said that Mr. Bowen must have been mistaken about the interview. Mr. Fullerton moved to strike out that remark of the witness.

"Oh, it was only a charitable remark," said Mr.

Shearman. "Well, we're not the subject of charity," retorted Mr. Fullerton.

Mr. Freeland was cross-examined by Mr. Fullerton, and proved to be somewhat unmanageable. Mr. Fullerton desired him to give more specific answers. "I will deal with you kindly," said Mr. Fullerton. "Yes, yes," replied the witness, "I know how you are going to deal with me."

Mrs. E. J. Ovington was recalled for the defendant to rebut the testimony of Mr. Martin regarding the interview at her house between Gen. Tracy and Miss Bessie Turner. She declared that at 2:30 p. m. on that day, when Mr. Martin said that he saw Gen. Tracy and Miss Turner in the back parlor, Gen. Tracy was not there at all, and Mr. Martin had not arrived. The witness said in a decisive tone, as the statements of Mr. Martin were read to her one by one, "It is false." Once after using that expression she remarked to Mr. Fullerton, who sat facing her, "It is false, Mr. Fullerton." "Well," replied the lawyer sharply, "repeat it again, Mrs. Ovington, if you think it becomes a lady. You need'nt address me in that manner."

The Rev. Edward Eggleston was recalled for the defense just at the close of the afternoon session, but he did not take the stand before the court adjourned.

THE PROCEEDINGS—VERBATIM.

MRS. WOODHULL APPEARS WITH SOME LETTERS.

The Court met at 11 a. m., pursuant to adjournment. Shortly after the opening of court, Mr. Evarts addressed the Judge as follows:

If your Honor please, I am expecting some papers in court in regard to which I may have to ask Mr. Tilton a question or two.

Judge Neilson—Yes; you may do so when they arrive.

Mr. Evarts—We would prefer not to have another witness put on the stand, as I expect to bring them into court in a moment.

After the lapse of several minutes, Mrs. Victoria C. Woodhull appeared in court.

Mr. Shearman—If your Honor please, we have subpenaed Mrs. Victoria C. Woodhull to produce certain letters for the purpose of cross-examination of the plaintiff in this case. Mrs. Woodhull is in attendance, but declines to produce any letters without being instructed by the Court that it is her duty to do so.

Mr. Fullerton—Well, the Court will not so instruct her, as a matter of course, because it is not her duty to produce them.

Judge Neilson—No; you may recall Mr. Tilton afterward, if you wish.

Mr. Evarts—Well, we understand, if your Honor please, that it is the right of the party under the process of *subpœna duces tecum* to bring letters into court, and that it is no part of that process that the witness having possession of the letters should be sworn as a witness.

Judge Neilson—No; you can have the letters without; but yet I do not feel like giving any direction to her.

Mr. Evarts—And that the right of the party is that a witness, as may be supposed in many cases, having no other interest or feeling in the matter except that it should not be a voluntary production of the papers, should have the direction of the Court to produce them. Now, our subpena is, as I understand, to produce certain letters. Our subpena—[to Mr. Shearman]—have you the subpena?

Judge Neilson—The party who has subpenaed a witness *duces tecum*, ought to get the papers or the witness bring them into court, whether the witness is sworn or not. But, under all the circumstances, I do not feel like giving that direction.

Mr. Fullerton—I don't think that is the rule, if your Honor please.

Judge Neilson—What?

Mr. Fullerton—I think that is not the rule, with all due respect.

Judge Neilson—A rule that we have applied in this court very frequently.

Mr. Fullerton—Well, Sir, I have never seen it applied myself. I think the practice generally has been, and so far as my experience goes, universally, to put the witness upon the stand and have the papers produced under oath; and I think that is the only way that your Honor gets the power to compel the production of the papers.

Judge Neilson—The witness is not compelled to produce the papers.

Mr. Fullerton—No, Sir; if they want the papers they must produce the witness and put her on the stand and have her sworn, and have them produced under oath.

Judge Neilson—Well, I could not give any direction to the witness about it at present.

Mr. Evarts—Well, we understand the law, if your Honor please, to be as your Honor has stated it, that it is not necessary that any other process than the *subpœna duces tecum* should be applied for, and the possession of papers does not make a person a witness in the cause. Then the question is whether the subpena is a proper exercise of the authority of the Court—whether it is a proper exercise of the process of the Court; that is, whether the papers sought for are properly papers which can come in evidence. Now, the subpena is. [Reading.]

All correspondence between Theodore Tilton and yourself, all books, papers, and documents in any way relating to any matter of difference between the said Tilton and the said Beecher.

Judge Neilson—Well, the subpena compels the witness to attend and bring the papers.

Mr. Evarts—Yes, Sir.

Judge Neilson—That is authority which the Court exercises in reference to the subpena.

Mr. Fullerton—She is subpenaed here as a witness——

Judge Neilson—Oh, no.

Mr. Fullerton—Not as an expressman [reading].

We command you that, all business and excuses being laid aside, you appear and attend before the City Court, &c., to testify and give evidence in a certain action now pending and undetermined in the said Court between the parties.

Naming them.

She is subpenaed to appear as a witness, and as a witness I suppose she is here.

Judge Neilson—I cannot give any direction about it, gentlemen.

Mr. Evarts—Now, if your Honor please, my friend is quite right in saying that it is in the form of a *subpœna duces tecum*. But this is a common law process by which the papers are brought into court, and the rule is familiar as I think—I suppose your Honor has had occasion often to practice it, as from your intimation it would appear that you had. Taylor on Evidence says, at Section 1,286:

And here it is clear that if the witness be called under a *subpœna duces tecum*, merely for the purpose of producing a document, which either requires no proof, or is to be identified by another witness, he need not be sworn, and if unsworn, he cannot be cross-examined. So if the witness be sworn under a mistake——

Though that is not important. In the case of Perry agt. Gibson, 1st of Adolphus & Ellis, before the King's Bench, [reading]:

On the trial of this case before Alderson, Judge, at the last Assizes of Cumberland, a person was called upon under a *subpœna duces tecum* to produce a book belonging to certain trustees appointed under an act of Parliament, which was in his custody as their clerk, and produced the book, but plaintiff's counsel, by whom he was called, having no other question to put to him, being prepared with other evidence to identify the book, did not propose to have him sworn. Counsel for defendant insisted that this should be done, in order that they might have an opportunity to cross-examine. The learned Judge refused to have the party sworn, and an application was made for a new trial on the ground of this being error in law.

Lord Denman, Chief Justice, says:

It is best not to disturb the question, which has been fully considered and decided.

Bell, Judge—I am of the same opinion; I always thought that the *subpœna duces tecum* had two distinct objects, and that one might be enforced without the other.

Judge Neilson—Well, if the witness has obeyed the writ, has attended in court, and brought the papers, that satisfies the writ. I am quite aware that the witness need not be examined, and that it does not imply the right to cross-examine. The only question is whether you could attach the witness for not delivering over the papers on your request, she being here.

Mr. Fullerton—Your Honor will perceive that there is a feature in this case entirely different from those which characterize the cases to which reference has been made. This *subpœna duces tecum* does not describe any particular paper, so as to enable us to identify it by that description when it is produced. There is an omnibus clause in it, to produce all papers of a certain character, without specifying particularly any, and hence it does not bring this case within the rule as laid down in the elementary books, or within the rule as administered in those decisions, because in those cases a particular paper was described in a way so that it could be readily identified when it was produced. But I do not think any one ever heard before, that a witness was compelled to come into court under a subpena of this character requiring them to produce all correspondence between A and B, and to hand them over at the will of the party sending the subpena.

Judge Neilson—You have no interest in this, Mr. Fullerton; you could not cross-examine the witness.

Mr. Fullerton—How, Sir?

Judge Neilson—You have no interest in this; you could not cross-examine the witness.

Mr. Fullerton—Unless she is put on the stand I could not, certainly. But if they put her on the stand, and she produces these papers and swears it is the correspondence between herself and the plaintiff in this case, then, if your Honor please, I will have.

Judge Neilson—You would have a right to cross-examine her on that subject.

Mr. Fullerton—Yes, Sir.

Judge Neilson—But they may identify the papers by another witness.

Mr. Fullerton—But the question is, whether she is compelled to come here and hand over these papers under this general clause of the *subpœna duces tecum*.

Mr. Evarts—How is that a question with which the plaintiff has anything to do?

Mr. Fullerton—Well, I suppose the plaintiff has got something to do with almost anything that takes place during this trial; we mean to have a hand in, at all events, on all proper occasions.

Mr. Evarts—Well, on all proper questions.

Mr. Fullerton—Yes, Sir; I think that is competent.

Mr. Evarts—But the process of the court, as the King's Bench have very properly pointed out, and as your Honor is familiar with the practice in this court, as well as in other courts in the State, the rule is that the process brings papers within the control of the court. The witness, under this process of the court, is in court with the papers in her possession. Now, it may be a question for a witness whether he or she has reasons for not wishing to produce letters or papers. But that is not a question for the opposite parties, not in the least. What we are now discussing is whether under this subpena, we asking the witness for these letters of Mr. Tilton, your Honor

will direct them to be produced. If she receives the direction of the court to produce letters, if that is the right of the party under a *subpœna duces tecum*, why then she is placed in the position of obeying the law. The question of swearing or not swearing has nothing to do with that question—nothing whatever.

Judge Neilson—I do not feel like giving any direction at this stage of the case.

Mr. Evarts—In the case of Somers agt. Moseley [4 Tyrwhitt, 168] it is said [reading]:

There must have existed a common law right in the Crown for the purposes of justice to compel by subpena the attendance of every person cognizant of the subject matter of the suit, and also to produce any document bearing on that subject matter though in the possession of a stranger to the suit. Such a stranger is only called to produce a paper as and for the required document, not to identify it, which would be done by extrinsic evidence. In numberless cases, as the party producing a paper is wholly ignorant of every circumstance of the case, it would be absurd to swear him as a witness. When a party called on his *subpœna duces tecum* to produce the document required disobeys the writ by not producing it, I have no doubt that he is liable to attachment. Whether he could be required to be sworn, not to give general testimony in the cause, but to make true answers as to the custody of the document only, is another question. But we think that he has no right to require the party who calls him to have him sworn in that way which would make him a witness in the case for all purposes, for he might be a mere stranger to the document, through having the custody of it. The witness, therefore, in this case was properly called on to produce the warrant, and that production was properly enforced without swearing him.

Mr. Fullerton—That is the warrant described in the writ, in the subpena.

Mr. Evarts—Well, it is not a question of that; it is not a question of the opposite party; it is the question of a witness proposing to the court or not that he or she has a right to be sworn in her own interest—not a question of the parties. I suppose no witness has that right.

Judge Neilson—No witness has that right.

Mr. Evarts—And it is for the court, therefore, to say whether this lady shall be advised that the letter entitles us, under this writ, to this correspondence.

Judge Neilson—It entitles you to that correspondence undoubtedly, unless there is some special personal objection, upon her part, that is to be considered. If there is, that remains to be tested in another proceeding.

Mr. Evarts—I do not understand that there is any personal objection on her part, except that it should not be a voluntary production of the letters.

Judge Neilson—There is nothing to be made by calling the witness and swearing her, because there could be no cross-examination, except——

Mr. Evarts—No, Sir; there is no question of swearing at all. Mrs. Woodhull——

Mr. Shearman [to Mrs. Woodhull]—I call for those letters of Mr. Tilton.

[A conversation in low tones here took place between Mrs. Woodhull and Mr. Shearman and Mr. Evarts.]

Mr. Fullerton—I think it is due to the witness, Sir, and due to the proper administration of justice, that your Honor should inform the witness that she is not called upon by the Court to produce those papers.

Judge Neilson—She has heard what I have said; I have not given any directions.

Mr. Fullerton—There is not any objection to Mrs. Woodhull going upon the stand at all.

Mr. Evarts—She has been advised that the writ entitles us to the production of the papers.

Mr. Fullerton—Provided she sees fit to give them.

MRS. WOODHULL MAKES A SPEECH.

Mr. Evarts—Ah! sees fit. The witness can say something to your Honor.

Mr. Shearman—She desires to say something to your Honor.

Mrs. Woodhull—Your Honor, I have a very few unimportant letters in my possession, and I feel that if they bring me in at this stage of the proceedings an explanation is due. They are letters which are entirely creditable to myself as well as the gentleman that wrote them. I have no disposition to keep them from any court of justice. But perhaps you are not aware—I cannot say you are not aware—perhaps you do not remember that I have been imprisoned several times for the publication of this scandal. During that time my office was ransacked, and all my private letters and papers taken away from me. Therefore I have reason to believe that some of my private letters are in the hands of the defense, as well as of the prosecution. They may not be; that is simply my private opinion; and the very few unimportant letters that are left in my possession of course can result in no disadvantage to myself, though, of course, I do not wish to be held to act from any thought of that nature. I am perfectly willing to give them with this explanation.

Judge Neilson—Well.

[Papers produced by Mrs. Woodhull and handed to Mr. Shearman.]

MR. TILTON'S CROSS-EXAMINATION AGAIN DEFERRED.

Mr. Evarts—We will not require Mr. Tilton to take the stand at this moment, Sir.

Judge Neilson—Very well. Now, Mr. Morris, proceed.

Mr. Fullerton—I think, Sir, under the present circumstances, that if they pursue the cross-examination of Mr. Tilton at all they ought to do it now.

Judge Neilson—Oh, I don't think that is material.

Mr. Fullerton—Well, Sir, it may be very material.

Judge Neilson—I think not.

Mr. Morris—It may be, to us.

Mr. Fullerton—They have got possession now of certain letters, and it may be necessary for us to explain those

letters or documents, or whatever they are. We are in a condition now, as your Honor knows, to attempt, at least, to do so.

Judge Neilson—You will have the opportunity of explaining or disproving them if the matter comes up at all.

Mr. Beach—The witness is now in court.

Mr. Fullerton—The witness who produces these papers is now in court. If they examine Mr. Tilton in regard to these letters some days hence, your Honor perceives it takes us at a disadvantage. We do not know where this witness will be at that time. She may be beyond the jurisdiction of the court.

Judge Neilson—I think your learned opponent ought to tell you what his purpose is.

Mr. Fullerton—What, Sir?

Judge Neilson—He ought to tell you what his purpose is.

Mr. Fullerton—Oh, I know what his purpose is.

Mr. Beach—Well, I don't know about that. Let us know what his purpose is. We have not seen the letters.

Judge Neilson—Well, whatever suggestion I could make about it now would not preclude their calling Mr. Tilton hereafter if they should see fit to do so.

Mr. Fullerton—It is all under the direction and control of your Honor whether they shall pursue the cross-examination of Mr. Tilton now further, or whether they shall be permitted to do it under favor hereafter; and the administration of that rule, as a matter of course, would be such as would subserve the ends of justice. Now, if your Honor perceives that we may be taken hereafter at a great disadvantage by the postponement of the further cross-examination of Mr. Tilton, I suppose your Honor would so order and direct as to prevent any such thing occurring.

Mr. Evarts—We are subject to your Honor's direction whenever we shall make an application. That we understand.

Judge Neilson—I understood that you were going to further cross-examine Mr. Tilton.

Mr. Evarts—Yes, Sir.

Judge Neilson—Why not do so now?

Mr. Beach—We have been waiting an hour for that purpose, under the declaration of the counsel that they wished to put Mr. Tilton on the stand for cross-examination, and were waiting for those letters; an hour has been spent waiting for them to proceed with their cross-examination.

Mr. Evarts—That does not make any difference.

Mr. Beach—Yes, Sir; that is a circumstance applying to your Honor's discretion, and it is most material.

Mr. Evarts—I have stated to your Honor that we will not ask them to put Mr. Tilton on the stand at this moment. They may go on with their case. But now they apply to your Honor to preclude us from making the application hereafter.

Judge Neilson—I have signified that I should make no order of that kind.

Mr. Evarts—Yes.

Mr. Fullerton—Your Honor might direct them to go on now, if they design to cross-examine Mr. Tilton further hereafter.

Judge Neilson—That, still, would not preclude them hereafter. If they desired to cross-examine him I would not make any order that would preclude them.

Mr. Fullerton—Well, it is within your Honor's power to do so.

Judge Neilson—I think not.

Mr. Fullerton—We have waited now from 11 until 12 o'clock for the purpose of enabling them to get possession of those letters, and they have got possession of those letters, and the person who produced the letters is now in court, subject to your Honor's jurisdiction—present to give any explanation, if any be needed, of those letters, or any part of them. Now, it does not seem to be any hardship to require the other side to go on at this time with their cross-examination.

Judge Neilson—Mr. Evarts, will you agree — I think it is reasonable you should — that if you hereafter, after to-day, call Mr. Tilton for cross-examination, as you have suggested you might, you will also have this witness, who produces these papers, then in attendance? I think you ought to say you will.

Mr. Beach—Not after *to-day*, Sir; after *now*.

Judge Neilson—Well, when you recall Mr. Tilton will you agree to have this witness in attendance?

Mr. Evarts—This lady is a free person, if your Honor please, and, I have no doubt, has as much will of her own as most people; at any rate, any lady, or witness, has control of her own movements when she is not needed in court.

Judge Neilson—Well, it would compel you to subpena her.

Mr. Evarts—Well, it would be only the *subpœna duces tecum*.

Mr. Beach—Well, Sir, that is a subpena that commands her presence as well as that of the papers. She is here now in court, in obedience to that subpena.

Judge Neilson—You appreciate my suggestion, I suppose, Mr. Evarts?

Mr. Evarts—I do, Sir. It is a proper suggestion; and when the circumstances under which we ask Mr. Tilton to be recalled for cross-examination are before the Court, if there is then any condition of impropriety about it of course your Honor will so order—that is to say, you will dispose of the question whether you will allow us to recall him or not.

Mr. Fullerton—Your Honor has waited for them to procure possession of these papers, and have indulged them with time to read them. They have read them; they have perused them all.

Mr. Beach—Waited under their announcement that they wanted to cross-examine Mr. Tilton.

Mr. Fullerton—They know their contents; they know what use they want to put them to; they know what questions they can frame in regard to them; and therefore I do not see that there is any impropriety in asking them to go on now.

Judge Neilson—This is understood then, that if your learned opponent declines to proceed now with Mr. Tilton, and desires to call him hereafter for cross-examination, his right to do so shall be conditioned upon his having Mrs. Woodhull in attendance at that time.

Mr. Evarts—We understand that it will be in your Honor's power to apply that condition.

Judge Neilson—I make that announcement now. It would be a very unpleasant thing to enforce it, perhaps, unless it was understood.

Mr. Evarts [continuing]—And we may have a very good reason for not wishing to break the cross-examination in two. We may not have all the letters that we desire or expect.

Judge Neilson—Well, we will proceed under that condition—that if they call Mr. Tilton hereafter they shall have this witness in attendance.

Mr. Fullerton—Well.

JOHN NAPOLEON LONGHI RECALLED.

John Napoleon Longhi, a witness for the plaintiff, was recalled and further examined.

By Mr. Fullerton—Since you were on the stand before have you measured the front premises occupied by Shedler in Broad-st., New-York? A. Yes, Sir.

Q. What is the distance between the entrance to Shedler's restaurant and the entrance to Delmonico's restaurant? A. As near as I can judge, 24 feet.

Q. And between the entrance to Shedler's restaurant and Delmonico's is there another entrance? A. Yes, Sir.

Q. An entrance to what? A. For offices.

Q. In what building? A. In Shedler's building.

Q. What is the width of that entrance? A. Eight feet, about.

Q. Shedler's restaurant is below the level of the street? A. Yes, Sir; down stairs.

Q. How many steps down? A. I should judge, seven.

Q. And between that entrance and the entrance to Delmonico's, I understand you to say that there is a third entrance of eight feet in width, which leads to the office above Delmonico's restaurant? A. Yes, Sir.

Mr. Fullerton—That is all.

Judge Neilson—Mr. Shearman, do you wish to ask this witness anything?

Mr. Shearman—No, Sir.

Judge Neilson [to the witness].—That is all, Sir. [To plaintiff's counsel]. Call the next witness.

FRANCIS D. MOULTON RECALLED.

Francis D. Moulton, a witness on behalf of the plaintiff, was recalled and further examined as follows:

By Mr. Morris—In your interview with Mr. Beecher on the 30th of December, 1870, in reference to delivering up the retraction, as it is called, did you use this language or language of similar import. Mr. Beecher says, speaking of that interview:

The first sentence, I think, was one of the arguments that he used when I said that I should retain that for self-defense, and his statement was that I should take a generous view, and act so as should be for the interest of all parties concerned.

Did you use any such language as that—that he should take a generous view? A. [Emphatically] No.

Q. I call your attention to this——

Mr. Evarts—Will you refer me to what you have just asked about, Mr. Morris?

Mr. Morris—It is near the top, on the left hand side of page 768, Part 11. [To the witness.] Now, I call your attention to this language:

Mr. Evarts—What page?

Mr. Morris—Page 770, commencing at the bottom of the second left-hand column. [To the witness.] This is the language:

But that it seemed to me that if she had been led to transfer her affection from her husband, by reason of my presence, I could not but feel that I was blameworthy; that she was a woman so quiet and so simple—her exterior life was so far from that, that I had never suspected it.

Did Mr. Beecher, in that interview——

Mr. Evarts—Wait a moment. What is the date?

Mr. Morris—Jan. 1.

Mr. Evarts—The witness has given a full statement of that, as your Honor knows, and Mr. Beecher has given a full statement of that; and it does not seem to me that the inquiries my learned friend is now making are in the nature of express contradiction. That is, there is no definite statement of the language, of what this witness is alleged by Mr. Beecher to have said to him, which the witness now is called upon to contradict or to qualify.

Judge Neilson—His right is limited to calling the attention of the witness to any new expressions used by the other witness, that he deny or explain them so far as he can.

Mr. Morris—Certainly. Suppose Mr. Moulton on his cross-examination should relate an interview as having occurred on the 1st of January that occupied a minute, and Mr. Beecher should go upon the stand and relate an entirely different interview, which occupied an hour; would we have no right to examine Mr. Moulton with reference to the new matter?

Mr. Evarts—I have never denied that; but that is not this case.

Mr. Morris—That is this case precisely.

Mr. Evarts—There was an interview that occupied

two hours or more, in the view of each witness, and each witness gave his own view of it.

Judge Neilson—This witness cannot repeat the view of it that he gave before. All he can do is to speak of specific expressions not used by him, but used by the other witness. I think you can go that far.

Mr. Morris—That is as far as I propose to go.

Mr. Evarts—That we have assented to as the correct rule of law when announced by your Honor. The question is, of its application to the case as it arises. Where do you begin, Mr. Morris?

Mr. Morris—At the close of the page. [To the witness:] The question is, whether in that interview Mr. Beecher used that language? A. He did not.

Q. Or language of similar import? A. He did not.

Mr. Morris—I read from the same column, Mr. Evarts, page 771. [To the witness.] Did you use to Mr. Beecher this language [reading]:

Mr. Moulton said to me, sitting in his chair, [here Mr. Beecher put his leg over the arm of the chair, in illustration,] with an intelligent look, "Why, there is no doubt about that, Mr. Beecher. Elizabeth Tilton loves your little finger more than she does Mr. Tilton's whole body."

Mr. Evarts—What part of the column is that?

Mr. Morris—About two-thirds of the way down—the inside column. [To the witness.] Did you use such language as that to Mr. Beecher on that occasion? A. No, Sir.

Q. Or, in substance, anything of that kind? A. No, Sir.

THE WRITING OF THE LETTER OF CONTRITION.

Q. On the same page, at the bottom of the outside column, right hand page, I read this now. I read this paragraph, Mr. Moulton, from Mr. Beecher's testimony. After the Letter of Contrition was read, he says:

He (Mr. Moulton) rose up from the table and gathered up the papers; they were on separate sheets, and a sort of afterthought came to him, and he said, "Sign this;" "you better sign this." I said, "No, I cannot sign a letter that I have not written." "Well, but," said he, "it won't have the influence with Mr. Tilton that it will if it has your name." "But," said I, "this is your memorandum; you take that and talk on those points to Mr. Tilton, and tell him what you have heard me say, and he believes you; you are his friend." "Well," he says, "it will be a great deal better if you just put your name to this in some way, to let him see that it is authorized."

Mr. Evarts—One moment, Mr. Moulton. I think, if your Honor please, that was all gone into on the direct and in the cross-examination of Mr. Moulton. Your Honor will remember that was a part of our case while he was under examination; that that was the nature of this paper, and there does not seem to be anything new in Mr. Beecher's statement of it itself. It was not the paper that he wrote or that he signed in any other way than as an authentication, that it might be useful in Mr. Moulton's hands.

Mr. Beach [to Mr. Morris]—Refer back, and put your question.

Mr. Evarts—I don't care about insisting on it, but I believe that is the truth of it.

Mr. Morris—No. [To the Witness]—What is your answer to that? Did any such conversation as that take place between you and Mr. Beecher? A. No, Sir.

Q. Now, after you had written the Letter of Contrition, did you gather up the letter as described here in any manner from the table before it was signed by Mr. Beecher? A. No. Yes, I did, so that he might read them, but not as he describes it—not giving the meaning that he did there.

Q. Mr. Beecher says that the close of that interview was the reading of the letter; is that correct, and, if so, by whom was it read? A. At the close of the interview was the reading of the letter?

Q. At the close of that interview. A. The letter was read, Sir, before it was signed.

Q. I call your attention to this language on page 773, a question by Mr. Evarts:

When Mr. Moulton went off—before he went off with this memorandum which he had made—was anything said by him about his burning or returning it? A. Yes, Sir.

Q. What was that? A. He said—treated it as a mere memorandum to be read, and said after he had used it he would either return it to me or burn it.

Did anything of that kind occur between you and Mr. Beecher, in reference to that letter? A. No, Sir.

Q. This is the language. I could not turn to it at the moment. I will read this paragraph in Mr. Beecher's examination. I read from my scrap-book. It is under the heading of "The Letter of Apology." You (Mr. Evarts) will find the heading:

I was walking to and fro, and he occasionally would ask me, when I was speaking rapidly and with some emphasis—he would say: "Did you say so and so?" or "Did you say?" or something to that effect, and I would check myself for a moment, and make some reply, "Yes," or substantially that, or something like that, and then I would repeat—repeat one thought and another thought, attempting to go over in my mind somewhat the points in the conversation that had immediately preceded this, and which occupied my feelings toward Mr. Tilton and his family. That was the last part of the interview before the reading of the memorandum.

Now, did you stop Mr. Beecher during the writing of that letter and ask him whether you had taken it down correctly or not, and if so, state what was said upon that point during the composition—the writing of the "Letter of Contrition?" A. Well, Sir, I don't remember having stopped Mr. Beecher in the dictation of his letter to ask him whether or not I had substantially written what he had said. The letter was a dictation, word for word, from his own lips.

Mr. Evarts—That last part I ask to have struck out, if your Honor please.

Judge Neilson—The last expression is struck out, as being part of the original evidence.

Mr. Morris—This he has testified to already. [To the witness.] The latter part of this is correct, then—the last part of the interview—this was the last part of the interview; that is, the dictation of the letter, before the reading of the letter? A. The letter was finished before it was read, certainly.

Q. And then immediately read? A. It was immediately read.

Q. As stated by Mr. Beecher here? A. Yes, Sir.

Mr. Shearman—It is well to call attention to the fact that this is certainly an error of the stenographer. It should be the writing of the memorandum, instead of the reading of the memorandum. Stenographers have almost the same sign for "read" and "write," and they have got it reading the memorandum instead of writing it.

Mr. Morris—What authority have you got for that assertion?

Mr. Shearman—The context shows.

Mr. Evarts—The witness says he never read it, and it was never read to him. Mr. Beecher says he never read it, and it never was read to him.

Judge Neilson—Well, we will correct that hereafter.

Mr. Morris—Well, the witness (Moulton) says that is correct, whether it is an error of the stenographer or not.

Mr. Evarts—The witness has said it was read; that we understand.

THE INTERVIEW OF FEB. 3, 1872, DENIED.

By Mr. Morris—Mr. Beecher, in relating an interview he had with you, in which you related an interview which you had with Mr. Bowen, says that you told him Mr. Bowen made use of this language at your house in Clinton-st. You said to Mr. Beecher:

"It is not for me to tell you what to do," and he said he looked up at the portrait that was hanging on the wall, and said: "Why, I shall never be reconciled to that man; I shall never be able to be reconciled to that man again."

Q. The portrait of whom? A. My portrait; the Paige portrait.

Did you ever have that portrait in your house at Remsen-st?

Mr. Evarts—Wait a moment.

The Witness—I beg your pardon.

Mr. Evarts—This is a question of fact; this is not a question of contradiction of Mr. Beecher. Mr. Beecher says that Mr. Moulton described to Mr. Beecher the interview which he (Mr. Moulton) had with Mr. Bowen. That is what I understand to be the point here. Now, the basis of the contradiction of Mr. Beecher would be whether he told Mr. Beecher that; not whether he had a portrait.

Judge Neilson—That is the first step—whether he said that thing.

Mr. Evarts—If they wish to ask that question, that is a question they may ask, no doubt.

Judge Neilson—They may ask that question.

Mr. Beach—Why, if your Honor please, this very question was fully discussed yesterday. Does it make any difference as to the order of the question?

Judge Neilson—I recommended that question.

Mr. Beach—If you recommended it, very well.

Mr. Evarts—It is not for me to suggest that they should ask that question, for I don't know whether they wish or intend to.

Mr. Morris—Yes, I intend to.

Mr. Evarts—All I say is, this inquiry is not of that nature. This inquiry——

Mr. Morris—There is no use arguing it. I will put that question, as suggested by the Court.

Judge Neilson—Put it as you were putting it when you were interrupted.

By Mr. Morris—Now, did you use that language to Mr. Beecher, or language of similar import? A. You mean the language with reference to the portrait?

Q. Yes, that language I read? A. No, Sir.

Q. Did you ever have Mr. Beecher's portrait—the one spoken of—in your house in Clinton-st.? A. No, Sir.

Q. In the month of January, 1871, did you use this language to Mr. Beecher, in an interview with him?

He never exactly said that; he spoke of what a grand thing it would be if Tilton and I could join forces on *The Christian Union*.

Mr. Evarts—What page is that?

Mr. Morris—788.

The Witness—No, Sir, I never said that.

Mr. Morris—I read this paragraph purporting to be an interview had between you and Mr. Beecher on the 3d of February, 1872.

Mr. Shearman—What page?

Mr. Morris—Page 833, the same part [Reading]:

Q. Before writing this letter to Mr. Moulton of Feb. 5, 1872, a long letter, had anything passed between you and Mr. Moulton which induced or led you to write it? A. Yes, Sir.

Q. How did that occur, and what was it? A. I went on a Saturday morning over to the office to see Mr. Moulton; it had been a troublous time from week to week all along there; things were breaking out; I went to see him on some one of these occasions. I sat for some length of time—some little time before he came in, and when he came in he did not see me—on purpose—and went about his business, continuing for—kept me waiting for a considerable length of time and then gave me rather a cold recognition; he was passing out and I got up and went out with him—I must say I forced myself on him; he was very distant; he seemed more nearly in the mood of anger with me than I had ever seen him before, and when I entered into some conversation with him he was very abrupt, and even more; I began to make some explanation to him of Mr. Tilton's demands upon me that I should—that I was not fulfilling the understanding and the intent of our cordial agreement, and that my friends were also doing me a great deal of damage—Mr. Tilton's representation by—doing

him a great deal injudiciously, too; Mr. Moulton replied with a tone that was cutting to me—the substance of it was it was very well for me, that I had all that I wanted—wealth, and a home, and a church, and my friends—it was very well for me to slight or pay little regard to Mr. Tilton's condition and feelings; that he was without support; that he was suffering poverty; that he was being injured by those that were flattering me, and he bore down with some severity upon me in the matter; the conversation was peculiarly trying to me.

Q. Did you, on the Saturday of the 3d of February, 1872, have any such conversation as that with Mr. Beecher? A. I did not.

Q. Did you on that day have any conversation with him whatever? A. My impression is that I had not; that I was at home ill.

Q. Did you see him at your office in New-York? A. I think not, Sir.

Q. Did you treat him with any harshness, or coldness, or severity, on that day? A. No, Sir. [To Judge Neilson.] I would like to say to your Honor that I am perfectly satisfied that I never had any such interview; I know I never had any such interview as Mr. Beecher describes. I have answered that my impression is I was at home ill on that day; is it proper for me to express the basis of that impression?

Judge Neilson—No; you are confined simply to answering in regard to specific statements made by Mr. Beecher to which your attention is called.

The Witness—I consulted my physician about it; that is all, Sir, and I wanted to know whether I had a right to.

By Mr. Morris—When was it you first learned Mr. Beecher had met Mr. Tilton in the cars and had a conversation with him? A. Through a letter of Feb. 5, 1872.

Q. Through this same letter? A. You have not referred to the letter before.

Mr. Morris—The letter of Feb. 5, I referred to; and that was the first you learned the fact?

Mr. Evarts—I object to this. This is not to contradict anything.

Judge Neilson—Get at the specific sentences you want to correct, if you want to lay the foundation.

Mr. Morris—I will state the reason of those questions. I am calling the witness's attention to the news part of this letter. This letter conveyed to him certain news, certain information; and, I suppose, it is proper for us to show that the first information that he had of this matter was derived from the letter itself, and that Mr. Beecher had not prior to that communicated this fact to him.

Judge Neilson—Who put in that letter?

Mr. Morris—The letter was put in by us.

Judge Neilson—Well.

Mr. Evarts—It is important if it was a part of the chief examination.

Judge Neilson—I think, therefore, any inquiry you [Mr. Morris] have to make in regard to the letter should have been made then, but you can read any new statement he made in respect to it.

Mr. Morris—But the interview has been testified to by Mr. Beecher, and a cause assigned for the writing of this letter that did n't exist at the time. That they have shown by their defense that it was in consequence of this interview that he had had with Mr. Moulton, on the Saturday preceding, that induced the writing of this letter. Now, this letter conveyed to Mr. Moulton certain information, certain news, which I submit we have a right to show was the first knowledge that Mr. Moulton had with reference to those matters.

Judge Neilson—If Mr. Beecher attributed knowledge to him at an earlier day, of course you can contradict that, as you can any other expression he used. I think it is economical to keep very close to the exact expression, so that there will be nothing to complain of.

OTHER CONTRADICTIONS OF MR. BEECHER.

Mr. Morris—Yes; that we purpose doing.

[To the Witness.] With reference to the arbitration. Mr. Moulton, Mr. Beecher says:

Mr. Moulton talked with me about whether there could not be an arbitration and quiet settlement of all our difficulties, including the payment of the debt owed by Mr. Bowen to Mr. Tilton, and the burying of all difficulties finally and out of sight; and wanted to know if it would not be a good thing to ask some of my influential friends in the church to act in the matter as a consulting committee.

Q. Did you have, with reference to that, any such interview as that?

Mr. Shearman—What page?

Mr. Evarts [to Mr. Morris]—What page, Judge?

Mr. Morris—Page 39. [To the witness.] Did you use that language or any language of similar import?

Mr. Evarts—Which column?

Mr. Morris—Inside column, the second long paragraph.

The Witness—Mr. Evarts, I understand, stops me from answering for the present.

Mr. Evarts—Yes; I want to get the part.

Mr. Beach—Go on and answer.

Mr. Morris—Answer the question.

The Witness—I didn't ask that a committee of his friends be appointed, if I understand the last part of your question.

Q. Did you suggest that the differences and matters between him and Mr. Tilton should be made the subject of that arbitration? A. No; I didn't suggest to him that the matters be made the subject of arbitration.

Q. Was anything upon that subject said between you and him? A. With regard to arbitration?

Mr. Morris—No.

Mr. Beach—[To Mr. Morris]: Read that again.

Mr. Morris—I will read it again:

Mr. Moulton talked with me about whether *there* could not be an arbitration and quiet settlement of all our

difficulties, including the payment of the debt owed by Mr. Bowen to Mr. Tilton, and the burying of all difficulties finally and out of sight.

A. No, Sir; it was the settlement between Mr. Bowen and Mr. Beecher that was talked about, not the settlement between Mr. Beecher and Mr. Tilton.

Q. At the interview of June 1—Sunday night, June 1, 1873——

Mr. Shearman—Be kind enough to give the page, Mr. Morris.

Mr. Morris—860. Was it agreed between you and Mr. Beecher that Mr. Kinsella should be sent for to see Mr. Beecher in the morning? A. On what day was that, Sir?

Q. On Sunday night, June the 1st, 1873.

Mr. Evarts—Well, that was gone into.

The Witness—No.

Mr. Morris—No, Sir; not that point.

Mr. Evarts—All that interview.

Judge Neilson—But the sending for Mr. Kinsella seems to be the point. Is that stated?

The Witness—No.

Mr. Morris—No, Sir. In reference to the interview of May 31, 1873, Mr. Beecher says——

Mr. Evarts—Name the page, Judge.

Mr. Morris—866. [Reading]:

I don't remember the consecutive interview; it was an interview in which I did pretty much all the talking, and spent my time in denouncing Mr. Tilton very largely.

At that interview did Mr. Beecher denounce Mr. Tilton? A. On the evening of May 31?

Q. May 31, 1873? A. No Sir; no.

Q. When Mr. Beecher went to your house on the 30th of December, 1870, and had the interview with Mr. Tilton there that has been testified to, did Mr. Beecher request you to be present at that interview? A. He did not.

Q. I will read this card, Mr. Moulton, with a view of asking you a question about it.

Mr. Shearman—What card?

Mr. Morris—This Tilton card; only a portion of it is here. You understand the card. [Reading]:

I learn from a friend that Mr. B., in his statement to you, has reversed this, and has done me justice.

The card written by Mr. Beecher—the proposed card, to be presented to the Investigating Committee by Mr. Tilton.

Mr. Evarts—Wait a moment. It is about that card?

Mr. Morris—That card—the card written by Mr. Beecher for Mr. Tilton—the proposed card for Mr. Tilton to make to the Investigating Committee—a brief card.

Mr. Evarts—Where is it? Judge, haven't you got the 12th Part.

Mr. Beach—I think you will find it on page 63.

Mr. Morris—I hadn't the 12th Part when I went over this. [To the witness.] The question is, whether you suggested to Mr. Beecher the writing of that card? A. I did not.

Q. In referring to an interview that Mr. Beecher had with you in January, 1871, he says that the mortgage upon Mr. Tilton's house was referred to, and——

Mr. Morris here consulted with Mr. Beach.

Mr. Shearman—Page 107.

Mr. Morris—At the interview held at your study in the early part of November, 1872?

Mr. Evarts—You pass over that.

GEN. TRACY CONTRADICTED.

Mr. Morris—I pass over that point. Mr. Tracy says, in speaking of this Letter of Contrition, that you said:

He said in that conversation, "It is a memorandum, or notes, of a conversation I had with Mr. Beecher."

Did you say that, or anything of that import, to Mr. Tracy with reference to that letter? A. No.

Q. And Mr. Tracy says that he said, in referring to that letter, that "this paper would simply seem to imply that Mr. Beecher had been attempting the virtue of Mrs. Tilton without success;" did Mr. Tracy make use of any language of that kind? A. No.

Q. To you or in your presence? A. No.

Q. In reference to that letter? A. No.

Q. Mr. Tracy uses this language in referring to what has come to be known as the "True Story:"

Thereupon Mr. Tilton unfolded, as I remember, a covering of a manuscript which he brought with him into the room, and began to read a statement.

Now, did Mr. Tilton at that interview read the "True Story," or any part of it? A. No, Sir.

Q. Was it there? A. No, Sir.

Q. Do you know whether it had been written at that time or not? A. It had not been written.

Mr. Evarts—Well, that I object to.

Judge Neilson—That is not material.

Mr. Evarts—It is wholly immaterial whether it was written or not, if it was not there.

Mr. Morris—I read this paragraph, Mr. Moulton, and ask your attention to it, in reference to this same interview. Mr. Tracy says:

I discussed with Mr. Tilton the probability of the truth of his wife's statement in regard to the charge of improper proposals. I remember saying to Mr. Tilton in that conversation: "Mr. Tilton, I can understand how you may believe Mr. Beecher has been guilty of that offense, and I can understand possibly how your wife may have conceived that he had intended to make to her an improper suggestion; but now isn't it more probable that this statement of your wife, that Mr. Beecher made an improper proposal to her, is the result of misunderstanding on her part?"

Was any such language as that used by Mr. Tracy in that interview? A. No, Sir.

Q. Was there any discussion whatever upon the subject of improper proposals? A. Not a word, Sir.

Q. Or any allusion to it? A. Nor any allusion to it, except so far as the letter of retraction alluded to the improper proposals, Sir, or improper advances.

Q. Mr. Tracy says in that interview he made this proposition:

I said, to meet that, "Mr. Tilton, how would it be if you and Mr. Beecher and your wife can agree as to what the real facts are in this case—how will it do for you and Mr. Beecher to go before one or more eminent citizens of Brooklyn and make a statement of the facts?"

Was any such proposition as that made by Mr. Tracy—any such proposition or suggestion made by Mr. Tracy during any part of that interview? A. No, Sir.

Q. Following that he puts this language in the mouth of Mr. Moulton:

Mr. Moulton asked me in substance what, in my judgment, could be done for Mr. Tilton if this matter was buried in this way. I said I thought the only course for Mr. Tilton was to go to Europe.

Did you use the language imputed to you in the first part? A. Won't you repeat the language of the first part.

Q. "Mr. Moulton asked me in substance what, in my judgment, could be done for Mr. Tilton if this matter was buried in this way"—that is, by making a statement to some eminent citizens. A. What in my judgment could be done for Mr. Tilton?

Q. Yes. A. No, Sir.

Q. I will read the balance of this paragraph, commencing where I left off:

Eminent citizens of Brooklyn who are strangers to this controversy now, and in whom the public have confidence, and there make a mutual statement of what the real truth is in this matter, out of which all this story has sprung, and then destroy the documents. I said that course would prevent either one from going back upon the other, because he will be bound by the statement that he has made to this person or these persons, who always can state what the fact was, and Mr. Beecher cannot go back on you nor you on Mr. Beecher.

Now, did Mr. Tracy make any statement of that kind, or any suggestion, or use that language, or any language of any similar import. A. There was no proposition made by Mr. Tracy to leave it to one person or to any number of persons, and then destroy the documents; nothing like that, Sir.

Q. Was anything said, Mr. Moulton, about burning the papers and documents at the time of the arbitration between Mr. Tilton and Mr. Bowen?

Mr. Evarts—What is the question? Excuse me.

Mr. Beach—Was anything said about burning the documents at the time of the arbitration?

Mr. Morris—That you heard. Did you hear anything? A. There was nothing said, Sir.

Q. Were you present during the proceedings before the arbitration? A. I was present all the time, Sir.

Q. Did you hear before the arbitration any matter discussed or talked about other than the money claim of Mr. Tilton against Mr. Bowen growing out of the contract? A. Yes, an expression of a desire by Mr. Claflin to have Mr. Bowen sign the draft of the Tripartite Covenant, made by Sam Wilkeson.

Q. To whom was that remark made? A. To whom was that remark made? Made by Mr. Claflin to me.

Mr. Evarts—It is not very material, but it is not a contradiction.

Mr. Beach—Yes it is, directly Sir.

Mr. Evarts—It is not in regard to any statement.

Mr. Beach—Why yes, it is.

Mr. Evarts—This witness gave his account of what occurred at the arbitration; and the other gentlemen have given their account.

Mr. Beach—That says that something more occurred in regard to the "Tripartite Covenant."

Judge Neilson—To that extent you can interrogate him.

Mr. Beach—Very well, Sir; what reply did he make to it? They say that it was agreed there that the "Tripartite Covenant"——

Mr. Evarts—That is what the arbitrators have all stated.

Mr. Beach—The arbitrators did not all state that; but, nevertheless, we ask this question.

Mr. Morris—What reply did you make, if any? A. What reply did I make to Mr. Claflin? I don't remember the reply that I made; it was a matter entirely within his sphere—something that he understood himself.

Mr. Beach—But what was it Mr. Claflin said? He said it to you, I understand? A. He said it to me, yes, Sir; he said he didn't care what there was in Bowen's soul, Bowen must sign that paper; that is what he said to me; I remember that distinctly; is that the answer?

Mr. Beach—Well, was that at the time of the arbitration?

The Witness—No, Sir; not at the time of the arbitration.

Mr. Beach—Well, you were asked at the time of the arbitration.

Mr. Morris—I was asking you simply at the time of the arbitration.

Mr. Beach—At the meeting of the arbitrators.

The Witness—The question was not put in that way, Mr. Beach.

Mr. Evarts—Well, this is all to be struck out.

Mr. Beach—Yes, strike it all out. Go back to the question.

Mr. Morris—Now, will the stenographer read the question?

The Tribune stenographer read the question as follows:

Did you hear before the arbitration any matter discussed or talked about other than the money claim of Mr Tilton against Mr. Bowen, growing out of the contract?

Mr. Beach—We gave a different construction to it.

The Witness—To the word "before." Then we are both right.

Mr. Beach—Before the arbitration.

Mr. Evarts—Then that will stand.

Mr. Beach—No, Sir; the question was misunderstood. Before the arbitration, Sir, means either a date anterior to that, or in the presence of the arbitration as it proceeded.

The Witness—I understood it as a date anterior.

Mr. Evarts—Well, that stands. Your question was not limited to the arbitration.

Mr. Beach—I think it will not have to stand, as both the gentleman and myself have agreed that it should be struck out.

Judge Neilson—Now, Mr. Morris, proceed. Keep yourself to that occasion—that evening.

Mr. Fullerton—Your Honor means he shall proceed at 2 o'clock, I take it.

Mr. Beach—Well, was anything said before the arbitrators upon any subject except the business difficulties between Mr. Tilton and Mr. Bowen? A. Not a word, Sir.

Judge Neilson—The jurors will get ready to retire. Return at 2 o'clock, gentlemen.

The Court here took a recess until 2 p. m.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Beach—If your Honor please, when Mrs. Moulton was upon the stand, I expressed an intention of recalling her as to two points, the conversation, related by Mr. Beecher, between himself and her, on May 31, 1873, and also the conversation between herself and Mr. Tracy as to which I cross-examined Mr. Tracy. I have determined, Sir, not to call Mrs. Moulton with reference to the last topic, as I suppose that evidence, relating to a collateral matter, would not be a proper subject of examination; and, in regard to the other matter, I have conversed with her personally and learned from her that she would deny, if she were called, upon oath, the allegation of Mr. Beecher in relation to that conversation, that she said to him: "Mr. Beecher, I don't believe the stories that they are telling about you; I believe that you are a good man." If Mrs. Moulton was produced upon the stand she would deny the utterance of that language, or equivalent language, and I have, upon my responsibility, assured my learned friends upon the other side that she would so testify. She is ill to-day, Sir, and in a very unequal condition to appearing on the witness-stand and submitting to an examination, from causes I have expressed to my learned friends, and I understand that they, relying upon that assurance of mine, are quite willing that it shall be taken as if Mrs. Moulton had sworn to a denial of that character.

Mr. Evarts—We understand Mr. Beach's statement as to what the witness if called would say, as entitling us to accept it as what would be the result of calling her, and we are willing that it should be taken in the ordinary form, that if she were asked that question whether she said that, or its equivalent—that single passage that has been read—she would deny it under oath, and this statement is to be received as if she had done so; as I should have no occasion to cross-examine her any more than other witnesses. I believe the lady is not in a condition to appear in Court.

Francis D. Moulton's reëxamination was then continued.

MR. MOULTON'S EXAMINATION CONCLUDED.

By Mr. Morris—Just a single additional question, Mr. Moulton. Mr. Beecher was asked in reference to the payment of Bessie Turner's school bills——

Mr. Evarts—What page?

Mr. Morris—Part 11, page 803. [To the witness.] Mr. Beecher was asked this:

Well, about when was that, or how, in reference to any bill that was present? A. My impression is that it was some time in the Summer of 1871. I will not be at all certain about that. I could refresh my memory, probably. He said to me one day that he was paying a great deal of money out for Mr. Tilton, and that here was a bill that he thought would be well if I would pay—he thought it would be a great help to Mr. Tilton.

And at another place that is fixed at some time in May, I think. Now, Mr. Moulton, did you say that to Mr. Beecher, in reference to a bill of Bessie Turner's, or the equivalent of that? A. No, Sir.

Q. When was your first advance of money to Mr. Tilton? A. In July.

Q. Following? A. July following, yes—July following the May of which you speak.

Q. 1871? A. Yes, Sir.

Mr. Morris—That is all.

STEPHEN PEARL ANDREWS RECALLED.

Stephen Pearl Andrews, a witness for the plaintiff, was next recalled and further examined.

By Mr. Fullerton—Mr. Andrews, do you know James H. Blood? A. I do.

Q. Do you know his handwriting? A. I do, I believe.

Q. You have seen him write? A. I have.

Q. Look at his signature attached to that paper [paper handed to witness] and say whether it is in his proper hand. A. It seems to be so; I also know this witness.

Mr. Fullerton—I offer this paper in evidence.

Paper marked "Ex. 128."

Mr. Evarts—I assented to this being proved, if your Honor please, without calling the subscribing witness.

Mr. Fullerton [reading]—This indenture, made the 23d day of May, 1872, between Thomas Brydon of the City of Brooklyn, County of Kings, and State of New-York, party of the first part, and James H. Blood of the second part, witnesseth that the said party of the first part hath letten, and by these presents doth grant, devise, and to farm let unto the said party of the second part all that certain two offices on the first floor of the building known as No. 48 Broad-st., in the City of New-York, and numbered one and two in said building, with the furniture and fixtures

now in said offices, with the appurtenances, for the term of one year from the first day of May, 1872, at the rent or sum of $1,200, to be paid in equal monthly advance payments.

Mr. Evarts—What time does it cover.

Mr. Fullerton—From May 1, 1872, to May 1, 1873. [To the witness] Now, Mr. James H. Blood, whose signature you have proven, is the husband of Mrs. Woodhull, is he? A. So reputed to be, and lives with her as such.

Q. Now, then, did they occupy No. 48 Broad-st. as a broker's office after May, 1872? A. I should think, after the latter part of May. My impression is that they did not move in at the 1st of May.

Q. From the latter part of that month in 1872 they occupied that office? A. I think so.

Q. And up to the time they moved into the office, 48 Broad-st., what offices did they occupy? A. No. 44 Broad-st.

Mr. Beach—What is the date of that lease?

Mr. Fullerton—May 23, 1872. That is all, Mr. Andrews.

CROSS-EXAMINATION OF STEPHEN PEARL ANDREWS.

By Mr. Evarts—This lady and Mr. Blood—Col. Blood—conducted the same business at 44 Broad, did they not, before this? A. Yes; with the exception of the fact that their newspaper publication was suspended during that Summer.

Q. Well, I mean the brokerage business. A. Yes; the brokerage business was the same.

Q. Now, up to what date did they remain in fact at No. 44? A. That I am unable to say with definiteness. I have only my impression with regard to that, which is not very distinct.

Q. What is your impression as to what time they removed? A. My impression is that they did not move at what we call the regular moving day, at the 1st of May, but perhaps one, two, or three weeks later; I am not certain.

Q. The date of this is May 23. A. I presume then that they moved immediately after the date of that.

Q. Have you any recollection of your own as to the date of their moving into 48? A. Not distinctively as to the date, but as I say to you.

Q. That, as far as you recollect, it would be about the latter part of May? A. Yes, Sir.

THE SUR-REBUTTAL BEGUN.

Mr. Evarts—That is all.

Mr. Fullerton—That is all, Mr. Andrews.

Mr. Beach—We rest, if your Honor please.

Mr. Evarts—We will recall Mr. Freeland.

DEACON FREELAND RECALLED.

By Mr. Shearman—Mr. Freeland, you are well acquainted, and have been for a long time, with Mr. Henry C. Bowen, have you not? A. I have.

Q. Were Mr. Beecher and Mr. Bowen at your house on the 26th day of December, 1870? No, Sir.

Q. Were Mr. Beecher and Mr. Bowen ever in your house together? A. They were.

Q. Yes; when was that? A. January—in January, 1870.

Q. In January, 1870? A. Yes, Sir.

Q. Were Mr. Beecher and Mr. Bowen ever at your house together at any other time? A. No, Sir.

Mr. Beach—Well, what is the proposed evidence?

Mr. Shearman—Mr. Bowen, called in rebuttal, has testified that Mr. Beecher and himself met at Mr. Freeland's house on the 26th day of December, 1870, by appointment through a note sent from Mr. Bowen to Mr. Freeland, requesting such an appointment to be made. That was in contradiction of Mr. Beecher's statement that the interview took place at Mr. Beecher's house. [To the witness.] Now, Mr. Freeland, did you receive on the 26th of December, 1870, any note from Mr. Bowen requesting you to make an appointment with Mr. Beecher of any kind? A. No, Sir.

Q. Was Mr. Bowen at your house at all, either with or without Mr. Beecher, on the 26th of December, 1870? A. I think not, Sir; no remembrance of anything of the kind.

Q. Have you any remembrance of Mr. Beecher being there on that day? A. No, Sir; Mr. Bowen must have made a mistake, and referred probably to the first meeting.

Q. Never mind that, Mr. Freeland you kept that day as a holiday, I suppose.

Mr. Beach—Have that stricken out.

Mr. Fullerton—Yes, Sir; I move to strike that out.

Judge Neilson—Yes, Sir.

Mr. Shearman—Well, it was only a charitable remark.

Mr. Fullerton—Well, we are not the subjects of his charity.

Mr. Shearman—You may be before you get through.

Mr. Fullerton—Well, we are not now.

By Mr. Shearman—Have you a distinct recollection of this meeting of Mr. Bowen and Mr. Beecher at your house in January, 1870? A. Yes, Sir.

Q. How long did that interview last? A. Well, from three to four hours.

Q. And what time of the day was it held? A. In the evening.

Q. Well, before or after 7 o'clock? A. After 7, I should think—7:30.

Mr. Beach—Well, I understood, Sir, that that sort of inquiry was rejected by your Honor?

By Mr. Shearman—Mr. Freeland, you recollect the occasion on which the arbitrators met at Mr. Moulton's house,

yourself, Mr. Cleveland, and Mr. Storrs, do you not? A. Yes.

Q. Now, on that occasion did you see, or were you informed of any written submission—— [To plaintiff's counsel.] Will you please give me that paper—that written submission? [Paper not produced.] Well, I will read to you the submission; I haven't the original here. A paper has been produced in evidence in the following terms. [Reading]:

We agree to submit to James Freeland, H. B. Claflin, and Charles Storrs, the question as to the amount of money due Mr. Theodore Tilton from *The Independent* and *Brooklyn Daily Union*, in full for all claims and demands to this date, and to abide by their decision, or a majority of them, without fail. HENRY C. BOWEN,

Brooklyn, April 3, 1872. THEODORE TILTON.

Did you ever see that paper? A. Who is that signed by?

Mr. Shearman [continuing]—On the day or evening of the arbitration? A. Who is that signed by?

Mr. Shearman—Henry C. Bowen and Theodore Tilton. Would you like to look at the paper? A. Yes, I would.

Mr. Shearman [to Mr. Morris]—Have you sent for the paper?

Mr. Morris—Yes, I have.

Mr. Evarts—Mr. Morris will have it here.

Mr. Shearman—Well, we will suspend this examination.

Mr. Evarts—We want to show the witness the original paper.

Judge Neilson—That is very proper.

Mr. Evarts—That is all that we wish to ask the witness.

Mr. Fullerton—Well, you want to ask him about the paper.

Mr. Evarts—Yes, when the original comes in.

CROSS-EXAMINATION OF JAMES FREELAND.

By Mr. Fullerton—You think that Mr. Bowen and Mr. Beecher were at your house in January? A. I don't think; I know.

Q. You don't think you know—that is what I think. A. I know; I say they were.

Q. What year? A. 1870.

Q. What time in January, 1870? A. Some time along in the middle, I should think; from the first to along in the middle.

Q. Now, Mr. Freeland, was n't it in January, 1871, that they were there? A. I think not.

Q. What? A. No, Sir.

Q. Sure—are you sure of it? A. Yes, pretty sure, quite sure.

Q. How sure are you? A. I swear to it.

Q. Well, that does not answer the question exactly. How do you know that it was in January, 1870, that they were at your house? A. Well, now, you would not let me explain it if I should undertake it—and I only tell you that I am pretty positive of the thing—sure—you would not let me explain it.

Q. Will you tell me how you know it was in January, 1870, that they were at your house? A. Our prayer-meeting was in January, the latter part of January. Mr. Beecher and Mr. Bowen met at my house to arrange their difficulties; the prayer-meeting was on—I don't recollect exactly—something the latter part of January. Mr. Bowen was there at that time, and Mr. Beecher made some observations. I mark it from that fact—very confident.

Q. Well, did they have but one prayer-meeting that year? A. No, Sir; they had, I think, more——

Q. How often? A. That month particularly—that week of January.

Q. What? A. That week of January; the latter part of January.

Q. You know it was in the latter part of January? A. I know it was in January, 1870.

Q. One moment, Mr. Freeland? A. Well, I knew you would stop me, if I undertook to explain it; I knew you would stop me.

Q. Well, having explained it, and having got through with that explanation, I propose to put you another question? A. Mr. Fullerton, you and I will get along pretty well, I guess.

Q. Well, if you won't treat a serious subject with unbecoming levity, we will get along well enough. Did you have more than one prayer-meeting in January, 1870? A. Yes.

Q. How? A. We have one a week.

Q. One a week? A. Friday evening of every week we have a prayer-meeting.

Q. Of every week? A. Yes; as a——

Q. Then you had four prayer-meetings in January, 1870, had you not? A. I suppose we had.

Q. Well, how does the fact, then, that you had prayer-meeting the last week in January enable you to say positively that they met at your house the last week in January? A. I took a good deal of interest in this matter, Mr. Fullerton, in getting Mr. Beecher and Mr. Bowen together at my house; and, after that meeting, they separated—seemed to—with the best of feelings; Mr. Beecher——

Q. Now, will you tell me how you are enabled to fix it in January, 1870? Is there any fact or circumstance? A. That is the fact and the circumstance of that prayer-meeting; I went to it.

Q. Well, there was a prayer-meeting the first week in January, 1870, or was there not?

Mr. Evarts—Well, Mr. Fullerton, hear what he has to say about the prayer-meeting.

Mr. Fullerton—I have heard what he had to say about the prayer-meeting.

The Witness—I know that it is the latter part of—the prayer-meeting—the latter part of January.

Q. Well, how are you enabled to fix it the last week in January if there was a prayer-meeting every week in January? A. I can only tell you I did fix it so.

Q. I was aware of that; but I wanted to know why. A. I said it was the latter part of January the prayer-meeting, and Mr. Bowen was at that prayer-meeting; and that is the first prayer-meeting he had been to in a great many—well, a long time, very long time; and I dated it from that fact.

Q. Did you make any memorandum of it? A. No, Sir; I did not; my memorandum was in my memory.

Q. Are you enabled to state now positively that Mr. Bowen and Mr. Beecher never met at your house at any other time than in January, 1870? A. I think they never did, Sir?

Q. My question was whether you were enabled to state positively that they never met? A. Yes, I think I can state positively.

Q. And you do so state positively? A. I do so state positively.

Q. Yes. Did you have any interview with Mr. Bowen in December, 1870? A. Not that I remember.

Q. Is that all that you could say? A. I don't remember of having any.

Q. That you don't remember? A. I don't remember.

Q. Well, is that as far as you can go? A. Well, yes; I think that is as far as I can go; I don't remember of any.

Q. Did you receive a note from Mr. Bowen in December, 1870? A. I cannot say as to that; I received notes from Mr. Bowen, but never upon this subject.

Q. Well, I didn't ask you that. A. Well, I answered it.

Q. Well, you need not to answer, Sir, until I ask it. A. I supposed you wanted it.

Q. Now, Mr. Freeland—— A. I take it all back.

Q. Well, you had better keep it there—not proffer it again, because we are going to treat this subject seriously. I move it to be struck out, Sir.

Judge Neilson—Yes.

By Mr. Fullerton—Can you state whether you received a note from Mr. Bowen in December, 1870? A. I don't know whether I did or not, Sir; I did not on that business.

Mr. Fullerton—I move to strike that out again, Sir ——

Judge Neilson—Strike out that last clause.

By Mr. Fullerton—You have no recollection then?

Mr. Evarts—If your Honor please, it seems hardly fair to the witness to strike out that clause; because it looks as if he were admitting in some sort that he did receive a note on this subject, by leaving his answer in that naked form, without he himself saying, "I did not;" now he says, "I don't know whether I received notes from Mr. Bowen in January; I know I had none on this subject.

Judge Neilson—The objection is, it gives the contents of a paper without an inquiry as to the contents.

SHARP PLAY BETWEEN COUNSEL AND WITNESS.

By Mr. Fullerton—You know the sons of Mr. Bowen? A. Yes, very well.

Q. What is his youngest son's name? A. I do n't know.

Q. Do you know his son James? A. I do n't know that he has a son James; I do n't remember; I do n't think he has, but I do n't know; I can explain about that note if you will allow ——

Q. Now, if you please, did you receive a note from Mr. Bowen through one of his younger sons in December, 1870? A. Can't say as to that; I have received them.

Q. You have no recollection of receiving a note? A. Well, I can fix it——

Q. Now, one moment; you have no recollection of receiving a note from one of his younger sons in December, 1870, I understand you? A. No, Sir; not in that month particularly, I haven't.

Q. Did you receive a note through one of his younger sons at any other time than December, 1870? A. Yes, I have in some other months.

Q. What months? A. I can't say, Sir.

Q. No recollection as to any month? A. No, I haven't; it was on the subject of business; I could explain it to you in a moment if you would let me.

Q. Do you preserve your notes that you receive? A. No, Sir.

Q. Have you any notes now in existence that you received from Mr. Bowen? A. No, Sir.

Q. Did you not receive a note from Mr. Bowen through the hands of one of his younger sons in December, 1870, and send back a message to the effect to this effect: "Yes; I will attend to it," or something of that kind? A. In December?

Q. Yes? A. I can't say.

Q. Why can't you say; don't you remember? A. In so far as it regards—as I said to you I have received business notes——

Q. Now, Mr. Freeland, please answer my question? A. I will do the best I can, Mr. Fullerton, to answer your questions, but you put them in such a way that I cannot answer them very well. [Laughter.] If you will let me tell the truth I will tell it straight out in the best way possible.

Q. I am going to deal with great—— A. Oh! I know you are going to deal with me; I understand that perfectly well.

Q. Your answer to my question, Mr. Freeland, was, "I cannot say." Now, the other question which you have not yet answered was this: "Why can't you say?" Have you no memory upon the subject. You can't misunderstand that question? A. No memory upon the subject; I have memory of receiving notes, but not in December, from—so far as regards Mr. Bowen in busi-

ness notes, I have received no business, but I did not receive any note——

Q. Now, Mr. Freeland, if you please——

The Witness—My mouth is getting a little dry; I should like a little water.

Mr. Fullerton—Well, I shouldn't wonder if it was worn out.

The Witness—Well, I should think yours would be. [Laughter.]

Q. Now, Mr. Freeland, I will put the question and repeat your answer, and see if I can get an answer to another question; I asked you whether or not you had any recollection of having received a note from Mr. Bowen through the hands of one of his younger sons in December, 1870, and that you sent back a reply in substance like this: "Yes, I will attend to it." Your answer was: "I have no recollection." Now, my question to you is this—your answer was: "I cannot say;" my question to you, therefore, is this—Can't you say, because you have no recollection upon the subject? A. So far as it regards—let me answer now in my own way, will you? Will you let me answer it in my——

Mr. Fullerton—I think, your Honor, you will have to take this witness in hand.

Judge Neilson—Go on and answer the question he puts the best way you can.

The Witness—I will.

Judge Neilson—And only that.

The Witness—Judge, Mr. Bowen and myself had business transactions; we used to pass notes between us, and I have received notes, but I cannot tell what, or how, at that time.

Mr. Fullerton—Your Honor understands I have put no question that leads to such an answer as that.

Judge Neilson—No, of course.

Mr. Fullerton—Now, Mr. Freeland, I will put the question to you again.

The Witness—Yes, Sir.

Q. In answer to a question whether you did not receive in December, 1870, a note through the hands of one of Mr. Bowen's younger sons you did not reply in substance: "Yes, I will attend to it," your answer was: "I can't say." Now my question to you is very distinct—whether you are unable to say whether that was so or not, because you have no recollection upon the subject? A. I do not recollect of receiving any note from Mr. Bowen in December.

Q. Then you have no recollection upon the subject, have you? A. Haven't I answered it?

Q. Well, is that so, Mr. Freeland? A. I said I had no recollection of receiving a note in December from Mr. Bowen.

Q. Now, I will put the question to you again.

Mr. Evarts—Well——

Mr. Fullerton—Well, what?

Mr. Evarts—He has answered that question.

Mr. Fullerton—No; he has not answered, but he is going to answer before I get through with him. [To the witness.] I am asking about a certain note received through the hands of one of Mr. Bowen's younger sons, to which you gave a certain answer, namely: "Yes, I will attend to it," or that in substance. In respect to that you say: "I do not recollect," or "I can't say." Now, are you unable to say because you have no recollection of any such circumstance? A. Well, now, how do you want I should answer that?

Judge Neilson—Either that you do recollect such a circumstance, or you do not.

Mr. Evarts—He has said he did not.

The Witness—I said I did not; I have said that several times.

Mr. Evarts—He said it three times.

Mr. Fullerton—He has not said it, Sir; he said that he did not recollect of having received a note. The question is whether he has any recollection upon that subject.

Mr. Evarts—Of receiving a note and sending an answer?

Judge Neilson—Yes.

Mr. Fullerton—That is the question; I won't characterize it. [To the witness.] Was Mr. Bowen at your house in December, 1870? A. I think not, Sir.

Q. You say you think not; can you say positively that he was not? A. So far as my knowledge extends he was not; I ain't in the house all the time.

Q. Then he might have been there and you not know it? A. He might have been, certainly.

Q. A little louder. A. He might have been, but I don't believe he was.

Mr. Fullerton—I move to strike out the words "I don't believe he was."

Judge Neilson—Yes, Sir. Will the audience keep quiet, please.

Mr. Evarts—Well, when the inquiry is what he knows he means something from the witness, he does not mean to prove the fact that when a man is not in the house all the while, another man might come there without his knowing it. We are not to impute any such folly to the question. The question is intended to get at the witness's impression that Mr. Bowen may, in fact, have been at that house and he not have known it.

Judge Neilson—Please to observe, Mr. Evarts, the witness answers as to his belief; whereas, he has not been interrogated as to his belief.

Mr. Evarts—Very well; then I say he should not ask him that question, because you do not want to ask this witness the question whether a man may not be at his house when he is absent, and he not know it, because we all know that.

Mr. Fullerton—Well, I don't think Mr. Freeland——

Mr. Evarts—And the object of the inquiry is to produce an impression that the witness thought Mr. Bowen might have been there as matter of fact—not of possibility, but

of fact, and therefore he answers, "He might have been, as matter of possibility, but, as matter of fact, I have no idea he was there."

By Mr. Fullerton—Has Mr. Bowen been at your house since January, 1870? A. Since January? he may have called New Year's Day.

Q. Well, do you recollect whether he did or not? A. I do not; I make calls myself and am not at home; my wife——

Q. Never mind that; has he called on occasions other than New Year's Day since January—— A. Not——

Q. Now, Mr. Freeland, won't you wait until the question is put to you? Has he called on you on occasions other than New Year's Day since January, 1870? A. I don't remember that he has, Sir.

Q. Well, can you say that he has not? A. Do you mean called at my house?

Q. I mean so, because I say so? A. I think he has not.

Q. Are you enabled to swear positively that he has not called at your house since January, 1870? A. How can I swear positively when I am not at home half the time; he may have called a dozen times when I was not at home, but I have never heard of his calling at my house from my family in any form whatever.

Q. Now, I didn't ask you that; I will put the question in another form.

Mr. Beach—Have that stricken out.

Judge Neilson—That last clause is stricken out.

By Mr. Fullerton—Can you swear positively that he has not called on you since January, 1870, at your house when you were at home? A. Since January?

Q. Yes. A. To the best of my knowledge and belief he has not.

Q. Now, that is not the question I asked you, Mr. Freeland; I asked you whether you could swear positively that he hadn't called at your house since January, 1870, when you were at home? A. I think not, Sir.

Q. Can you swear positively that he has not so called? A. It is a pretty close corner, that is, Mr. Fullerton; I wish you would let me see my friend, Mr. Beach, there behind you.

Mr. Fullerton—Well, that is not witty, Mr. Freeland. Now, you are too old a man for me to have any trouble with. He wants to see Mr. Beach behind me, he says, and he has got in a close corner, and all these observations, which I think would be unbecoming to a man of much younger years. I want an answer to my question.

Mr. Beach—I dont think it is unbecoming to want to see me. [Laughter.]

The Witness—Thank you, Sir.

Mr. Fullerton—Well, the spirit in which he made the observation was unbecoming.

Judge Neilson.—I wish the audience would keep quiet. Mr. Freeland, please attend to the question he puts, and answer it the best you can.

Mr. Shearman—Well, if your Honor please, it is a question which needs a little explanation; it is very rarely that the witness understands what we lawyers mean by answering positively. We understand, of course, but very few witnesses do. What Mr. Fullerton means is that he should be able to swear from absolute knowledge.

Mr. Fullerton—Now, one moment; I object to this Sir; there is no necessity for any explanation; the question is not objected to, Sir,

Mr. Shearman—I am perfectly right——

Mr. Fullerton [interrupting]—The question is not objected to, Sir, and there is no occasion for discussion.

The Witness—Now, let me have the question; excuse me; if I have done any wrong I ask your pardon most sincerely.

Mr. Fullerton—Oh! well, you need not ask my pardon.

The Witness—I do, most sincerely.

By Mr. Fullerton—Very well; now we will commence anew. Now, Mr. Reporter, will you be kind enough to read that question?

The Tribune stenographer [reading]: "Can you swear positively that he has not so called?"

The Witness—Well, I would not be willing to swear positively.

Q. Very well; that is a very fair answer, and I am satisfied. Can't you say whether Mr. Beecher was at your house in December, 1870? A. I cannot.

Q. How? A. I cannot.

Q. Was Mr. Beecher in the habit of frequently calling at your house at that time? A. He calls occasionally, not very frequently.

Q. Now, I spoke of that time, December, 1870, was he then in the habit of calling occasionally? A. Yes, he was; I don't know that he did call in December at all; I don't remember that he did; I don't think he did.

Q. Then you are not positive that he did not call in December, 1870, when you were home, are you? A. I am not positive.

Q. Do you recollect of sending any message or letter to Mr. Beecher in December, 1870? A. No, Sir; I did not.

Q. Can you say positively—— A. Yes, Sir; positively, I can.

Q. Well, you hadn't heard my whole question. Can you say positively that you sent no message or letter to Mr. Beecher in December, 1870? A. Yes, Sir; I think I can say positively.

Q. How are you enabled to say positively? A. I never wrote to Mr. Beecher a note, to my knowledge.

Q. Well, now, that answers only half of the question. My question was whether you ever wrote to him or sent a message to him in that month. A. I don't remember of ever doing it.

Q. Well, your answer was you could say positively that you did not? A. I mean so far as regards the letter.

Q. Very well; then, so far as sending a message, you

cannot say positively that you did not send a message to him in December, 1870, I understand? A. No, I cannot say positively, but I don't think I did.

Mr. Beach—Strike that out.

Mr. Fullerton—One moment. I move to strike that out, Sir.

Judge Neilson—Yes.

Mr. Fullerton—"I don't think I did" goes by the board now. Did you ever send a message to Mr. Beecher? A. Oh, yes; I have sent messages to him.

Q. Do you remember when? A. No.

Q. Do you remember how often? A. No, Sir.

Q. But you have sent messages to him? A. Yes, Sir; I have sent messages.

Q. You cannot recollect the dates when? A. No, Sir.

Q. And you cannot recollect the substance of the message? A. No, Sir.

Q. Do you recollect whether you sent messages to him in 1870? A. No, Sir.

Q. You might have done so and not remember it? A. I might have done so and not remember it.

Q. How? A. I might, yes.

Q. Did you send messages to him in 1871? A. I don't remember.

Q. You might have done so and forgotten it? A. Yes, I might have done so.

Q. And forgotten it? A. Yes, Sir.

Q. Do you recollect whether you saw Mr. Beecher in December, 1870? A. I don't remember it now distinctly.

Q. You may have done so and forgotten it? A. Yes, Sir.

Q. May have seen him a good many times in that month and forgotten it, I suppose? A. Very likely.

Q. Do you recollect whether you called upon him in December, 1870? A. I do not.

Q. You may have done so and forgotten it? A. Yes, might have forgotten it.

Q. May have called upon him a number of times in that month, and forgotten it? A. Very likely.

Q. Have no recollection upon that subject? A. None whatever.

Q. That is a mere blank as to whether you did call or not? A. Yes, Sir.

MR. FREELAND DEMURS TO A DELICATE QUESTION.

Q. Is your memory pretty good, Mr. Freeland? A. Some things it is very good, and some very bad.

Q. Pray tell me what is your age? A. Well, that is a pretty delicate question.

Q. Well, I don't mean to be impertinent at all, Mr. Freeland; it is a question that is legitimate in this case. A. You don't know whether I am a widower or not.

Q. No, I don't know whether you are a widower or not. I hope you are not. I only want to know your age. A. Seventy-five.

Q. Seventy-five. Your recollection is not as good as it was once, Mr. Freeland? A. No, Sir, it is not; some things it is as good as it ever was and others it is very poor.

Q. Well, Sir, that is my infirmity also.

Mr. Evarts—Mr. Fullerton, we have this paper here now. [Referring to the submission to arbitration.]

Mr. Fullerton—I have the name of Mr. Bowen's son now, that I could not recall a moment ago, Mr. Freeland. A. I suppose you mean John.

Q. I mean John; yes. A. Yes.

Q. John Eliot? A. Yes.

Q. And now I want to ask you whether such a note was not delivered through his son, John Eliot Bowen? A. What note do you speak of?

Q. The note from Mr. Bowen to you, in December, 1870? A. Do you speak of what note do you speak of?

Q. I ask whether Mr. Bowen did not write a note to you and send it by the hands of his son, John Eliot, in December, 1870?

Mr. Beach—To which he replied.

The Witness—To which I replied?

Mr. Beach—Yes.

Mr. Fullerton—To which you replied "yes," or "I will attend to it." A. I don't remember, Sir.

Q. Don't remember? A. No, Sir.

Q. It may have been so, I suppose, and you have forgotten it? A. No, Sir; I should not have forgotten it, I don't think, upon that subject that I have reference to.

Q. I am not talking about subjects? A. Yes.

Q. I am not talking about subjects; I asked you whether in December, 1870, Mr. Bowen did not send a note to you through his son John Eliot, to which you made a reply, "Yes, I will attend to it?" A. I don't remember, Sir.

Q. Well, it may have happened and you not remember it? A. Yes.

Mr. Fullerton—That is all.

Mr. Evarts—We will complete our direct examination upon the other branch—not re-direct.

Mr. Shearman—Look at this paper, "Exhibit No. 122," on the part of the plaintiff, and say whether you ever saw that paper before? A. I never did, to my knowledge.

Q. And did any person at any time on the 3d of April, 1872, inform you of the contents of that paper or of any part of it? A. No, Sir.

Mr. Shearman—That is all upon that point. Do you want to examine him upon that point?

Mr. Fullerton—Is that all you want to examine him?

Mr. Shearman—All on that point.

Mr. Evarts—You will remember that you have not cross-examined about the arbitration at all. We simply wanted to ask this on the direct, and give an opportunity for you to cross-examine on that point.

Mr. Beach—Do you propose to examine any further?

Mr. Evarts—No, we propose a re-direct examination on your cross, whenever you have finished your cross.

By Mr. Fullerton—Did I understand you, Mr. Freeland, to say that you never saw this paper, "Exhibit 122," before to-day? A. Yes; the arbitration?

Q. The submission. Look at it again, so that you will be able to say what it is (handing witness "Exhibit 122.") A. I saw no such paper at the arbitration.

Q. Well, I suppose it may have been there and you not see it? A. Very possible it might, but I did n't hear anything of it or know anything of it.

Q. Well, you mean to say that you don't remember of having heard anything about it, don't you? A. I remember—I never saw such a paper there, and I don't remember hearing anything about it.

Q. Don't remember? A. No, Sir.

Q. It may have been spoken of and you not remember it, I suppose? A. Very possible.

Q. And it may have been read there and you not remember it, I suppose? A. I should think it could not have been read there without my remembering it.

Q. Well, is it not possible that it may have been read there and you not remember it? A. I should hardly think it was possible.

Q. Do you recollect Mr. Bowen being there? A. Yes.

Q. Don't you recollect Mr. Bowen said something about having it understood definitely what was to be submitted to the arbitrators? A. I do not.

Q. He may have said so and you not remember it? A. Very possible.

Q. Do you remember of his saying in substance, "I won't proceed in this matter any further until we know what the arbitrators are to pass upon?" A. No.

Q. He may have said that? A. I really don't remember what Mr. Bowen or Mr. Tilton, either of them, said.

Q. Well, then he may have said that, and you not remember it, Mr. Freeland? A. Very possible.

Q. And it may have been that after Mr. Bowen said a thing of that kind, that this paper was drawn and you not remember it, I suppose? A. I think I should remember it; if it was drawn there, and it was present, I should remember that fact, I think.

Q. How? A. I think I should remember that fact if it was drawn there.

Q. But it may have been drawn, and you not remember it, I suppose? A. Well, I should doubt very much.

Q. Were not there some papers there that you did not have in your hands? A. I think—I saw papers on the table there.

Q. Do you know what they were? A. I think the "Tripartite Agreement" was there—I saw that on the table.

Q. Were there any papers that you did not know the contents of? A. Yes, Sir, I suppose there was.

Q. How? A. I suppose there was.

Q. And this may have been one of them? A. Very possible.

Q. Was there anything read over there? A. Yes, there was something read; I think a part of that Tripartite Agreement; I don't think it was all..

Q. Anything else read? A. I don't remember anything else.

Mr. Fullerton—That is all.

RE-DIRECT EXAMINATION OF MR. FREELAND.

By Mr. Shearman—Mr. Freeland, can you remember for what purpose Mr. Bowen and Mr. Beecher were invited by you to meet together at your house in January, 1870?

Mr. Fullerton—That is objected to, Sir.

Mr. Shearman—It is for the purpose of fixing the date. The counsel on the other side went into his reasons.

Judge Neilson—I think we will take the general fact.

Mr. Fullerton—Why, Sir, for what purpose he invited them—the purpose of his own mind?

Judge Neilson—Well, it appears that he did send an invitation, as he remembers, and I think it well enough to learn what it was about.

Mr. Fullerton—Well, that, if your Honor please, was a year removed from the meeting that we have talked about. What have we to do with the meeting in January, 1870.

Judge Neilson—I think we will take the general subject.

Mr. Shearman—That is the very point.

Mr. Fullerton—Won't your Honor reflect one moment? January, 1870!

Judge Neilson—Yes, your meeting was December, 1870.

Mr. Fullerton—Certainly.

Judge Neilson—Nearly a year.

Mr. Fullerton—Certainly. What have we do with January, 1870?

Mr. Evarts—The effort of the cross-examination was to make it appear that this gentleman——

Judge Neilson—I don't know that that was the effort; but I think we will take it.

Mr. Fullerton—It is not rebutting anything. We have not alluded to January, 1870.

Judge Neilson—I know, but it seems to be due to the witness. It cannot do you any harm.

The Witness—Thank you, Judge; I want to explain. [Laughter.]

Mr. Shearman—Give your explanation.

Judge Neilson—We don't want an explanation; we want simply what was the subject matter of that interview in January, 1870.

The Witness—What the object was—at my house?

Judge Neilson—Yes.

Mr. Fullerton—It is upon a new subject.

Mr. Morris—We shall want to call witnesses upon the subject.

Judge Neilson—No.

Mr. Fullerton—If your Honor please, if it is of no consequence then I want to renew my objection. If they open that settlement between Mr. Bowen and Mr. Beecher in January, 1870, it is open for all purposes.

Judge Neilson—Well, it won't be opened. The interview he called Mr. Beecher to he can say related to this subject or that. That is all there will be about it.

Mr. Evarts—We can settle this very easily if our learned friends will admit that the interview between Mr. Beecher and Mr. Bowen, in which their difficulties were settled, took place in January, 1870.

Mr. Shearman—That is all.

Mr. Evarts—We understand the effort of the cross-examination was to endeavor to confound those two occurrences.

Judge Neilson—That was the fact, I suppose.

Mr. Morris—No, we cannot admit that, because it is not the fact, as the evidence is to the contrary.

Mr. Evarts—I don't understand it so.

Mr. Morris—Well, it is.

Mr. Shearman—Mr. Moulton has given evidence and produced exhibits which show that there was a meeting between Mr. Beecher and Mr. Bowen, either in January or February, 1870. That is left as a matter of doubt.

Mr. Fullerton—No, Sir; it is not a matter of doubt at all.

Mr. Morris—Mr. Beecher's own handwriting—a document introduced here states when it was, and it was in February—the statement of Mr. Beecher himself.

Judge Neilson—If we have got the paper we don't want anything more.

Mr. Shearman—There is simply an allusion to an interview in February, 1870. Now, I want to show that that was this interview—the only one; it was a meeting in January, 1870; that it was on the same subject that was there referred to.

Judge Neilson—Don't Mr. Beecher's paper show what the subject of the interview was?

Mr. Morris—Certainly it does; he fixes the date.

Judge Neilson—That's all we want.

Mr. Shearman—The subject of reconciliation.

Judge Neilson—Well, that is all he could say.

Mr. Shearman—We don't think that does fix the date as February, although it refers to it in those general terms. We want to show the fact, if the other side don't object to a leading question.

Mr. Beach—We certainly object to a leading question. Your Honor, in our rebutting evidence, has held us with great strictness to the rule.

Judge Neilson—Yes.

Mr. Beach—Why you should relax it now, Sir, for the purpose of inquiring into an interview or an occasion between third parties, at which Mr. Tilton was not present, a year from the period to which we directed our attention, I am unable to perceive, Sir, and I don't understand upon what principle of evidence your Honor permits it.

Judge Neilson—You have a better argument than that, even.

Mr. Beach—Well, perhaps I am not through yet, Sir.

Judge Neilson—You did not inquire into the interview.

Mr. Fullerton—That argument is before your Honor, already.

Judge Neilson—The witness referred to that without inquiry, and as Mr. Beecher has referred to it in the paper, I think it is to be left where it is; go on, Mr. Shearman.

By Mr. Shearman—Do you remember distinctly the interview already spoken of, between Mr. Bowen and Mr. Beecher, at your house in January, 1870?

Mr. Fullerton—I object to that, Sir, because he said upon his direct examination that he did remember it distinctly.

Judge Neilson—Well, that ought to be sufficient.

Mr. Fullerton—That ought to be sufficient.

Mr. Shearman—There is no harm.

Mr. Evarts—If the objection is entered, we waive the question—if it is objected to on the ground that it is already answered.

By Mr. Shearman—Do you recollect any incident occurring at a prayer-meeting, in the last of January, 1870, which fixes that meeting upon your memory?

Mr. Fullerton—I object to that, Sir.

Mr. Shearman—They brought out on cross-examination that there was a prayer-meeting, and that that helped him to remember it. Then they brought out that there were four prayer-meetings in that month, and they asked the question why he was enabled to identify that particular prayer-meeting. Now I propose to follow that, to show which of the prayer-meetings it was, and why he identifies it.

Mr. Beach—That was not the question at all, Sir. The question was, Sir, in answer to an interrogatory put by us—the question presented by Mr. Freeland was that as there was a prayer-meeting on the last week of January, 1870, therefore he remembered that this conversation occurred then, and he was asked—that was given voluntarily, Sir—and therefore he was asked by us whether there were not prayer-meetings every week of the year, and he was asked how he could distinguish, and he said there was no means by which he could distinguish. The question was put again and again to him.

Mr. Shearman—Then I have a right now to show, by the suggestion, that he has some means by which he can distinguish. He says now he does remember an incident.

Mr. Fullerton—No, he does not say that.

The Witness—I do.

Mr. Shearman—He does say that.

Mr. Beach—That was what we were objecting to.

The Witness—That is what I want to get out.

Mr. Fullerton—I know you want to get it out.

Mr. Shearman—We have a right to that on the re-direct. That is what a re-direct is for.

Mr. Beach—The witness did not want to get it out when we were examining him.

Mr. Shearman—That is an imputation that is not proper to be made in court. If he was not able then to recollect, he is now able to recollect. He tried hard to get it out then, but was not allowed to do it.

Mr. Beach—That is a mistake.

Mr. Shearman—We think not. Now, your Honor, having said that he does remember an incident that fixes his memory upon that meeting, I ask what was that incident.

Mr. Beach—He has not said that, because there was an objection made to the question.

Mr. Shearman—No, Sir.

Judge Neilson—The question then is, "If you do remember an incident, what was it?"

Mr. Shearman—I ask the question.

The Witness—I remember that prayer-meeting particularly; Mr. Bowen was there, and I requested some number of gentlemen to shake hands with him, and settle the difficulties that had been existing between him and Mr. Beecher.

Judge Neilson—Very well; that is sufficient.

Mr. Shearman—And that was the first time at which you had ever made such a request, was it not, to any gentlemen? A. It was; that was one of the things that marked it.

Judge Neilson—Well, that will do.

Mr. Shearman—Had you taken part in bringing about that interview between Mr. Beecher and Mr. Bowen at your house?

Mr. Fullerton—One moment. That has been proven.

Mr. Shearman—It is only for the purpose of fixing——

Judge Neilson—I think we have it sufficiently.

Mr. Fullerton—Now, it is not fixed any more than it was fixed before.

Judge Neilson—Now, Mr. Freeland, that is all.

[The witness here started to leave the stand.]

Mr. Beach—Wait a minute. Don't go. [Laughter.]

Mr. Evarts—One moment.

The Witness—I want to explain about that note.

By Mr. Shearman—Did you ever take part in bringing about any other interview between Mr. Beecher and Mr. Bowen than this one in January, 1870? A. No, Sir; I ended on that—labored six months.

Q. You have said that you received notes sometimes from Mr. Bowen? A. I did.

Q. And are you sure or not that you received none from him on this business?

Mr. Fullerton—That is objected to.

Judge Neilson—We can't take that.

Mr. Fullerton—He has testified he was not sure.

Judge Neilson—Anything more wanted?

Mr. Shearman—That is all.

[The witness then left the stand.]

Mr. Fullerton—Mr. Freeland—you need not come back. Who are the persons whom you requested to shake hands with Mr. Bowen? A. Well, Mr. Howard, Mr. Shearman, and others.

Mr. Beach—Who? A. Mr. Shearman. That is all I remember now, but there was half a dozen.

By Mr. Fullerton—Can't remember any more? A. I don't remember any more now.

Mr. Shearman—Mrs. Ovington.

MRS. OVINGTON RECALLED.

Mrs. Maria N. Ovington was then recalled on behalf of defendant.

By Mr. Shearman—Mrs. Ovington, are you acquainted with Mr. Albert B. Martin? A. I have been, Sir.

Q. You were acquainted with him in the Summer of 1874? A. I was.

Q. He visited frequently at your house after Mrs. Tilton came, did he not? A. Very frequently.

Q. Do you recollect one day when he visited your house at a time when Miss Turner and Gen. Tracy were there? A. Perfectly.

Q. Can you tell what day that was? A. The 28th of July.

Q. 1874? A. 1874.

Q. Now, can you recollect, Mrs. Ovington, at what time of the day Miss Turner first came to your house on that day?

Mr. Fullerton—That is objected to, Sir.

Mr. Shearman—Well, if your Honor pleases, it is merely a question of the order in which I shall show the impossibility of Mr. Martin's statement.

Judge Neilson—You should not comment on the evidence.

Mr. Shearman—That is what I propose to show.

Mr. Fullerton—Mr. Martin's statement was in answer to your evidence. If you had any further or other evidence upon that subject, it should have been given upon the direct.

Mr. Shearman—Oh!

Mr. Fullerton—Well, "Oh!" is not an argument. [Laughter.] Your Honor will perceive that they went through with that branch of the case then. We have produced a witness in reply to that upon that subject.

Judge Neilson—Now, anything that Mr. Martin said that is new they can meet.

Mr. Fullerton—Undoubtedly, Sir.

Judge Neilson—That is all.

Mr. Fullerton—They cannot go at the subject *de novo*.

Mr. Shearman—That is all that we are doing, your Honor.

Mr. Fullerton—Well, that is the reason I am objecting.

Mr. Shearman—The question is upon some evidence given by Mr. Martin as to the day when he found Miss Turner there, and Gen. Tracy.

Judge Neilson—Take up Mr. Martin's precise statement, if you want to call attention to it.

Mr. Fullerton—They proved by Miss Turner what time she went there and what time she left there, and they proved by Mr. Tracy what time he went there and what time he left there, and the length of the interview with the witness. We then, to meet that, produced a witness upon our behalf to prove the time. Now, does not that end the matter so far as the time is concerned? If there is any statement made by our witness in regard to the matter, or the situation of the house, or anything of that kind, they may meet that—that they can prove by this or other witnesses.

Judge Neilson—They must state the specific statement that they wish to contradict.

Mr. Fullerton—Yes, Sir.

Judge Neilson—Proceed, Mr. Shearman.

MR. MARTIN'S TESTIMONY DISPUTED.

By Mr. Shearman—Mrs. Ovington, at what time in the day did Mr. Moulton come to your house on the 28th of July? A. Shortly after 5 o'clock in the afternoon.

Q. At what time in the day did Gen. Tracy come to your house on that day? A. At 5 or about 5, a few moments before Mr. Martin was there.

Q. Mr. Martin testified that he came to your house about half-past 2 o'clock in the afternoon and found Gen. Tracy and Miss Turner seated in the back parlor; now at half-past 2 o'clock in the afternoon where was Miss Turner and who were with her? A. She was in the back parlor playing on the piano. Mr. Ovington, Mrs. Tilton, and myself were there listening to her. Mr. Martin was not in the house, neither was Gen. Tracy.

Q. Now, will you state, for the purpose of fixing that time, at what hour Miss Turner arrived at your house, and what she did after that during the afternoon?

Mr. Fullerton—That is objected to. That is all gone through with. Your Honor will recollect Miss Turner was questioned with great particularity in regard to that, and we have proved nothing to the contrary.

Mr. Shearman—It was on cross-examination and in their rebuttal that they proved something to the contrary.

Mr. Fullerton—In the re-direct, Sir, they went into the subject.

Mr. Shearman—That was the re-direct of Miss Turner.

Mr. Fullerton—They have no right to take up that topic now.

Judge Neilson—They have only a right to take it up to contradict statements made by the witness.

Mr. Fullerton—Yes, Sir, and that is what I object to.

Mr. Shearman—That is what we propose to do. He says he met Miss Turner at half past 2.

Judge Neilson—Read the particular clause in which Mr. Martin states that and asks her about it.

Mr. Shearman—At what time did Miss Turner come to your house?

Mr. Fullerton—One moment. Does your Honor permit that?

Judge Neilson—I suggested to the counsel that he read the particular clause in Mr. Martin's statement upon that subject, or any other.

Mr. Shearman—I have read the particular clause. I want to show how this lady establishes the time.

Mr. Fullerton—We have not heard the clause.

Judge Neilson—Read the clause in contradiction.

Mr. Shearman—I have, your Honor.

Judge Neilson—Go on then.

Mr. Morris—We don't understand the clause.

GETTING TESTIMONY UNDER DIFFICULTIES.

Mr. Shearman—I read the clause in which Mr. Martin says he saw Miss Turner at Mrs. Ovington's about half-past two o'clock in the afternoon. That Mrs. Ovington contradicts. Now, this is a question of memory as to time. I propose to show how Mrs. Ovington has an accurate memory as to this time.

Judge Neilson—That is not necessary now—the independent fact.

Mr. Shearman—Well, your Honor, there are two witnesses——

Mr. Evarts—It is to be assumed, unless it is contradicted by their cross-examination.

Judge Neilson—What else did Mr. Martin say?

By Mr. Shearman—Mrs. Ovington, are you positive that at half-past 2 o'clock in the afternoon Miss Turner was with you and your husband, and that Gen. Tracy and Mr. Martin were neither of them there? A. I can swear so truthfully.

Q. Now, at what time did Gen. Tracy leave that afternoon?

Mr. Fullerton—That is gone into, Sir.

Mr. Shearman—Not except by asking Gen. Tracy, who was unable to state the time, on cross-examination.

Mr. Fullerton—No, Sir, the question has all been exhausted.

Judge Neilson—One moment. Mr. Shearman you must confine yourself to such clauses in Mr. Martin's evidence as you can read to the witness, and take her answers; otherwise we are opening the subject anew.

Mr. Shearman—Very good. Mr. Martin testifies that Gen. Tracy went away, as near as he could tell, about 5 o'clock in the afternoon; is that true?

Mr. Morris—One moment.

Mr. Shearman—We were told to ask that question.

Mr. Morris—Exactly; and that evidence of Mr. Martin was in strict reply to their evidence. This is not surrebuttal. Our evidence upon that point was in reply to the evidence that they had offered; that is all. Now, if

they can contradict that by this witness, we can put another witness on the stand, and when will that topic end—when will that fact be ended?

Mr. Beach—Mr. Tracy testified exactly when he went there, and when he went away.

Mr. Shearman—Gen. Tracy did not fix the time.

Mr. Beach—Yes, he did fix the time.

Judge Neilson—I think you can correct Mr. Martin upon any specific statement he has made.

The Witness—If your Honor remembers, Mr. Martin's name was not mentioned in my former testimony.

Judge Neilson—No.

The Witness—Had it been I would have told you then.

Judge Neilson—Yes.

Mr. Beach—Your Honor, Mr. Tracy was called as to the time when he was at Mrs. Ovington's, when he went there and when he left, when he had the conversation with Bessie Turner and how long that conversation was. To contradict Mr. Tracy we put on the stand Mr. Martin. Now you permit them to contradict Mr. Martin?

Judge Neilson—Yes.

Mr. Beach—And then you will permit us, I suppose, to give further evidence to sustain Mr. Martin, and when will we get through?

Judge Neilson—I think we will get through about 4 o'clock this afternoon. [Laughter.]

Mr. Beach—I don't think we will, Sir, if you permit that line of examination.

Mr. Shearman—Your Honor, would we have been allowed to have brought 500 witnesses in succession to confirm the statement of Mr. Tracy as to the hour when he went there?

Judge Neilson—I think you can contradict any statement that Mr. Martin has made, and you will proceed to do so. Read the clause.

By Mr. Shearman—Mr. Martin says Gen. Tracy went away, as near as he could tell, about 5 o'clock in the afternoon. Now, Mrs. Ovington, what time in the afternoon did Gen. Tracy go away?

Judge Neilson—No, that is asking an independent fact. Read the statement of Mr. Martin and ask her if that is so or not.

By Mr. Shearman—Mr. Martin testifies that Gen. Tracy went away about 5 o'clock in the afternoon. Is that true? A. It is false.

Q. Mr. Martin testifies that Mrs. Tilton and he were on the back piazza of your house for at least two hours on that afternoon. Is that true? A. It is false—it is, Mr. Fullerton.

Mr. Fullerton—Well, repeat it again, Mrs. Ovington, if you think it becomes a lady to do it. You need not approach and address me in that kind of style. If you forget you are a lady, others may forget it also.

The Witness—Excuse me.

Mr. Fullerton—I will excuse you.

By Mr. Shearman—Mr. Martin testifies that after Gen. Tracy left, there was conversation between Miss Turner and some other persons not named concerning the subject of her testimony before the Committee; is that true? A. It is false.

Q. Mr. Martin testifies that the subject of Miss Turner's testimony before the Committee formed the principal topic of conversation, after Gen. Tracy left, with Miss Turner and Mrs. Ovington; is that true? A. It is not true.

Q. Mr. Martin again testifies that he can safely say that after Gen. Tracy left there was no other topic discussed during that afternoon or talked about; was that true—no other topic than the subject of Miss Turner's testimony before the Committee discussed or talked about? A. There was scarcely any conversation of any kind; the time was short, only at the tea-table.

Q. But is it true that the topic of her testimony before the Committee was the only topic of conversation or discussion during that afternoon after Gen. Tracy left? A. It is not true. There was no discussion of any kind; very little said on any subject at the tea-table.

Q. Was anything said on the subject of her testimony before the Committee after Gen. Tracy left? A. Not a word. Directly Gen. Tracy left the house we went from the tea-table, and she went to the Committee directly after tea. There was no opportunity for conversation.

Mr. Beach—That is all irregular and inadmissible, under your Honor's ruling.

Mr. Shearman—It is a statement of fact.

Mr. Beach—No, it is not a statement of fact.

By Mr. Shearman—Mr. Martin is asked whether he knew, as a matter of fact, that your piazza was specially hot about 3 o'clock, and that it was only about 5 o'clock that that piazza was cooler than any other part of the house, and he answers that he does not remember. I ask you what is the fact about your piazza in the afternoon.

Judge Neilson—That does not contradict Mr. Martin, and we cannot take that.

Mr. Evarts—Why?

Judge Neilson—This witness cannot speak of that piazza, its condition in regard to heat, which no witness has testified about at all. It opens up the whole subject.

Mr. Evarts—Mr. Martin is testifying. He was the first witness that said anything about it; and, if I remember right, he says that Mrs. Tilton and he were up stairs.

Judge Neilson—And he went down stairs. It was on Mr. Shearman's examination.

Mr. Evarts—Mr. Martin's examination as a witness.

Judge Neilson—Mr. Shearman's examination of Mr. Martin.

Mr. Evarts—We have a right to cross-examine the witness, to contradict him.

Judge Neilson—You cannot contradict a man if that man does not say a thing is so or not.

Mr. Evarts—He does say that he and Mrs. Tilton went down stairs because the piazza was cooler, and that the

sun was kept from coming in there and broiling them by a projecting wall that protected, which shaded them. Now, if we propose to contradict him, we have a right to do so.

Judge Neilson—I have said, over and over again, that what he said you can contradict, but not an independent fact.

By Mr. Shearman—This question is asked Mr. Martin, and he gives this answer:

Q. Well, was it cooler on the piazza when you went down than up in the room? A. Yes, we went down for that purpose.

Q. Well, was the sun shining? A. Not on the piazza.

And he gives this time as half-past two o'clock in the afternoon, or three.

Judge Neilson—Yes, and look a little further and you will find a specific question of your own on that point.

Mr. Shearman—Then he is asked:

Don't you know that from 2½ or 3 o'clock in the afternoon that the sun is blazing on that piazza, and it is the hottest place in the house? A. I don't think so, Sir; I don't know——

Q. Don't you know that that piazza is exposed to the sun in the afternoon, and that that is the time the sun is shining on it? A. I think I know it is, but there is a protection there from the sun.

Then he goes on to say "there is some protection from the building, the next house. I think the next house is a protection." Further on he says: "This house next door is a three-story brick house, and running back, and the other house does not;" and he says that he has repeatedly sat on the piazza from 10 o'clock in the morning until the evening, and he never went away because of the heat.

Q. Not even on the hottest days? A. Well, it is very hot at that time, Sir.

Mr. Fullerton—All that is collateral.

Mr. Shearman—It comes down to the very question whether these parties came down at three o'clock in the afternoon in order to be cool, and went on the piazza. The whole question turns on a question of time. The whole contradiction of Gen. Tracy is attempted on the time he went down, and this witness testifies that although he looked at no clock, and had no other idea of the time, he knows he went on the piazza at three o'clock because he went down there to get cooler, and when asked whether the piazza was the hottest place in the house he said no.

Judge Neilson—Ask the lady that question.

By Mr. Shearman—Is, or is not, that piazza the hottest place in your house between the hours of half-past 2 and 4 o'clock in the afternoon? A. We have always considered it so.

Mr. Beach—Wait one moment, Madam. We object to that answer.

Mr. Evarts—Why?

Mr. Beach—We move to strike it out.

Mr. Evarts—It is a good answer.

Judge Neilson—I think we will let it stand. Go on, Mr. Shearman.

Q. Does the next house on either side of you project beyond the rear of your piazza? A. Neither of them does. A frame house on each side of ours, neither one extending beyond ours.

Q. Is your piazza exposed to the sun in the afternoon or not? A. It is.

Q. Is it not directly exposed to the sun? A. It is.

By Judge Neilson—What is the protection there? There is some protection there, is there not? A. There is a protection until an hour or two in the afternoon by a roof, but between 2 and half past 5, I think it is, in Summer, there is no protection whatever; the sun blazes there.

By Mr. Evarts—You mean the roof of your piazza? A. The roof of our own piazza is a narrow old roof; it is a narrow, old-fashioned piazza.

By Mr. Shearman—Have you recently observed during what hour the sun does strike upon the whole of that piazza?

Mr. Fullerton—She has not recently observed that piazza.

Mr. Shearman—The sun occupies about the same position——

Mr. Fullerton—That is the way I studied geography.

Mr. Shearman—The sun occupies about the same position on the 14th of May that it does on the 28th of July.

Judge Neilson—I think her answer is sufficient on that subject.

Q. Have you recently observed during what hours the sun strikes upon the whole of that piazza? A. From 2 until half-past 5 o'clock, I think it is, or 5; in the Summer it lies there longer.

Q. Mr. Martin testifies, being asked how he has refreshed his recollection as to the time of being in a room in your house, and he says:

Because they have a clock there; I may have looked at that; I do not remember.

Judge Neilson—You need not ask her about the clock.

By Mr. Shearman—Mr. Martin went into Mrs. Tilton's room; is there a clock in Mrs. Tilton's room?

Judge Neilson—That is immaterial.

The Witness—There is.

By Mr. Shearman—Was that clock running in the Summer of 1874? A. No, Sir.

Q. Had it been? A. No, Sir, not for some years.

Judge Neilson—Never mind about the clock. Mr. Martin did n't prove anything about the clock.

Mr. Shearman—He attempted to.

Judge Neilson—He attempted to show he looked at it.

Mr. Beach—No, he did n't attempt to show he looked at it.

By Mr. Shearman—Mr. Martin being asked the question—

There was quite a long time elapsed after Gen. Tracy left before you had tea? answers:

Well, I should think about an hour; and again, I think, my best impression is it was about an hour.

How long was it after Gen. Tracy left before you and Mr. Martin had tea? A. Gen. Tracy left at 6 o'clock. We went to tea a few minutes past 6. I think the tea bell rang when Gen. Tracy was in the house.

Q. I call your attention to some testimony that Mr. Tilton gave yesterday:

I was sitting with Mr. and Mrs. Ovington on their back piazza, and I chanced to make a remark to this effect, that I was sorry that the piazza on my house was in the front, and not in the rear; that my piazza was practically of no advantage to the family, because, in order to sit there, we must expose ourselves to the street; whereas, in Mrs. Ovington's house, they could enjoy the comfort of their piazza, and still maintain their family seclusion.

And he fixes this conversation as of the 9th of July, 1874, as I understand. Do you agree as to the date, the 9th of July?

Mr. Beach—No, I understand not.

Mr. Shearman—Then, if it was not so, it was improper evidence, because it was no contradiction of the testimony Mrs. Ovington gave. Mrs. Ovington gave an account of a conversation that took place on the 9th of July, 1874. Mr. Tilton's attention was called to that, and he gave his evidence by way of contradiction, giving a new conversation. I will put the question in this shape. [To the witness]. You remember testifying, Mrs. Ovington, to a conversation with Mr. Tilton, in which he said to you: "Elizabeth will lie for me. She would tell any number of lies to clear me; she loves me." You remember testifying that? A. I do.

Mr. Morris—One moment.

Mr. Shearman—That is all, to call her attention to it. [To the witness.] Mr. Tracy testifies that on that occasion the following took place:

I was sitting with Mr. and Mrs. Ovington on their back piazza, and I chanced to make a remark to this effect, that I was sorry that the piazza on my house was in the front, and not in the rear; that my piazza was practically of no advantage to the family, because in order to sit there we must expose ourselves to the street, whereas in Mrs. Ovington's house they could enjoy the comfort of their piazza, and still maintain their family seclusion. Mrs. Ovington made some remark, however, about my house being very cool and comfortable in the Summer, in consequence of Gallatin-place opening perpendicularly just in front of it. I then made a remark that that was true, but that I was very sorry that Mrs. Tilton had been compelled to yield up the pleasantest and coolest room in our house, which was the second-story pair of front rooms, to Mr. and Mrs. Taylor, who were then occupying them; and I added, perhaps in a satirical vein, "This is one of the consequences of the scandal, and unless I defend myself against the accusations brought against me, I presume I shall go to complete ruin."

Did any part of that conversation take place; and, if so, what part of it?

Judge Neilson—She has testified to part of it.

Mr. Fullerton—Can there be anything more collateral than that?

Judge Neilson—No.

The Witness—[to Judge Neilson]—But, Sir, it was not in the same connection; and that was not so.

Mr. Fullerton [to the witness]—Let Mr. Shearman argue the case. [To Judge Neilson.] I object to it on the ground that it is entirely collateral.

Mr. Shearman—It was evidence worth putting in on the other side; I suppose anything they put in we have a right to rebut. [To the witness.] Did Mr. Tilton use any such language as that in this connection? A. No, Sir, he did not; it was in an entirely different connection.

Judge Neilson—Let it stand.

Mr. Fullerton—I understood your Honor to rule it out.

Judge Neilson—Well, we will let it stand.

Mr. Shearman—That is all, Mrs. Ovington.

CROSS-EXAMINATION OF MRS. OVINGTON.

By Mr. Fullerton—Was the scandal the subject of conversation at the tea-table that night? A. It was not, Mr. Fullerton.

Q. Not one word said about it? A. Nothing concerning the scandal. The mere arrangement of Bessie being sent to Mr. Storrs's that evening was the only time the subject was mentioned.

Q. Nothing as to what she was to testify to? A. Not one word.

Q. Sure of it? A. Nothing before she went; before the Committee met no word was said on that subject; neither did Mrs. Tilton or me understand, that I know.

Q. How long was the interview between Mr. Tracy and her? A. Less than an hour; I can give you the reasons why I know it was so.

Q. How much less than an hour? A. Perhaps ten minutes less.

Q. You think, then, it was about fifty minutes long, as near as you could say? A. Fifty minutes; I could not say to two or three or four minutes.

Q. As near as you recollect? A. I should say it was fifty minutes.

Q. And where did it take place? A. In the back parlor. The conversation took place in the back parlor; I introduced Miss Turner to Gen. Tracy in the front parlor.

Q. What took place in the back parlor? A. Miss Turner was speaking to Mr. Tracy.

Q. It was in the back parlor? A. It was in the back parlor.

Q. What time did it commence? A. It commenced directly after I introduced Bessie.

Q. What time did it commence? A. A little past five o'clock; I cannot say the number of minutes.

Q. What time did Bessie go to the Committee? A. About seven o'clock, I think it was.

Q. Did the Committee meet as early as that? A. I know she left long before dark, or some time before dark; it was daylight when she left.

Mr. Fullerton—That is all.

Judge Neilson [to the witness]—That is all. [To counsel.] That is the case on both sides, gentlemen, I suppose.

Mr. Shearman—No; we have another witness to answer some questions here.

Mr. Evarts—If your Honor please, we shall have several witnesses. We have no expectation of being able to finish to-night. We have several witnesses, but they won't be long.

Mr. Shearman—We can finish with Mr. Eggleston in a few minutes.

Mr. Fullerton—They say they can finish with him; perhaps I cannot.

Mr. Evarts—If you cannot, perhaps we had better adjourn.

Judge Neilson [to the jurors]—Gentlemen, get ready to retire. Be in your seats to-morrow morning at 11 o'clock.

The court then adjourned until 11 o'clock on Thursday morning.

EIGHTY-FIFTH DAY'S PROCEEDINGS.

THE TESTIMONY ALL IN.

COUNSEL FOR THE DEFENDANT OBTAIN AN ADJOURNMENT UNTIL WEDNESDAY—THE LAST WITNESSES—BRIEF TESTIMONY FROM HENRY C. BOWEN, THE REV. EDWARD EGGLESTON, H. B. CLAFLIN, CHARLES STORRS, GEORGE W. UHLER, JOHN C. SOUTHWICK, AND OTHERS.

THURSDAY, May 13, 1875.

Although the end of the trial was known to be very near, yet there was considerable surprise to-day when it was suddenly announced, about five minutes before 3 o'clock, that the last witness had given his testimony, and the case on both sides was ready to be summed up and given to the jury. Judge Neilson exhibited unmixed satisfaction when Mr. Evarts announced that he rested the defendant's case. The counsel on both sides also appeared relieved, and the jurymen looked at one another and smiled as if well pleased that their long confinement was so nearly over. Mr. Evarts stated that on account of the large accumulation of evidence, and because their side would have to begin the summing up, the counsel for the defendant desired a short interval for preparation. Judge Porter and himself were to divide the work of summing up the defendant's case, and they would like an adjournment until next Wednesday morning.

Mr. Beach stated that personally he should prefer to go on with the case on Monday, but although it would be a personal sacrifice to him, he was willing to oblige Judge Porter and Mr. Evarts by acceding to the request for an adjournment. Judge Neilson accordingly granted Mr. Evarts's request, and the court adjourned until Wednesday morning at 11 o'clock.

THE CLOSING TESTIMONY.

The first witness put on the stand by the defendant yesterday was Calvin J. Mills, who is engaged in an editorial capacity on *The New-York Herald*. It was sought to prove by him that the Woodhull scandal publication had been circulated in printed slips prior to its appearance in *Woodhull & Claflin's Weekly*. After a good deal of argument by the counsel on both sides the testimony of this witness was ruled out by Judge Neilson, and Mr. Evarts withdrew the question which had already been put to him.

Henry C. Bowen was recalled by the defendant for further cross-examination. His appearance created another stir in the audience. He came forward with a quick, nervous step, gave his testimony briefly, and after being about five minutes on the stand stepped down again and disappeared among the spectators. He substantially reiterated his former statements concerning the time of the alleged interview at Mr. Freeland's house, and about the Woodstock letter, and his alleged statements to Mr. Eggleston.

The Rev. Edward Eggleston immediately followed Mr. Bowen in the witness chair. Mr. Shearman asked him if his occupation had not changed since his last appearance before the Court. "Well, Sir," replied Mr. Eggleston, "when I was here before I said I was lecturer, author, and clergyman; now I am principally clergyman, Sir. The lecturer and author have been rather sunk out of sight, I believe." Mr. Eggleston's examination was short. He repeated in substance the statements alleged to have been made to him by Mr. Bowen, and which Mr. Bowen had denied.

Horace B. Claflin and Charles Storrs were successively called to the stand by the defendant's counsel. Both of them declared that they had never before seen the document asserted to be the submission to arbitration agreed upon between Mr. Bowen and

Mr. Tilton, and written by Mr. Moulton. They substantially reasserted the points of their evidence which had been called in question by Mr. Bowen.

George W. Uhler, the owner of the house in Clinton-st. occupied by Mr. Moulton in 1871, and Wallace E. Caldwell, were both called by the defendant to contradict the statement that there was no portrait of Mr. Beecher in Mr. Moulton's house in Clinton-st. Both swore that they had seen a large portrait of Mr. Beecher in the parlor of that house when it was occupied by Mr. Moulton.

John C. Southwick was called for the defendant to contradict some of the statements of Mr. Woodruff, but much of the evidence which it was desired to draw from him was ruled out. On the cross-examination of this witness Mr. Beach caused much merriment by abruptly asking him if he had any bets on the result of this trial. The witness admitted that he had had a bet of $100 of that kind, but had withdrawn it in anticipation of being called as a witness. Mr. Southwick was the last witness for the defendant.

The plaintiff's counsel called John Eliot Bowen, a son of Henry C. Bowen, who swore that in 1870—he thought it was in December of that year—he had delivered a note from his father to Mr. Freeland, and received the reply, "I'll attend to it," or something equivalent to that.

Marshall J. Morrell, an architect, was also called for the plaintiff. He brought with him a drawing which he had made of the rear of Mr. Ovington's house, and the situation of the adjoining buildings. His testimony was intended to support the assertion of Mr. Martin that he and Mrs. Tilton had sat on the back piazza of Mr. Ovington's house to find a cool place on the afternoon when Gen. Tracy and Miss Bessie Turner had their interview at that house.

THE PROCEEDINGS—VERBATIM.

THE TRIBUNE'S EDITORIAL COMMENTS CRITICISED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Are you ready to proceed, gentlemen?

Mr. Fullerton—If your Honor please, I desire to call attention to a brief editorial in one of the morning papers, of this morning.

Mr. Beach—Name the paper.

Mr. Fullerton—THE NEW-YORK TRIBUNE.

Mr. Beach—[*Sotto voce.*] The official paper of this Court.

Mr. Fullerton—Well, it is an editorial. It is headed as follows:

As usual, the Beecher trial was enlivened yesterday by some choice exhibitions of legal blackguardism.

And then goes on to quote a question put to Mrs. Ovington while on the stand, and her answer; also an observation made by Mrs. Ovington to me, and my reply. Mrs. Ovington's answer to the question was as follows: "It is false"—and then turning to me, when she was not under examination by me, and in an excited manner, and with a good deal of gesticulation——

Mr. Beach—And emphasis.

Mr. Fullerton—And emphasis, said: "It is false, Mr. Fullerton," when I replied:

Well, you can repeat it again, Mrs. Ovington, if you think it becomes a lady to do it. You need not approach and address me in that kind of style. If you forget you are a lady, others may forget it also.

Now, the writer of that article could not have understood that I was not examining Mrs. Ovington at the time, but my friend Mr. Shearman was, and that she had no right to turn and address me by name, in a loud tone, too, and in such an emphatic manner. Why she did it I certainly did not at the time understand, but I did think, although she was a lady, that it was such a piece of impertinence, not to say anthing harsher, that it required some observation from me by way of rebuke. If the lady had been under examination by me, it, of course, would have been a very different matter, but she was not, and she had no occasion and no right to address me in a public court-room in that kind of way, calling me by name, and repeating the answer in the manner, which was very offensive, which she did.

Judge Neilson—I appreciate what the counsel says, and regret exceedingly that such an article should appear in that paper. I remember the occasion and recollect it as counsel now states it, and regret that Mrs. Ovington should at the moment have forgotten herself so far as to make the remark which she did, especially to counsel who was not then examining her or speaking to her.

Mr. Fullerton—Mrs. Ovington undoubtedly discovered her mistake, because she apologized in a moment, and the apology was accepted at the time.

Judge Neilson—The error of the article goes quite back beyond that. The reference in the first line—will you be kind enough to repeat it.

Mr. Fullerton—The language is this, Sir: "As usual"——

Judge Neilson—"As usual."

Mr. Fullerton [continuing]—"The Beecher trial was enlivened yesterday by some choice exhibitions of legal blackguardism."

Judge Neilson—Well, now, that will do. I consider that the offensive part of the article. The reference to Mrs. Ovington, no doubt, proceeds in a measure from misapprehension—the supposition perhaps that you was dealing with the witness. But the expression that this trial,

on the occasion yesterday, or any other day, has been characterized by "the usual," or any blackguardism, is an unpardonable offense. I, in one way and another, during my experience here and at the bar, have seen very many trials hotly contested, civil and criminal, and I have never seen a case where counsel have treated each other and treated witnesses with more courtesy and circumspection than in this case. I think that remark by the editor of that paper was a most unpardonable offense, and calls for an apology from him.

Mr. Evarts—I think, if your Honor please, my friend Mr. Fullerton will not disagree in what I shall say in respect to Mrs. Ovington. Altogether, I think, too much of the occurrence was made of the matter by the press, of course. We agree that that is not a fair representation of it, but I am inclined to think that there is too much of an inference of impropriety on the part of Mrs. Ovington, from the manner in which my friend Mr. Fullerton took it up. Now, we cannot reproduce in print all that occurs in court. Mr. Shearman was standing behind Mr. Fullerton, as usual, in his position and our position, and examining Mrs. Ovington. Mr. Fullerton, as was his right, was watching the witness closely and looking in her face, as preparing for a cross-examination. Mrs. Ovington, observing in his face an expression which she regarded as distrustful, in some degree, of her statement, did, without any justification, under the rules of giving evidence, make an observation to him, and I think made it very good-naturedly, as far as I recollect; but Mr. Fullerton did not treat it in that sense exactly, but treated it as an impropriety, and spoke as he is reported to have spoken. Then Mrs. Ovington apologized; Mr. Fullerton then accepted her apology; and there I suppose the thing should have ended, the people who saw and remember the whole, including the jury, and your Honor, and the rest of us, understanding the matter much more distinctly than by any production in print by mere words that passed either one way or the other. I am sure Mr. Fullerton cannot think that Mrs. Ovington intended any affront to him in what she said, and we must admit that there was no occasion for her speaking again in repetition of her answer as matter of evidence, but she was drawn into it by Mr. Fullerton's position and scrutiny of her countenance, and the expression of his, and the very amicable relations that had been established between Mrs. Ovington and Mr. Fullerton on the previous examination and cross-examination.

Judge Neilson—That act on Mrs. Ovington's part was incidental, and perhaps natural to a person not much accustomed to proceedings in court, and I think she had been treated very properly, and with courtesy, in her previous examination, and but for the mention of the circumstance in the press I think it would have passed off satisfactorily and pleasantly. I do not think even at the moment that Mr. Fullerton had a wish to censure Mrs. Ovington.

A CORRECTION OF THE PRINTED RECORD.

Mr. Evarts—If your Honor please, there is a matter in the evidence incidentally brought to notice by an examination of Mr. Moulton as to a particular passage in Mr. Beecher's testimony, and we have asked the stenographer to make the proper examination to see whether the clause as printed was correctly printed or not, and he has made it.

Judge Neilson—As to the word "reading?"

Mr. Evarts—Yes, Sir, as to the word "reading." It is on page 45 of the third volume, in the second column, very near the foot, and is in this clause. In speaking of Mr. Moulton he says:

He would say, "Did you say" so and so? or "Do you say?" or something to that effect, and I would check myself for a moment to make some reply—"Yes," or "Substantially that," or something like that, and then would repeat—repeated one thought and another thought, attempting to go over in my mind, somewhat, the points of the conversation that had immediately preceded this, and which concerned my feelings toward Mr. Tilton and his family; that was the last part of the interview before the making [instead of reading] of the memorandum.

Judge Neilson—Mr. Stenographer, does the character used for the word "reading" also represent the word "writing?"

The Stenographer—No, Sir; it does not look a bit like it.

Judge Neilson—What?

The Stenographer—It does look at all like it.

Judge Neilson—They are totally unlike?

The Stenographer—Yes, Sir.

Mr. Morris—Then it turns out that Mr. Shearman's reasoning was not correct.

Mr. Shearman—I will appeal to Mr. Munson, who is quite experienced, as to whether I was right, if you insist upon it.

Mr. Beach—Don't be all talking at once.

Mr. Morris—Well, I have a right to talk, because I had the floor first.

Mr. Beach—Well, I was trying to quiet Mr. Shearman.

Mr. Morris—You have got a hard task.

Mr. Beach—No; not very hard.

Judge Neilson—Very well, gentlemen; I am satisfied.

Mr. Shearman—Well, then, your Honor, I wish to make this explanation. Mr. Munson spoke to me across the table, saying that since the time when I practiced phonography (for I used to practice it—when Mr. Tilton did) the system had changed—I was told the system had changed, that there are now four or five systems. Mr. Munson will bear me out that, under the old Pitman system, "read" and "write" were written very much alike—just a little difference in the turn or crook. That was under Pitman's system.

Mr. Munson—That was very early; in the earlier editions it was so.

Mr. Morris—That is outlawed.

Mr. Evarts—We are not proceeding under that now;

we have asked the stenographer to get his own notes and give us the correction.

Judge Neilson—Yes. Have we any more witnesses?

Horace B. Claflin was recalled on behalf of the defendant.

Judge Neilson—Good morning, Mr. Claflin.

Mr. Claflin—Good morning, Sir.

Mr. Shearman—The paper is not in court upon which we proposed to examine Mr. Claflin; Judge Morris has sent for it.

Mr. Beach—Can't we do something else while he is gone?

Mr. Shearman—Mr. Claflin, we will exchange you for another witness.

Judge Neilson—Take a seat below for a moment, Mr. Claflin.

TESTIMONY OF CALVIN J. MILLS.

Calvin J. Mills was called and sworn on behalf of the defendant.

By Mr. Hill—Where do you reside, Mr. Mills? A. In Brooklyn.

Q. How long have you lived in Brooklyn? A. I have lived in New-York and Brooklyn about 17 years—occasionally I lived in New-York, and sometimes in Brooklyn.

Q. Are you acquainted with both of the parties to this action? A. I am not; I am acquainted with Mr. Beecher, but not with Mr. Tilton.

Q. What is your present business? A. An editor, Sir.

Q. How long have you been engaged in the business of an editor? A. I commenced, I think, the year after the Mexican war; which I think was 1849, Sir.

Q. And have been engaged in the business ever since? A. Not ever since.

Q. Nearly all the while? A. The most part of the time, Sir.

Q. At what place? A. At Buffalo I commenced; I have been in New-York about six years now.

Q. What papers have you been engaged upon? A. In Buffalo on *The Buffalo Courier* and *The Buffalo Evening Post.*

Q. And in New-York? A. In New-York on *The Standard,* and where I am at present—on *The Herald.*

Q. Were you so engaged in New York in 1872, any part of the year? A. Yes, Sir; all the year.

Q. On what papers first? A. In the first half of the year on *The Standard,* and from July on *The Herald.*

Q. Do you recollect at any time during the year 1872—I will pass that question at present. Did you, during the year 1872, see what was called the Woodhull scandal—the publication in *The Woodhull & Claflin Weekly* called the Woodhull scandal? A. I did, Sir.

Q. When did you see it, Mr. Mills? I saw it published in the Woodhull paper about election time, 1872; I think about the 1st of November.

Q. Now, Sir, did you examine the article at that time? A. Yes, Sir.

Q. Read it through? A. I cannot say that I read it through certainly, but I think I did.

Q. Be kind enough to look at this publication and see if it is the same which you read—that is, the subject matter? [Handing witness *Woodhull & Claflin's Weekly.*] A. Yes, Sir, it is.

Q. Now, Mr. Mills, had you at any time prior to your reading and examination of this publication seen the substance of it in type, either in proof-slips or other form, before that time?

Mr. Fullerton—That is objected to. One moment.

Judge Neilson—We had that subject up a month ago, Mr. Hill.

Mr. Hill—I know it.

Mr. Evarts—But your Honor will notice that other evidence has been given on their part.

Judge Neilson—Then you may turn to the specific statements that have been given by anybody, which you have a right to meet. I want to get you to apply the same principle that you insisted upon yesterday.

Mr. Evarts—Exactly; we agree, if your Honor please, when it goes to the contradiction of the witness, any statements, but this is our point. In the rebutting evidence of the plaintiff a witness was produced who had the conduct of the press or publication for Mrs. Woodhull of her paper.

Judge Neilson—Mr. Andrews?

Mr. Evarts—No, Sir.

Mr. Beach—Mr. Mitchell.

Mr. Evarts—Mr. Andrews was introduced and spoke, but Mr. Mitchell, if that was his name—the printer.

Mr. Morris—Mr. Wood.

Mr. Evarts—Mr. Wood—and showed the suspension of that paper during a certain period, and that there were no proofs of the actual publication—that is, no proofs of this in print, as it came out actually in that paper—no preliminary proofs of that that were made or could have been made at that press or in that publication earlier than a certain date.

Judge Neilson—Yes, a day or two before the paper was issued.

Mr. Evarts—Yes, Sir; it was to preclude the idea that our witnesses were right in saying that they had seen slips. Our witnesses had said that they had seen slips in the hands of Mrs. Woodhull and in the presence of Mr. Tilton, &c. Now, these witnesses were, as I understand it, before, excluded by your Honor—as I was not in court at that time—on the ground of its being a collateral inquiry, and that we were not to go into it. My own view of the matter—to present upon the aspect of the case as it then stood—was that it was good principal evidence, and it was so presented by my associates to your Honor.

Judge Neilson—No. It was excluded because the attempt was to show that slips had passed from hand to

hand, were known, were the same seen by the colored witness.

Mr. Beach—Mr. Woodley.

Judge Neilson—Mr. Woodley, at the office.

Mr. Evarts—Yes, Sir.

Judge Neilson—Whereas it did not appear to the Court that there was any connection between any slips that existed and the papers that Woodley had ever seen, and that Woodley did not identify the slips because he could not read. That was the aspect then.

Mr. Evarts—I don't think, if your Honor please, that we should doubt that when evidence is produced here in rebuttal by them to show that their press was suspended, and thus furnishing evidence that there were no slips flying about during this period, but that it would be certainly evidence contravening that for us to show that this gentleman and others——

Judge Neilson—I think you can contradict any statement made by Mr. Wood, or Mr. Andrews, if you will turn to the precise statement and call the witness's attention to it.

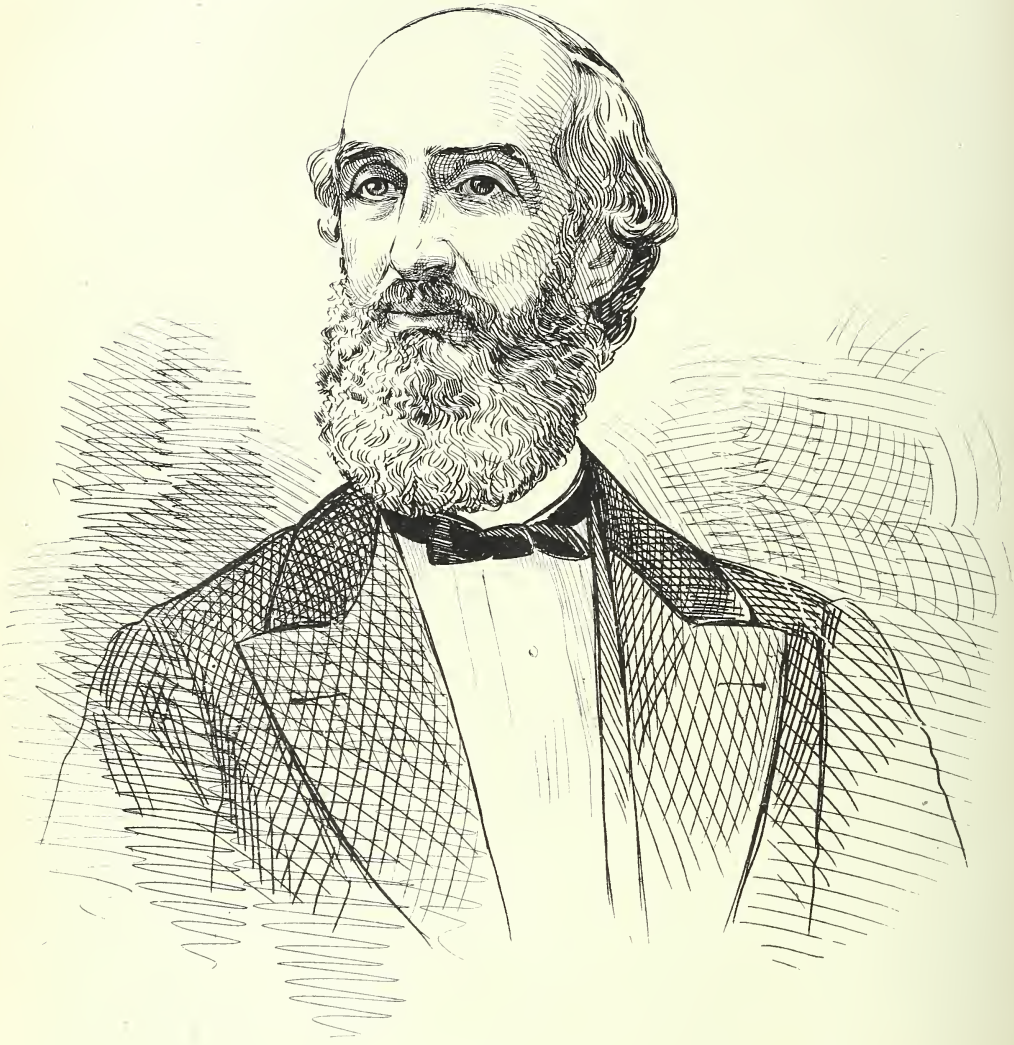
Mr. Evarts—That is not our proposition, if your Honor please. Our proposition is this—that they have proved not statements but a matter of fact, that there was no press at work of theirs on the publication or any issues, and have brought that evidence as being material or important only in the aspect of discrediting or throwing doubt or contradiction upon the statements of our witnesses that they had seen in the form of printed slips the subject-matter of this scandal. Now, they having introduced that in the evidence, we propose to show by this gentleman, connected with the newspaper press, and by several other witnesses independent of him—independent of the circumstances of his seeing the slips—that slips of this Woodhull scandal were in circulation during the Summer and Fall of the year 1872, in and through the newspaper offices, or some of them, which will be named, of the City of New-York, and that this gentleman and the others saw them, and know them, from their own perusal, to have been of that character. Then, of course, if that was so we have displaced all argument that Mr. Woodley or others that saw slips were mistaken in their statement or false in their statement, because of the evidence that the specific press of the Woodhull publisher was still during that period. That is the object of our present evidence, and that it would have that effect if it is admitted, and that it would have that effect, as counterpoising and countervailing the rebutting evidence of this plaintiff, cannot be doubted. And we are not within the rule that you must meet rebutting evidence by the contradiction of the particular witness in the fact that he states. If you introduce in answer to that fact, newly introduced in that rebuttal, an opposite fact that countervails it, not in the truth of the fact introduced into the rebuttal, but in its import or value, as bearing upon the evidence in the case, it is strictly within the line as it seems to us, of sur-rebuttal. That is our proposition.

Judge Neilson—I think we will take the answer, Sir; it is a very remote matter.

Mr. Beach—Well, your Honor will please consider this question before you rule in favor of this proposition. This is strictly, Sir, cumulative evidence to that which was given upon the defense. They presented the issue in regard to the circulation of these slips anterior to the publication in *The Woodhull & Claflin Weekly* of November, 1872. They gave evidence of this precise character—identically the same, Sir—that slips of that article were circulated and were seen by others during the preceding months to its publication. We then content ourselves with the production of evidence upon that affirmative issue presented by the defense, and we prove by Mr. Andrews that he was the author of this article, and did not commence its preparation until a few days before its publication. And we show, in addition, that between Spring and Fall of 1872, not that the press of Woodhull & Claflin was suspended, but that the publication of the paper was suspended. And now they propose, Sir, in sur-rebuttal, to come in with this cumulative evidence thus opening the issue to which we gave nothing but answering proof upon our rebuttal. Now, if your Honor is disposed to open the issues in this case, and permit additional evidence to be given, because if this evidence is received we must have an opportunity to meet it; it is a departure from the ordinary rules of evidence. It is clearly cumulative evidence upon an issue which they presented, upon which they have the affirmative, and worse than that, it is of the same identical character which they gave upon the opening of their defense, and which we answered in our reply. Now, Sir, there is no dispute of this proposition. A reference to the minutes—the record—will show that this statement is strictly accurate, and your Honor has, heretofore, with a good deal of strictness, in our replies to the evidence upon the defense, confined us to the rules of examination, not having permitted us in a single instance to wander beyond the strictness of those rules; and I submit to your Honor, with great earnestness, that this will be the first departure from the application of those rules which your Honor has made since the affirmative cases on the part of the plaintiff and the defendant have been produced. Now, your Honor has made the remark that this is extremely remote.

Judge Neilson—Well, I would like to ask you what earthly bearing it has upon this case?

Mr. Beach—I have submitted to your Honor heretofore, Sir, that it has no bearing upon the issue; that it is entirely collateral. They presented that issue and upon our objection your Honor received that evidence, and after we have, upon each side, exhausted our evidence upon that issue and rested, you now permit them to come in, if you admit this evidence, with additional proof in



Henry C Bowen

support of their opening upon the defense, and upon a question that has but this very distant and collateral bearing upon the merits of the issue. I submit to your Honor that it would be an irregularity in the course of this trial which I should very much regret to have established as a precedent in this case, because, I assure your Honor, that it is opening an issue which will necessarily lead to a further protracted investigation, and we must ask your Honor, if you permit this departure from the rules of evidence, to give us an opportunity to prepare to meet it. It takes us entirely by surprise, Sir,

Judge Neilson—I think I will take the general answer. Repeat this question, Mr. Stenographer. Can you find it?

The Tribune stenographer [reading]: "Now, Mr. Mills, had you at any time prior to your reading and examination of this publication, seen the substance of it in type, either in proof-slips or other form, before that time?"

The Witness—I had.

Mr. Fullerton—Well, one moment—the substance of it, Sir?

Judge Neilson—Well, let him say yes or no.

Mr. Fullerton—Well, Sir, that is not in contradiction of anything we have proven.

Judge Neilson—Well, leave out the word "substance."

Mr. Hill—Well, leave out the word "substance."

LIMITATION OF THE TESTIMONY.

Mr. Morris—Now, if your Honor please, yesterday when I was examining Mr. Moulton, and when I undertook to ask questions calling for a contradiction of facts, general facts, they objected, and your Honor compelled me, in every instance, to read the precise language and confine the evidence to a strict denial of that. Now, we say to your Honor if this general question is asked, it opens the whole door; we have witnesses, and we must be permitted to bring the witnesses here and try that issue; and your Honor cannot tell, nor any one else, if this course is to be pursued in this examination, when the examination of the witness will end. In no single instance in our rebuttal were we permitted to ask a question to disprove a general fact in the case, but in every instance we were met by an objection, and in every instance your Honor compelled us to turn to the evidence and read the language and put the precise question to them. Now, we submit that the same rule should be applied to them that was applied to us. If not, then we want to put our witnesses upon the stand again and pursue the examination. We have a number of witnesses that we desire to call if this is done, and we shall ask the court to give us the opportunity. We can exhaust days upon that subject if there is——

[Mr. Evarts here rose to speak.]

Judge Neilson—I think we have enough upon this subject, and I will let the witness answer this. I do not want any more argument upon the subject; I am sorry you put the question.

Mr. Evarts—I do not propose to argue.

Judge Neilson—I have said he can answer yes or no, unless you withdraw the question.

Mr. Evarts—I am going to state what will be very agreeable to your Honor if I have an opportunity; and that is, that under this distinct threat of prolonged examination that will be given to the subject, I withdraw the question.

Judge Neilson—I recognize that as a very judicious and fair performance of professional duty on the part of counsel.

Mr. Evarts—I agree to that; all these things are relative, and the magnitude of a question is, of course, sometimes such as compels counsel to insist upon it; at other times it does not, and I agree they would have a right to call witnesses on the other side of this question, of this distinct question, whether there were slips; and I concede that the interest of the Republic is that we should come to an end of this case. [Laughter.]

Judge Neilson—Yes; that is all, Mr. Witness.

MR. BOWEN RECALLED FOR CROSS-EXAMINATION.

Mr. Shearman—If your Honor please, we desire to recall Mr. Bowen for a few moments for further cross-examination. [Mr. Bowen took the stand.]

By Mr. Shearman—Mr. Bowen, you were asked on your previous cross-examination whether you recollected an interview with Dr. Edward Eggleston, at your house on the afternoon of the 26th of Dec., 1870, after your return from Mr. Beecher's; I ask you now, whether you still have no recollection of that interview? A. I have no recollection; it is possible, but I have no recollection of it.

Q. Do you recollect in such an interview, on that occasion, saying to Dr. Eggleston that Mr. Beecher had told you that an adopted daughter of Mrs. Tilton had told Mr. Beecher that Mr. Tilton had taken her out of her bed at night, or anything to that effect? A. I have no recollection of it, Sir; none whatever.

Q. Nor anything in substance like it? A. Nothing whatever.

Mr. Shearman—That is all.

Mr. Fullerton—Mr. Bowen, what time did you leave the house of Mr. ——

Mr. Shearman—Oh, Mr. Fullerton; one other matter.

Mr. Fullerton—Certainly.

By Mr. Shearman—Do you recollect, Mr. Bowen, after leaving the scene of the arbitration between yourself and Mr. Tilton, on April 3, 1872, going away with Mr. Claflin and Mr. Storrs? A. I recollect going with Mr. Storrs, but not with Mr. Claflin; it is possible, however, he might have been there, or near there; we all went, as I recollect, about the same time.

Q. Do you recollect saying to either or both of those gentlemen, or in their presence, that you desired to have

the Woodstock letter returned to you, and hoped one of them would attend to it? A. I said nothing whatever on the subject, according to my recollection.

Q. Do you recollect whether Mr. Claflin replied to you that that was "a matter that Mr. Storrs had better attend to?" A. I recollect nothing on the subject; I am positive, if you wish my statement, that nothing of the kind was said.

Judge Neilson—I so understood you before, Mr. Bowen.

The Witness—Yes, Sir; I so stated before. I desire to state further, if I did not at that time, that nothing was said for two days (according to my recollection) after the arbitration.

Judge Neilson—On that subject?

The Witness—On that subject of the Woodstock letter, and when it was spoken of it was a surprise to me.

Mr. Shearman—Wait a moment. I move to strike that out, if your Honor please.

Mr. Morris—It is a proper explanation.

Mr. Beach—Let them strike it out.

Judge Neilson—Well, I think it is an explanation. Let it stand.

Mr. Shearman—We except; please note our exception. [To the Witness.] I believe you have said that Mr. Storrs brought you the letter—the Woodstock letter? A. He did.

Q. Did he say to you at that time, when you proposed to keep the letter, that he did not feel at liberty to give it to you to keep until you had published a certain article in *The Independent*?

Mr. Beach—That is objected to, Sir, as being totally immaterial and incompetent as to what passed.

By Mr. Shearman—And that he had made that promise to Mr. Tilton? A. Nothing whatever of the kind.

Mr. Beach—Wait one moment; I object to the question.

Mr. Shearman—I am not going to fight about it; I will withdraw the question rather than take any time.

Mr. Beach—Well, strike it out; strike it out.

Judge Neilson—Do you wish to ask Mr. Bowen anything?

Mr. Fullerton—Yes, Sir.

RE-DIRECT EXAMINATION OF MR. BOWEN.

Mr. Fullerton—Mr. Bowen, what time did you leave Mr. Freeland's house on the 27th, or 26th of Jan., 1870, after this interview with Mr. Beecher—26th of December?

Mr. Evarts—Well, how is this material to our present inquiry? This has nothing to do with the questions that we have asked.

Mr. Fullerton—Oh, yes; it has a good deal to do with it.

Mr. Evarts—We have recalled Mr. Bowen in cross-examination before we put Mr. Eggleston on the stand to ask him certain questions.

Judge Neilson—Well, Mr. Fullerton is now confined to the subjects indicated by you, I think.

Mr. Evarts—He is now going back to the general frame and progress of the interview between Mr. Beecher and Mr. Bowen.

Mr. Beach—Can we not contradict the last evidence of Mr. Freeland?

Judge Neilson—Any witness of theirs examined since may be contradicted.

Mr. Fullerton—Your Honor will perceive that they asked Mr. Bowen with reference to an interview with Dr. Eggleston after he left Mr. Freeland's. I think it is competent for us to know what time of night he left there, as bearing upon that matter.

Judge Neilson—Yes; if it was 12 o'clock it would be a circumstance, unless Mr. Eggleston keeps good hours.

Mr. Fullerton—That is what I want to find out, Sir; what hours he did keep. [To the witness.] What time did you leave Mr. Freeland's that night? A. What night do you refer to?

Q. On the 26th of December, 1870, after your interview with Mr. Beecher. A. I do not recollect the precise hour; but it was before evening.

Q. It was before evening? A. It was betore 6 o'clock.

Q. That you left? A. That I left Mr. Freeland's house.

Q. What time did you arrive at the house? A. I should say, perhaps before half-past 6 at the latest, not later than half-past 6.

Q. What time did you arrive at Mr. Freeland's house? A. According to my recollection it was 4 or 5 o'clock, I am not certain which, and the interview was prolonged some time, perhaps an hour, perhaps more, possibly a little less.

Q. Now, how soon after the signing of the "Tripartite Agreement" did you hear of the Woodstock letter? A. Not until two days after; I can give the particulars if I am permitted to by your Honor.

Mr. Fullerton—I wish you would give the particulars.

Mr. Evarts—I object to that—what were the particulars. The inquiry is as to the date.

Mr. Fullerton—Yes; I want to know how Mr. Bowen recollects that it was two days after.

Mr. Evarts—That is not necessary.

Mr. Fullerton—Oh, yes; it is

The Witness—I recollect very distinctly.

Mr. Fullerton—The witness has a right to fortify himself when he gives a date, by showing some competent circumstance which enables him to give it.

Mr. Evarts—Well, it is just what we have discussed over and over again, that a witness cannot be corroborated except when their testimony is reduced through some form of contradiction. He says he recollects distinctly that it was two days afterwards. We have not made any controversy as to the date that it was delivered to him.

Mr. Fullerton—I am asking when he first heard of the Woodstock letter.

Mr. Evarts—He said it was when it was delivered to him.

Mr. Fullerton—Now, I ask him how he is enabled to fix the time when he first heard of the Woodstock letter.

Mr. Beach—Why, Sir, the rule of rebuttal evidence does not apply to this; they call this witness for additional examination, and they ask him in regard to the Woodstock letter and the transaction concerning it, and we certainly have a right to draw out all his knowledge on that subject, if necessary, in answer to their cross-examination; I repeat, Sir, that the rule in regard to rebutting evidence does not apply.

Mr. Evarts—I have not said anything about that rule,

Mr. Beach—Well, I have.

Mr. Evarts—I have said——

Mr. Fullerton—The gentleman tries to get the advantage of it without saying anything about it.

Mr. Evarts—But this is not in answer to anything that we show.

Mr. Beach—I say it is a proposition in answer to what you established; that his Honor has repeatedly ruled on this question, whereas that question has not been before him.

Mr. Evarts—It was not that question of rebuttal I was talking of; it was the corroborating of witnesses. We were not permitted to do it by Mrs. Ovington yesterday, the very point that we tried to get in—why she knew this, that, and the other; it was not allowed; it is precisely the same matter that is now proposed by this gentleman.

Judge Neilson—I think we have the answer sufficiently from this witness.

Mr. Fullerton—How, Sir?

Judge Neilson—I think we have the answer sufficiently from this witness.

Mr. Fullerton—Well, your Honor will recollect that yesterday, when Deacon Freeland said that he knew a certain meeting took place the last week in January of a certain year, that he was permitted to say why, and did so; it was because they had prayer-meeting that week; and when it turned out that they prayed four times in a month in Plymouth Church, then he was enabled to go further and state why he knew it was in the last week of January, 1869.

Judge Neilson—To wit, the shaking of hands.

Mr. Fullerton—The shaking of hands, yes, Sir.

Judge Neilson—Well, I remember that now, Sir; take this answer.

Mr. Evarts—That was on their cross-examination, and then on the re-direct.

Mr. Beach—No, Sir, it was in answer to Mr. Shearman that it was given.

Mr. Evarts—That is what I say; on the re-direct.

Mr. Shearman—I asked the same question on the re-direct which they had asked on the cross; that is why I was allowed to ask that. Now, if we had asked Mr. Bowen why he remembered, and he had given an imperfect answer, they would have the right to ask the same question again. But now Mr. Bowen is in the position with them which Mrs. Ovington was with us, and we were not allowed to ask just that question.

Judge Neilson—I think Mrs. Ovington was allowed to state, the witness having been so long on the piazza to get out of the heat, that it was a hot place, and the hottest place in the house; I think we will take this answer.

By Mr. Fullerton—Now, Mr. Bowen, how are you enabled to state that it was two days after the signing of the "Tripartite Agreement." [To Mr. Shearman, who was beginning to speak.] One moment, if you please, Mr. Shearman; I wish you would only speak when we get through, or when I get through. [To the witness.] How are you enabled to state that it was two days after the signing of the "Tripartite Agreement" when you first heard of the Woodstock letter? A. One of the arbitrators, Mr. Charles Storrs, came into my office and said, "I have some news for you, Mr. Bowen," using that expression. I said, "What is it?" Said he, "It is in regard to the Woodstock letter." "Well," said I, "what have you to say about the Woodstock letter?" "I am going to get it and return it to you." "Well," said I, "I should like to have it." I am not positive, on a moment's reflection, whether he said "I am going to get it" or "I have got it." When he told me that, he did not hand me the letter, but, after stating that fact, he either produced the letter at that time—but I fail to recollect that point—or he went out and got it; it was brought to me or delivered to me at that time, or very near that time; when he brought the letter to me I took it and read it and put it in my safe. The next day or day following Mr. Storrs came to me and asked me for that letter.

Mr. Evarts—We object to this.

By Mr. Fullerton—Was it an unconditional delivery of the Woodstock letter to you? A. An unconditional delivery.

Q. And you took possession of it? A. I took possession of it and put it in my safe and locked it in the safe; that was the first I heard of it.

Mr. Fullerton—Now, I shall have to recall you, Mr. Bowen, after the examination of Mr. Eggleston, and if you will be kind enough to remain you will oblige me.

EDWARD EGGLESTON RECALLED.

By Mr. Shearman—Dr. Eggleston, I have an impression that your occupation has changed since you were on the stand before. Will you state how you are now at present engaged? A. Well, Sir, when I was here before I said I was lecturer, author, and clergyman; now, I am principally clergyman, Sir; the lecturer and author have rather been sunk out of sight, I believe.

Q. Are you pastor of any church? A. I am pastor, Sir.

Q. Of what church?

Mr. Beach—Well, we object to going into the history of this gentleman; I do n't know what it is in reply to.

Judge Neilson—The witness has not had time to write a book since he was here. [Laughter.]

By Mr. Shearman—Of what church are you pastor?

Mr. Beach—I object to it.

Mr. Evarts—Then, we will have to argue it.

Judge Neilson—No, I rule it out without argument. He is pastor of some church, and we have no curiosity what it is.

Mr. Evarts—We have a right to show what the witness's position and employment is.

Judge Neilson—Well, that was asked when he was here before.

Mr. Evarts—Well, it has changed.

Judge Neilson—That is not the subject of criticism.

Mr. Evarts—I agree; but it would not take three minutes to find out what church.

Mr. Beach—That is no argument in favor of it.

Mr. Shearman—Your Honor rules it out, and we except.

Judge Neilson—I can't see that it is material now.

By Mr. Shearman—In December, 1870, did you have any business relations with Mr. Henry C. Bowen? A. I did, Sir.

Q. What were they?

Mr. Beach—I object to that.

Judge Neilson—Oh! we will take that, Sir.

Mr. Beach—The business relations of this gentleman with Mr. Bowen?

Judge Neilson—Yes, by way of bringing him in contact with him, I suppose.

By Mr. Shearman—What were these relations? A. I was his employé; I was employed by Mr. Bowen.

Q. In what capacity? A. In the early part of December, Sir, as literary editor of *The Independent*, and the latter part of December I was superintending editor.

Q. Did Mr. Bowen make an appointment with you for Monday, December 26, at his house?

Mr. Fullerton—Now, that is a leading question.

Mr. Shearman—I understand I am obliged to ask in this form. I refer to a question and answer of Mr. Bowen.

Judge Neilson—Well, answer that.

The Witness—It is my recollection that he did, Sir, but I am not positive that my meeting on Monday was by appointment.

MR. BOWEN CONTRADICTED.

Q. Do you recollect whether you were at Mr. Bowen's house on the 26th of December? A. I was, Sir.

Q. How often were you there? A. My recollection is that I was there twice.

Q. On that day? A. Yes, Sir.

Q. At what time first did you see Mr. Bowen? A. I was there—I wish to correct my previous answer, Mr. Shearman—I ought to say I was there three times, including once that I found Mr. Bowen engaged.

Q. Three times, including once that you found Mr. Bowen engaged? A. Yes, Sir; that is my recollection.

Q. And one of the times you did not see him; what hour did you first see Mr. Bowen on the 26th of December? A. Well, Sir, I could not fix the precise hour; it was in the afternoon.

Q. Was Mr. Bowen then putting on his boots to go out? A. Yes, Sir, he was putting on his boots; my recollection is that it was to go out; I remember the act; the picture is upon my mind.

Q. Did Mr. Bowen then say to you, "If Mr. Tilton is as bad as we think he is, he talks exceedingly well?"

Mr. Beach—That is objected to, Sir.

Mr. Shearman—On what ground?

Judge Neilson—That inquiry was put to Mr. Bowen.

Mr. Beach—Well, Sir, it is entirely collateral. Suppose it was; what has the declaration of Mr. Bowen in regard to Mr. Tilton to do here?

Judge Neilson—Nothing, except as connected with the proposed visit, if it was so.

Mr. Beach—Well, Sir, there is no connection at all between the two. Mr. Bowen may have expressed favorable or unfavorable opinions of Mr. Tilton, and are they to be gotten in upon this idea of contradicting him.

Judge Neilson—No, Sir.

Mr. Beach—After they ask him whether he made those declarations and he says he did not, can they get them in upon the idea of contradicting him upon that immaterial and irrelevant matter?

Judge Neilson—The only materiality in connection with this question is the time when Mr. Bowen went to Mr Freeland's and when he returned.

Mr. Beach—Well, Sir, this declaration has nothing to do with that.

Judge Neilson—I cannot take the declaration.

Mr. Shearman—Your Honor will allow me a moment; I was simply reading in sentences part of a conversation; it is clearly material.

Judge Neilson—Well, any opinion expressed then by Mr. Bowen cannot be received even if this witness remembers it, and although Mr. Bowen did not remember it.

Mr. Shearman—Well, it is a part of a conversation that is clearly material. The whole conversation is this: Mr. Bowen is asked whether Mr. Eggleston found him putting on his boots; whether Mr. Bowen said, "If Tilton is as bad as we think he is, he talks exceedingly well;" whether he then asked Mr. Eggleston to go down and see a certain lady, whom he named, and whether he then said to Mr. Eggleston, tapping his pocket, that he had a letter from Tilton to Beecher.

Judge Neilson—Well, that is the point where you can take up the examination.

By Mr. Shearman—Well, Mr. Eggleston, did Mr. Bowen say to you in substance that he had a letter from Tilton

to Beecher, tapping his pocket at the time? A. To the best of my recollection he did, Sir; I don't recollect that part of the conversation so vividly as the other, but I remember—a remark something like that is in my memory.

Q. Well, Sir, did you return again that evening to Mr. Bowen's house? A. I did, Sir; that is my recollection.

Q. About what time was that? A. I don't remember, Sir, at what time I came. I waited for Mr. Bowen—I don't know whether I am allowed to go on—I waited for Mr. Bowen until, I think, past his dinner hour, 6 o'clock, when he came in—about the time that he said.

Q. Was it after dark when he came in? A. It was after dark, Sir.

Q. Did Mr. Bowen then say to you, "I have just been to Beecher's; he is a good friend of mine and of yours; he is delighted that Tilton is removed; he says that he is the worst man in the world, and that Mrs. Tilton is a saint, going to heaven before her time."

Mr. Beach—I object to that question.

Judge Neilson—We will take that.

A. The latter part of that I remember very distinctly, that he said precisely those words; the former part in substance; whether he said he had "been to Beecher's" or "to see Beecher," I would not like to swear positively. My impression is that it is as you have stated, but I would not say with positiveness that he said he had been "to Beecher's."

Q. Which is the latter part, that you say is accurate? A. That he said that Mr. Beecher said that Mr. Tilton was the "worst man in the world;" that is my recollection; then, I remember this phrase: "And that Mrs. Tilton is a saint, going to heaven before her time;" that I remember to be precisely the words; I think I cannot be mistaken about that.

Q. What is your recollection as to the phrase, "Mr. Beecher is a good friend of mine and of yours?" A. I am very positive in reference to that.

Q. What is your recollection about these words: "He is delighted that Tilton is removed?" A. He said that in substance, Sir.

Q. Now, did Mr. Bowen at the same time say to you that Mr. Beecher had told him horrible things about Tilton? A. Yes, Sir; in substance that. He said—"things that were horrible" was the phrase, or something like that.

Q. Did he at the same interview say to you that Mr. Beecher had told him that an adopted daughter of Mrs. Tilton had told Mrs. Beecher that Mr. Tilton had taken her out of her bed at night, or anything to that effect? A. To the best of my recollection it was at that interview, standing in the door, and in that connection, that he said to me just about what you have read, that an adopted daughter of Mrs. Tilton had told Mrs. Beecher (this was given to me as something that Mr. Beecher had just told him; that is my recollection) that Mr. Tilton had taken her out of bed at night and carried her to his room.

Mr. Shearman—That is all.

CROSS-EXAMINATION OF EDWARD EGGLESTON.

By Mr. Fullerton—You don't recollect, I understand you, whether Mr. Bowen said he had been to Mr. Beecher, or that he had been to see Mr. Beecher? A. My inclination is to——

Q. I don't ask for your inclinations; I am aware of them. A. I don't want—— By inclination I mean that my impression is——

Q. I want your memory. We don't want your impressions at all.

Judge Neilson—He asks you if you recollect? A. I don't certainly recollect which of those expressions he used.

Q. Very well; that is an answer; when did you cease to be employed by Mr. Bowen? A. In July, 1871, about the middle of the month.

Q. Do you recollect the date? A. Not the precise date; it was about the middle of July, I think about the 12th—no, Sir, a little later than the 12th; I cannot say just the date, but I remember by the Orange riot that it was later than the 12th.

Q. To whom did you first communicate that you heard or had such a conversation with Mr. Bowen? A. I am not sure; I have conversed with several friends about it.

Q. When? A. If you want to know to whom connected with this trial, I can tell you.

Q. Yes—when first did you speak of it? A. I spoke of it first, as I remember, to any one at all, directly or indirectly, connected with the trial, incidentally to Mr. Ross. Raymond, in *The Christian Union* office, one day.

Q. When? A. I cannot give the date.

Q. About what time? A. I should say, Sir, before the beginning of the trial; I cannot speak about it with positiveness, however; I have not a distinct memory of the date.

Q. It was after it was supposed that Mr. Bowen would be a witness in this case, was it not? A. Not after; I supposed that he would be a witness—I think not.

Q. I did n't ask you what you supposed. A. Well, Sir; I did n't know anything about anybody else's supposition.

Q. Had n't it been talked of in your presence that he would be a probable witness? A. I don't remember, if it was.

Q. Why did you communicate it to Mr. Ross. Raymond? A. It was a general conversation of what I knew.

Q. Very likely. I am asking you now why you communicated it to him in that way? A. I communicated it to him as I had to others, because I was talking about the trial, and did it almost without motive, perhaps.

Q. You knew that he was a member of Plymouth Church? A. I did.

Q. And a prominent gentleman in that church? A. Yes, Sir, I knew he was an active man there.

DR. EGGLESTON'S RELATIONS TO MR. BOWEN.

Q. Have you ever had any difficulty with Mr. Bowen? A. No personal difficulty between Mr. Bowen and me in the world.

Q. Leave out the word "personal," and say whether you have had a difficulty with him? A. I think it would not be proper for me to say that I have had a difficulty with him.

Q. Then, of course, you won't say it? A. No, Sir.

Q. Will you say that you have not had any difficulty with him? A. I think a categorical answer would not describe it exactly; I never have had a difficulty with Mr. Bowen—yes, I think I can say that.

Q. No misunderstanding between you? A. I don't remember any misunderstanding in the sense that misunderstanding is used; we have had differences of opinion.

Q. Did those differences of opinion engender any ill-feeling? A. Between Mr. Bowen and myself?

Q. Yes. A. I think not, Sir, I don't know that they did; I would not say that they did not engender this kind—a certain kind of ill-feeling; it did not amount to personal animosity, it was not hostility.

Q. Did Mr. Bowen make any demands upon you which you failed to comply with? A. No, Sir; he did not.

Q. Your connection with *The Independent* ceased, you think, about the 12th of July? A. Some time about the middle of July.

Q. 1871? A. Yes, Sir.

Q. You received your salary up to that time, did you? A. I received my salary up to the time of my leaving.

Q. Didn't Mr. Bowen complain that you took with you some of the results of your literary labor which belonged to him, when you left? A. Mr. Bowen did not. One of his editors——

Q. Mr. Bowen did not? A. Mr. Bowen neither directly nor indirectly did—that I understood to come from Mr. Bowen.

Q. Did any one connected with Mr. Bowen make that complaint? A. Mr. Ward called on me, and asked me to give him a story that I had written.

Q. Did you give it to him? A. I did not; I didn't admit his right.

Q. Didn't he claim it on behalf of *The Independent*? A. He claimed it; I denied his claim.

Q. He claimed it on behalf of *The Independent*? A. He did.

Q. You denied his claim? A. I denied his claim.

Q. What were the terms of your denial?

Mr. Evarts—I don't think you can take that.

Mr. Fullerton—Oh, yes, I can. A. The terms of my denial were that I had permission from Mr. Bowen to do outside work, and that this work did not belong to him. A variety of considerations were taken into account. It was an ethical point that I submitted to several gentlemen, and they——

Q. Never mind the several gentlemen. Did you write the story during your employment by Mr. Bowen? A. I wrote a great many stories during my employment by Mr. Bowen.

Q. I mean this particular story. A. I did.

Q. What was the title of that story? A. "Priscilla."

Q. Was it not written for *The Independent*? A. It was written with the intention of publishing it in *The Independent.*

Q. Was it so announced? A. It was announced that I would print a story in *The Independent* during the Summer.

Q. Of your own composition? A. Yes, Sir; one of a dozen—I was one of a dozen who were to print stories in *The Independent* during the Summer.

Q. Had you written the story before the announcement? A. No, Sir.

Q. No part of it? A. No, Sir.

Q. You had written some part of it before your employment ceased on *The Independent*? A. Part of it before I left *The Independent.*

Q. Didn't you write it whilst you were in Mr. Bowen's employ? A. Part of it.

Q. You say he gave you permission to do outside work? A. That was the understanding when I went on the paper, Sir.

Q. Did you mean to publish this outside work that you did, in *The Independent*? A. No, Sir; the outside work was published elsewhere—a great deal of it.

Q. You had that story published elsewhere, did you not? A. I did, Sir.

Q. Where was it published? Q. In *Scribner's Monthly.*

Q. You received a compensation for it? A. I did. Excuse me; I ought to correct an answer that I made a moment ago. One of the terms of my refusal to Prof. Ward was that I had already sold the story to *Scribner's Monthly* before he came and asked for it, supposing that they would not want it in *The Independent.*

Q. When did you sell it to *Scribner's*? A. Soon after I left *The Independent.*

Q. How soon? A. Almost immediately.

Q. Didn't that give rise to ill-feeling between you and Mr. Bowen? A. I did not know that it did, Sir.

Q. Was it not claimed that that story was the property of Mr. Bowen? A. I had no message from Mr. Bowen about it. I never knew his feeling on it.

Q. Was is not communicated to you by this gentleman? A. Not as from Mr. Bowen. He spoke for himself as having taken my place in charge of the paper. He never mentioned Mr. Bowen.

Q. Did n't you design to publish that story in *The Independent*? A. Yes, Sir.

I id you expect compensation for it? A. No, Sir; I expected to publish it as part of my salary. I expected to leave the paper the latter part of August; I left before that time, and did not publish it in the paper consequently.

Q. [Handing witness a letter.] Is that letter in your handwriting? A. That appears to be my writing, Sir; I don't remember anything about the letter.

Mr. Fullerton—I will read a part of it, because I want to ask you a question in regard to it.

Mr. Evarts—Let me see it, please?

[Mr. Evarts, having scanned the letter, handed it back to Mr. Fullerton.]

Mr. Fullerton—This letter is addressed to Mr. Bowen by Mr. Eggleston [reading]:

July 3, 1871.

I am glad to hear that you had so pleasant a time in Boston. We are getting along pleasantly as ever. I spent most of my time during the past week in writing my story, which is now done except a little touching up. I shall try to keep it until the last.

Q. Did you have reference in this letter to the story which you have spoken of in your evidence? A. I did, Sir.

Q. Now, will you be kind enough to look at *The Independent* under date of May 4, 1871, and say whether that article there [indicating] refers to this story? A. [Looking at the paper.] It does, Sir.

Q. [Reading]:

May 4.—In our next illustrated number, we begin the series of Summer stories, by thirteen first-rate story writers, upon the arrangement of which we have spent not a little pains and expense. The first story will be "The Mouse and the Lion," by the Rev. Edward Everett Hale. It will occupy the first page, and will be illustrated by cuts from designs by Felix O. C. Darley, and engraved in excellent style by * * * The titles of the other stories, so far as we have them, are as follows: "The Lady of Shalott," by Elizabeth Stuart Phelps; "Only a Woman's Hair," by Chas. F. Briggs; "Katie's Wedding Gown," by Rose Terry; "Finding a Soul," by Rev. Geo. Axford; "Le Roi S'Amuse," by Harriet Prescott Spofford, and "The Vine-dresser of Vevay," by Edward Eggleston. The following writers, contributing to the series, have not yet sent in their stories, &c.

Q. Who was the author of that article? A. I am not sure, Sir; I suppose likely that I had a hand in it; such things as that were generally gotten up among us in the office; they were a sort of advertising.

Q. You were superintending editor? A. I was superintending editor, so that I am responsible for it at least.

Q. Now, who called upon you with reference to this story? A. The Rev. Dr. Ward, Sir, my successor.

Q. What connection had he with Mr. Bowen or *The Independent*? A. He was my successor as superintending editor.

Q. Did he not demand that story in behalf of Mr. Bowen? A. Oh, he asked for it, Sir; I could hardly say he demanded it. We were on pleasant personal relations; he asked for it.

Q. Claiming it to be Mr. Bowen's property? A. He claimed that he had a right to it.

Q. How? A. He claimed very strongly that he had a right to it.

Q. That he had or Mr. Bowen had? A. Oh, the paper, of course—Mr. Bowen.

Q. And he claimed strongly that he had a right to it? A. Yes, Sir.

Q. He urged upon you strongly that you had written it while in Mr. Bowen's employ, and under his pay? A. Yes, Sir; that most of the work on it was done while I was in Mr. Bowen's employ.

Q. What did you sell that story for? A. I sold that story for $100.

DR. EGGLESTON'S NEW PASTORATE.

Q. Now, Mr. Eggleston, I think we shall have to ask you something about that church. A. Well, Sir.

Q. What church are you pastor of, please? A. The Church of Christian Endeavor.

Q. The Church of the Christian Endeavor? A. The Church of Christian Endeavor, Sir; there is no definite article in it.

Q. Where is that church situated? A. At the corner of Lee-ave. and Hooper-st., Brooklyn.

Q. What denomination does it represent? A. It represents no denomination.

Q. It is on its own hook? A. It is on its own hook. [Laughter.]

Q. Is that the church you have always belonged to? A. No, Sir.

Q. What other denomination? A. I have belonged and do belong to the Methodist denomination.

Q. Were you ever pastor of a Methodist church? A. Of several, Sir.

Q. In this State? A. No, Sir.

Q. Where? A. Minnesota.

Q. When? A. From 1857—well, I began my ministry in Indiana in 1856, and from that to 1866 I was pastor of various Methodist churches, chiefly in Minnesota.

Q. Yes; and this is the Church of Christian Endeavor? A. Yes.

Q. When was it established? A. It is a very old church, Sir; I don't know when—more than 20 years ago—established as a Dutch Reformed Church.

Q. And when did it undergo a change of heart? A. It underwent a change two years ago, when it became a Congregational Church, and it again underwent a change a few weeks ago, when it declared itself to be an independent church.

Q. Is it likely to undergo another? A. I think not, Sir, while I remain.

Q. When did you become connected with it? A. I have been supplying—I was supplying it when I was

here before, and I have been, since about the 1st of February, supplying it as a Congregational church then.

Mr. Fullerton—Yes; I believe that is all.

RE-DIRECT EXAMINATION OF DR. EGGLESTON.

By Mr. Shearman—You received no special pay from Mr. Bowen for this particular story? A. No, Sir; I would like——

Q. If you would like to make an explanation, you may. A. I would like to make an explanation I think; I not only received no pay, but——

Mr. Fullerton—One moment.

The Witness—You have asked the grounds on which Mr. Ward insisted, and now I would like to state my grounds.

Judge Neilson—Anything you said to Mr. Ward you can state.

The Witness—I said among other things to Mr. Ward that I had taken no vacation at all in *The Independent* while the other editors had had vacation, and that the little time that I spent on this story was very little indeed for me to take in lieu of a vacation; that if the story had been asked for before I sold it, I should have given it to them in token of good-will on leaving the paper; but as it was not asked for until after I had sold it, I declined to give it.

Mr. Shearman—That is all, Sir.

HORACE B. CLAFLIN RECALLED.

Mr. Shearman called Charles Storrs, but before the witness could take the stand, changed his mind and called H. B. Claflin, who was thereupon further examined as follows:

By Mr. Shearman—You were one of the arbitrators between Mr. Bowen and Mr. Tilton, I believe? A. Yes, Sir.

Q. You were present at the arbitration on April 3, 1872? A. Yes, Sir.

Q. Look at this paper, the written submission, "Ex. 122," and state whether you ever saw that paper before? A. [Inspecting paper] No, I never saw it.

Q. Look carefully over it; look at the signatures. A. I see it; I never saw it, Sir.

Q. Was this paper read in your presence or hearing? A. I did not hear it, Sir; I have no recollection about it at all.

Q. Were you informed at any time on April 3, 1872, of the existence of such a paper? A. No, Sir.

Q. Did you ever hear of its existence before the trial of this cause? A. No, Sir.

Mr. Beach—That is objected to.

Mr. Shearman—I don't discover any objection to it.

Mr. Beach—Well, I object, whether you discover it or not.

Mr. Shearman—Mr. Bowen gives this testimony. [Reading:]

Q. Then how did the Arbitration Court organize and commence its sittings? A. They gathered about the table, and were about to proceed, when I interrupted them by saying: "Gentlemen, what are we to submit?" And they said: "The matters between Mr. Tilton and yourself." I said that I should decline taking one step until it was put in writing what we were to submit, and suggested that one of the arbitrators draw that submission, and finally, I think Mr. Moulton took his pen and said. "Gentlemen, what do you submit?"

Did any part of that take place in your sight or hearing? A. No, Sir; I don't remember anything of the kind.

Q. Can you say positively whether or not Mr. Bowen said that he would decline to take any step until it was put in writing what they were to submit? A. I—I did not hear any such thing.

Q. You are positive that you did not hear it? A. I am positive that I did not hear anything of the kind.

Q. Was any written submission of any kind drawn in your presence by Mr. Moulton, or Mr. Bowen, or Mr. Tilton, that night? A. No, Sir.

Q. Was there not an interval during which the arbitrators were alone? A. Yes, Sir.

Q. Now, Sir, after leaving that arbitration, with whom did you go away? A. I think we all went away together, Mr. Freeland, and Mr. Storrs, and Mr. Bowen, and myself.

Q. On your way home did Mr. Bowen say to you, in substance, or say to any one in your hearing, in substance or in effect, that you must get the Woodstock letter? A. Mr. Bowen addressed some of us in that way. I don't know but he said: "Gentlemen, you must get it," without referring to any particular one, and I remember I referred him to Mr. Storrs, saying he was——

Judge Neilson—We have that.

Mr. Beach—This is but a repetition of the evidence.

Mr. Shearman—No, if your Honor please, this is another occasion. Mr. Claflin related that originally as happening at the time of the arbitration.

Judge Neilson—Certainly.

Mr. Shearman—But this is subsequent to the arbitration, on their way home. Mr. Bowen has been specially interrogated as to the occurrence of that event.

Judge Neilson—Well, read Mr. Bowen's statement.

Mr. Shearman—The stenographer will have to do that.

Mr. Evarts—That happened this morning.

Mr. Shearman—I am going.

Mr. Beach—I submit, Sir, that they cannot recall a witness after they have rested, and we have rested for re-cross-examination, merely for the purpose of contradiction, and contradict him. They must take his answer if they recall him.

Mr. Evarts—No.

Judge Neilson—Yes; otherwise we cannot proceed with any chance of terminating the suit.

Mr. Beach—Yes, Sir; this trial will proceed indefinitely otherwise.

Mr. Evarts—The objection should have been made when we asked Mr. Bowen about that.

Mr. Beach—No, I didn't make the objection then. They must take his answer. I didn't know that they were purposing to contradict him. I didn't know but they were calling him for the proof.

Mr. Evarts—We called him to contradict him. That was plain.

Mr. Beach—It was not plain to us, Sir.

Mr. Evarts—And we asked those questions.

Mr. Beach—Certainly you did ask.

Judge Neilson—I think we have sufficient on that subject.

Mr. Shearman—That is all that I have to ask, Mr. Claflin. I understand that his answer is taken.

Mr. Evarts—Yes.

Mr. Beach—No, Sir; I do not understand that the answer has been taken down.

Mr. Evarts—No.

Mr. Beach—I objected.

Mr. Evarts—The stenographer has it.

Mr. Beach—Well, the Court says that it was improperly taken, and is to be stricken out.

Mr. Evarts—Well, it was taken.

Judge Neilson—Is there any objection?

Mr. Beach—I objected in season. If the stenographer has taken the answer it is taken under the objection, and is to be stricken out.

Judge Neilson—Yes, I suppose it is stricken out. We have enough on that point.

Mr. Evarts—Will the stenographer be so good as to read the question?

Judge Neilson—No, it may not be down at all.

The Tribune stenographer read the question and answer as follows:

On your way home, did Mr. Bowen say to you in substance, or say to any one in your hearing, in substance or in effect, that you must get the Woodstock letter? A. Mr. Bowen addressed some of us in that way; I don't know but he said: "Gentlemen, you must get it," without referring to any particular one, and I remember I referred him to Mr. Storrs, saying he was"——

Q. Now, Mr. Claflin, was not that what occurred before you left? A. No, Sir, that was going home, after we left the house—after we got out of the house.

Mr. Evarts—No objection was made until the witness proceeded so far. The answer was taken down to that point.

Mr. Beach—I made the objection. Mr. Fullerton was putting me a question, and he has left under circumstances which compelled him to go from suffering; and as soon as my attention was drawn to the answer Mr. Claflin was giving I objected.

Mr. Evarts—I don't object to his moving to strike it out.

Judge Neilson—Of course.

Mr. Evarts—That is timely, but he had answered, and I suppose it must be moved to be stricken out.

Mr. Beach—The answer is not there; part of it is there, and I objected during the giving of it by the witness.

Mr. Evarts—No, the question is whether it must be stricken out. I suppose it is perfectly good evidence.

Mr. Beach—I have said what I chose to say on the subject.

Judge Neilson—I think it is one of the points which at some phase of the case might lead to interminable contradiction and re-contradiction, and it is a point where we ought to stop, and, therefore, the answer ought to be stricken out.

Mr. Evarts—Your Honor will be so good as to note my exception.

Judge Neilson—Yes, Sir.

Mr. Shearman—That is all, Mr. Claflin.

Mr. Beach—No question.

CHARLES STORRS RECALLED.

Mr. Shearman—Charles Storrs.

Charles Storrs was then recalled on behalf of defendant and further examined.

By Mr. Shearman—You were also present at the arbitration of April 3, 1872? A. Yes, Sir.

Q. Will you examine this paper, Exhibit 122, being the written submission of Mr. Bowen and Mr. Tilton, and state whether you ever saw that paper before [handing paper to witness]? A. No, Sir.

Q. Were you ever informed of the existence or the contents of that paper in any manner before this trial? A. No, Sir.

Q. Were you ever before this trial informed of the existence or contents of any written submission whatever about Mr. Bowen and Mr. Tilton?

Mr. Beach—I object to that question.

Judge Neilson—It is covered by the last question; I think he may answer.

Mr. Beach—I should have objected to the last question if I had not been occupied.

The Witness—No, Sir.

Q. Mr. Bowen testifies as follows with regard to the arbitration of April 3, 1872:

The arbitrators gathered about the table, and were about to proceed when I interrupted them by saying, "Gentlemen, what are we to submit?" And they said, "The matters between Mr. Tilton and yourself." I said that I should decline taking one step until it was put in writing, what we were to submit, and suggested that one of the arbitrators draw that submission, and finally, I think Mr. Moulton took his pen and said, "Gentlemen, what do you submit?"

Did anything of that kind, or any part of it, take place in your presence or hearing? A. No, Sir.

Q. Did you that evening leave the house in company with Mr. Bowen and Mr. Claflin? A. And Mr. Freeland.

Q. You did? A. Yes, Sir.

Q. On your way did Mr. Bowen request any of you gentlemen to obtain for him the Woodstock letter?

Mr. Beach—Objected to. Your Honor has already ruled that out.

Judge Neilson—Yes, matter of form. It is ruled out.

Mr. Evarts—Your Honor will remember that Mr. Bowen, against our objection, was allowed to testify about the Woodstock letter when he was on the stand about half an hour ago.

Judge Neilson—It was to meet what had been proved by you on that subject.

Mr. Evarts—We examine this witness to meet what is proved.

Judge Neilson—Then some one else can examine some other witness. No, I think we will stop at this point. It is very remote. That same letter was ruled out, so we don't know what it relates to. It may have been an invitation to dinner, for all we know.

By Mr. Shearman—With whom did you go to Mr. Moulton's house on that evening?

Mr. Beach—That is objected to.

Judge Neilson—He has given an answer on that subject. He has been examined on that subject.

Mr. Shearman—It is for the purpose of meeting Mr. Bowen's evidence. Mr. Bowen—they brought in on his direct evidence this matter of the written submission.

Judge Neilson—You can show it so far as you can.

Mr. Shearman—We propose to meet it in a further way, by showing that the three arbitrators were absent for about half an hour

Mr. Beach—This written submission had nothing to do with the companions with whom Mr. Bowen went to that arbitration. It is a totally immaterial point.

Mr. Shearman—Our purpose is to show, in contradiction of Mr. Bowen, that not only that didn't take place in the presence of the arbitrators, but that there was an interval in which Mr. Bowen, Mr. Tilton, and Mr. Moulton were together, in which, if it ever occurred, it took place.

Judge Neilson—You may show that they were together.

By Mr. Shearman—Did you not go that evening to Mr. Bowen's? A. Yes, Sir.

Q. Did you not find Mr. Moulton and Mr. Tilton there? A. Yes, Sir.

Q. Did you leave Mr. Bowen, Mr. Moulton, and Mr. Tilton together to go to Mr. Claflin's? A. I did, to go to Mr. Claflins.

Q. You went to Mr. Claflin's? A. Yes, Sir.

Q. Did you go for Mr. Freeland? A. I found him at Mr. Claflin's.

Mr. Beach—We had all that in the prior examination.

By Mr. Shearman—How long were you, Mr. Claflin, and Mr. Freeland, away from Mr. Moulton's house after the time you left Mr. Bowen, Mr. Moulton, and Mr. Tilton there? A. I should say from fifteen to thirty minutes.

Q. You took the Woodstock letter to Mr. Claflin's? A. To Mr. Bowen.

Q. Delivered it to Mr. Bowen? A. Yes, Sir.

Q. Did Mr. Bowen express any surprise on hearing it?

Mr. Beach—That is objected to.

Mr. Shearman—Mr. Bowen testified on his direct examination——

Mr. Beach—No he didn't.

Mr. Shearman—He said it was a surprise to him when he received it.

Judge Neilson—I think we will leave that where it is. I am afraid we shall have to admit the letter by and by, if we deal with it any more.

Mr. Evarts—If your Honor please, we resisted their calling it out. Your Honor allowed it, and now we propose to contradict him.

Judge Neilson—Yes, it was allowed, because, during your testimony, that evidence was referred to, and evidence given in respect to it—if Mr. Bowen demanded it on the occasion of the arbitration.

Mr. Evarts—I am not now complaining of its having been allowed.

Judge Neilson—It was allowed simply to meet that.

Mr. Evarts—I am not now complaining that it was allowed, but it was against our resistance.

Judge Neilson—Whatever they have given on the subject was to meet what you put in.

Mr. Evarts—Well, they have brought it out on their part—direct evidence of their rebutting witness, Mr. Bowen—new evidence brought into the case in rebuttal. If it has anything to do with the matter, it is part of their rebutting evidence of their rebutting witness.

Judge Neilson—Well, it came up in this way. Before the arbitrators, the materiality of it was first put by you in your evidence that the papers were spoken of to be burned, the Woodstock letter excepted. They put in evidence by Mr. Bowen his views to meet that, and, as a part of that comes in the fact that although it was not spoken of on that occasion it was brought in afterward. That is all there is of it. It was simply to meet your view of the case.

Mr. Evarts—And they have been allowed, against our resistance, to give specific proof of the accuracy of his memory by his recital of what took place between Mr. Storrs and himself when Mr. Storrs brought him the letter—wholly on that ground, against our objection. The general rules of evidence didn't allow it, and he has thus put himself on this fact as to the occurrence, which is the basis of his principal evidence on this point, and now we prove, or offer to prove by this witness, that no such thing occurred, and, if your Honor excludes it, why, of course, we have no mode——

Judge Neilson—Well, we have the case standing thus: You put in evidence, in reference to this letter, what you say occurred at the time of the arbitration in connection with the suggestion of burning the other papers.

Mr. Evarts—And I don't renew that.

Judge Neilson—Their evidence is simply to meet that; that is all.

Mr. Evarts—Mr. Bowen is allowed, against our objection, to give as proof, to confirm his principal statement, his distinct memory of what took place between Mr. Storrs and himself.

Judge Neilson—Very well.

Mr. Evarts—That basis I propose to strike down by Mr. Storrs, and if I am not allowed to——

Judge Neilson—My view is simply this: You put in evidence what you chose on that subject, and freely, but confined to the action of the arbitration, as if then the Woodstock letter was the subject of discussion, and to meet that they call Mr. Bowen, which they had a right to do, and proved by him, according to his recollection, the Woodstock letter was not spoken of then, but was brought to him afterward, and that was simply to meet what you put in evidence, and that is all we ought to take.

Mr. Evarts—I think my statement is correct. Against my objection your Honor allowed Mr. Bowen to give an interview between Mr. Storrs and himself as confirmation of his memory.

Judge Neilson—There are two ways of contradicting what you have proved to have occurred before the arbitrators. One was that Mr. Bowen didn't recollect what you proved did occur in the presence of the arbitrators about this letter, and the other way was that that was brought to him afterward, going to the same point.

Mr. Evarts—If they had stopped there, as I tried to hold them, this evidence would not have been produced; but against my objection they were allowed to confirm Mr. Bowen's accuracy by his adoption, as the basis of his accuracy, his memory of an interview between Mr. Storrs and himself.

Judge Neilson—To wit, that what did not occur before the arbitrators he thinks did occur between him and Mr. Storrs.

Mr. Evarts—Now, we ask Mr. Storrs whether on that same interview it did occur.

Judge Neilson—Then they might call a witness to prove he was present at Mr. Bowen's office, and heard conversation between Mr. Bowen and Mr. Storrs, and that that did occur as stated by Mr. Bowen, and you might call another witness to support Mr. Storrs, and perhaps by to-morrow afternoon we would get rid of the Woodstock letter. I think we cannot go any further with it.

Mr. Evarts—Will your Honor be so good as to note my exception?

Judge Neilson—Yes.

Mr. Shearman—We offer by this witness specifically to contradict the very conversation which Mr. Bowen related this morning.

Judge Neilson—Very well.

Mr. Shearman—We understand that.

Judge Neilson—The same ruling.

Mr. Shearman—The conversation which Mr. Bowen related as occurring in regard to the Woodstock letter.

Judge Neilson—Yes.

Mr. Shearman—Your Honor rules that out and we except.

CROSS-EXAMINATION OF CHARLES STORRS.

By Mr. Beach.—Do you assume to recollect all the details of the proceedings before the arbitrators? A. No, Sir, I cannot perhaps say all.

Q. Do you assume to recollect all the conversation that occurred before the arbitrators? A. Not all.

Q. Do you mean to swear positively that, in the presence of the arbitrators, and of Mr. Bowen and Mr. Tilton and Mr. Moulton, Mr. Moulton did not draw up that paper? A. I think he could not without my knowing it.

Q. I want you to answer my question. Do you mean to swear positively, upon your recollection, that in the presence of the arbitrators, at the time of the arbitration, and in the presence of Mr. Tilton, Mr. Moulton, and Mr. Bowen, Mr. Moulton did not draw up that paper, and it was then signed by Mr. Bowen and Mr. Tilton? A. If it was, it was unknown to me. It was not read or made known.

Mr. Beach—I didn't ask anything about reading or making known. I move to have that struck out.

Judge Neilson [to the witness]—He simply wants to know if you are positive.

Mr. Beach—Is that struck out?

Judge Neilson—Yes.

The Witness—I am positive it could not have been.

Mr. Beach—I don't think that answers my question. I wish to put this gentleman on his responsibility upon that question, and I repeat my question. [To the witness.] Do you swear positively that in the presence of the arbitrators, and of Mr. Tilton and Mr. Moulton and Mr. Bowen, that paper was not drawn up by Mr. Moulton at the time of the arbitration?

Mr. Shearman—I object to the renewal of the question. I would not object if the gentleman would ask him if he will swear it was not done in the sight of the arbitrators; but asking him to swear positively that it was not done in the presence of the arbitrators, when their backs might be turned, and without taking any notice of it, is too broad a question, because he has answered once it could not have occurred.

Judge Neilson [to Mr. Beach]—I think Mr. Shearman's criticism on your question is very reasonable. You ought to incorporate the words "or in your sight."

Mr. Beach—No, I will not incorporate the words "or in your sight." My point is to prove those papers, as sworn to by Mr. Bowen, and corroborated by Mr. Moulton, were drawn up in the presence of the arbitrators, and, if they

were looking, in their sight—they may have been inattentive—but I want to know whether this witness will swear positively the thing was not done in the presence of the arbitrators.

Judge Neilson [to the witness]—Now, answer, Mr. Storrs.

The Witness—I have no knowledge.

By Mr. Beach—Will you answer my question?

Judge Neilson [to the witness]—Is that as positive as you can make it?

The Witness—It is, unless I explain. I don't think it could be done without I had seen it, and I have no knowledge of it whatever.

By Mr. Beach—Now, Sir, have you any recollection of any paper having been executed at that time by Mr. Bowen or Mr. Tilton?

Mr. Evarts—Has he not answered the question, whatever paper he does refer to?

Mr. Beach—I am not asking him about that paper—I am not asking about any paper.

Mr. Evarts—He has been told to answer yes or no.

By Mr. Beach—My question is, whether you now have any recollection of any paper having been executed on the occasion of that arbitration by either Mr. Bowen or Mr. Tilton or both of them? A. After the arbitration, Mr. Beach?

Q. What? A. After the award had been made?

Q. Not before the award? A. No, Sir, I have not.

Q. No recollection at all? A. No, Sir.

Q. Have you any recollection of any being executed after the award was promulgated? A. I think some writing was received.

Q. Do you recollect it? A. I am under the impression—but I would not want to swear positively—I am under the impression that there was some paper at the last of the arbitration, but I would not want to swear to that positively; I am under the impression that there was a paper, but whether it was a receipt, or what, I cannot state.

Q. Can you swear positively that on that occasion Mr. Bowen did not insist upon having a writing? A. He did not.

Q. You swear positively to that? A. I do.

Q. And he could not have insisted on it without your hearing it? A. He could not.

Q. And you swear positively he didn't say to Mr. Tilton that the matters must be submitted in writing? A. No, Sir.

Q. That it could not, in the course of the preliminaries, have occurred in the presence of the arbitrators? A. I think not.

Q. Do you swear positively that it could not? A. I swear I didn't hear it.

Q. That is not the point; it is very likely you didn't hear it. I want to know if you will swear that it did not occur? A. I would not want to go any further, because it may have been said.

Q. That is what I have been asking your attention to. That is what you mean to say—that you didn't hear it? A. That I didn't hear it.

Mr. Beach—That is all, Mr. Storrs.

Judge Neilson—That is all, Mr. Storrs.

RE-DIRECT EXAMINATION OF MR. STORRS.

By Mr. Shearman—Could anything of this kind, such as this written paper, and the request by Mr. Bowen for a written submission, have occurred in your presence without your hearing it?

Mr. Beach—Objected to.

Judge Neilson—I think I will take that, if it could have occurred in his presence.

Mr. Beach—Is it for him to say, as a matter of judgment, that it could not have occurred? Must he not relate the condition of the circumstances and surroundings and let us judge?

Judge Neilson—I think he can answer it.

Mr. Beach [To Mr. Storrs.]—Come back to the stand, Sir.

By Mr. Shearman—I will ask you whether this language could have been used by him in your presence—whether he could have said in your presence that he should decline taking one step until it was put in writing what they were to submit, and could have suggested that one of the arbitrators draw that submission without your hearing it? A. I think he could not.

Judge Neilson—He had virtually said that before. It leaves it where it was.

Mr. Beach [to Judge Neilson]—You seem to think I ought not to ask him any question.

Judge Neilson—We are drawing so close to the end of the case that I would rather encourage you than prevent you.

Mr. Shearman—That is all, Mr. Storrs.

The Witness [to Mr. Beach]—Are you through, Sir.

Mr. Beach—Yes.

Mr. Shearman—Mr. George W. Uhler.

TESTIMONY OF GEORGE W. UHLER.

George W. Uhler, a witness called on behalf of the defendant, being duly sworn, testified:

By Mr. Shearman—Where do you reside? A. No. 31 Ormond-place.

Q. How long have you resided in Brooklyn? A. Since 1842.

Q. Are you the owner of real estate in Brooklyn? A. I am.

Q. How long have you owned real estate in Brooklyn?

Mr. Fullerton—What is that in reply to?

Mr. Shearman—Oh, well, well.

Mr. Beach—What is it?

Mr. Fullerton—His ownership of real estate don't qualify him to talk about some one else's real estate.

Mr. Evarts—We have a right to show the witness——

Mr. Shearman—I will waive that.

Judge Neilson—Well, that is waived; go on.

By Mr. Shearman—In the years 1870 and 1871, were you the owner of the house in which Mr. Moulton lived in Clinton-st.? A. I was.

Q. For how many years was Mr. Moulton your tenant? A. Three or four.

Q. Did you frequently visit the house during that period of 1870 and 1871—did you ever visit it? A. The first part of 1871, before that, during the time that he lived there.

Q. Did you, between the 1st of January and the 1st of May, 1871, visit the house? A. 1871?

Q. Yes, Sir. A. I did.

Q. Did you go into the parlor of Mr. Moulton's house? A. I did.

Q. Did you see any picture of the Rev. Henry Ward Beecher hanging in the parlor of Mr. Moulton's house in Clinton-st. at that time? A. I did.

Q. What sort of a picture was it? A. Life size, head and shoulders, down to the bust.

Q. How often have you seen it there? Did you see it during that period? A. I seen it previous to that, I should judge, three times altogether.

Q. Did you see it before the 1st of January, 1871? A. I think I did.

Q. When did Mr. Moulton leave your house? A. I think it was the 1st of May, 1871; I cannot tell without looking at the lease; I think I have that time.

Mr. Shearman—That is all.

CROSS-EXAMINATION OF MR. UHLER.

By Mr. Fullerton—Was there more than one portrait there? A. Of Mr. Beecher?

Q. I ask you if there was more than one portrait there? A. I cannot say. There was only one of Mr. Beecher that I saw.

Q. Did you see a portrait there of any other person, or persons? A. I may have seen it.

Q. Why can you not recollect that as well? A. Simply because Mr. Beecher's is a very prominent face, and as I knew it very well I remembered it.

Q. Did you see a portrait there of Mr. Tilton? A. I cannot say.

Q. How? A. I cannot say as to that.

Q. Where did this portrait of Mr. Beecher hang? A. It hung on the east—between the windows at the east end of the parlor, or on the south side, I think; I won't be certain; that is, on the wall on the south side—the side toward Schermerhorn-st.

Q. And you swear positively it was a portrait of Mr. Beecher? A. I do.

Q. A portrait in oil? A. I cannot say as to that.

Q. It was not a portrait of Mr. Tilton? A. I didn't know Mr. Tilton.

Q. That is the reason I ask you the question. It was not a portrait of Mr. Tilton, was it? A. Not Mr. Beecher's, the one that I seen.

Q. I am talking about the portrait you saw. A. It was Mr. Beecher I seen.

Q. I ask you whether you are positive the portrait you saw hanging there was not a portrait of Mr. Tilton instead of Mr. Beecher? A. I am.

Q. Positive? A. Yes, Sir.

Q. No doubt in your mind at all about it, is there? A. I want to understand the question.

Q. I ask you if you have no doubt whatever in your mind upon that subject, as to whether the portrait you did see was a portrait of Mr. Beecher or of Mr. Tilton? A. I have no doubt in my mind but that it was Mr. Beecher.

Q. Very well. And when do you say you saw it there? A. Well, in the first two weeks of February, 1871, I had occasion to go to the house—I think that was once; previous to that I seen it.

Q. Well, how long previous to that? A. Oh, well within two or three years that he lived there.

Q. How early did you see it there? A. I cannot tell you.

Q. As near as you can tell? A. Within that time.

Q. Did you see it there in 1870? A. In that year I should judge.

Q. What time do you think in that year you saw it? A. I cannot tell.

Q. Did you see it there in 1869? A. I cannot tell; I seen it several times within the time he lived there. He lived there in 1869.

Q. Do you think you saw it in 1868? A. I cannot say, Sir.

Q. Was Mr. Moulton there in 1868? A. I think he was. I can tell by looking at the old lease.

Q. Can you not tell now? A. I know he lived there three or four years.

Q. You cannot tell which, can you? A. Tell which what?

Q. Whether it was three or your years? A. Not without looking at the lease.

Q. Were you the owner of the premises? A. I was, and am now.

Q. How? A. I was then and am now.

Q. Well, what is there to fix in your mind when you first saw the portrait there? A. Because I knew the face; I knew Mr. Beecher by sight; I knew his portrait; I heard him preach.

Q. How late can you say you saw it there? A. That would be the last time in the first part of February. Mr. Moulton was sick.

Q. The first part of February of what year? A. 1871.

Q. Mr. Moulton was sick at the time? A. He was sick in bed.

Q. And the portrait was in the parlor, was it? A. It was in the parlor.

Q. When was your attention first drawn to the time when you saw the portrait there in the house? A. I hardly understand you. Do you mean lately?

Q. Yes. A. Well, I was reading Mr. Moulton's answers in regard——

By Mr. Fullerton—A little louder, please. A. I was was reading the paper this morning—his answers in regard to Mr. Beecher's portrait, where he says there was none in the house. I think—at least, I so understood it——

Mr. Fullerton—A little louder.

The Witness—My attention was then called to it.

Q. Was that the first? A. In this connection. I remembered seeing his portrait there previous, though, while this trial has been going on.

Q. What did you do when you saw Mr. Moulton's testimony? A. Well, Sir, I have business with a Mr. James in Montague-st., a real estate man. He has charge of some property of mine. As I had business, why I thought I would go in and ask——

Mr. Evarts—A little louder.

The Witness—I thought I would go in and ask Mr. Tracy whether that was meant, that he stated there was none there, as I recollected having seen one.

Q. Did you go to see Mr. Tracy? A. I did, for information.

Q. Told him what you knew? A. No, I went to ask him if that was meant.

Mr. Beach—We didn't ask about that.

The Witness—I am telling why I went there.

By Mr. Fullerton—Did you communicate the fact to Mr. Tracy of what you have now sworn to? A. I did.

Q. When? A. This morning.

Q. At his office? A. At his office.

Mr. Fullerton—That is all.

Mr. Shearman—That is all, Mr. Uhler.

Judge Neilson—That is all, Sir. [To the jurors.] Get ready to retire, gentlemen. Please return at 2 o'clock.

The Court then took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2, pursuant to adjournment.

After a delay of 15 minutes Mr. Fullerton said: Shall we proceed, Sir?

Judge Neilson—Is there anything more, gentlemen?

Mr. Shearman—We have, your Honor.

Mr. Evarts—[Who had been talking to Mr. Carpenter, foreman of the jury.] I was addressing the jury, Sir. [Laughter.]

Judge Neilson—I think this will be a good time in the case to rest, gentlemen.

Mr. Fullerton—There is no rest for the wicked, and they propose to go on. [Laughter.]

Judge Neilson—Well, I will take a portion of that to myself, of course.

Mr. Shearman—Mr. Caldwell.

TESTIMONY OF WALLACE E. CALDWELL.

Wallace E. Caldwell, a witness called and sworn on behalf of the defendant, testified as follows:

By Mr. Shearman—Mr. Caldwell, where do you reside? A. In Brooklyn.

Q. How long have you lived in Brooklyn? A. Most of the time, for 25 years.

Q. Are you acquainted with Mr. Francis D. Moulton? A. I am, Sir.

Q. When did you become acquainted with him? A. I should think about six years ago, six or eight years, perhaps—partially.

Q. Did you visit Mr. Moulton's house in the early part of the year 1871? A. I did.

Q. And at what time did you visit him? A. I should think it was about the month of February; the snow was on the ground, I know.

Q. Where was he then living? A. Clinton-st.

Q. Did you stay some little time in his house? A. I spent about 15 hours there, with about two hours intermission—an hour and a half intermission.

Q. State the reason. A. Mr. Moulton was sick and I was watching with him from about 11 o'clock in the forenoon until 2 o'clock the next morning, or perhaps a little longer.

Q. Did you go into the parlor while you were there? A. I did, when I first went in.

Q. Did you see any portrait of Henry Ward Beecher in the parlor? A. I did, Sir.

Q. Was it an oil painting? A. Yes, Sir.

Q. Was it the one described as Paige's portrait of Beecher?

Mr. Beach—Oh! well, what does he know about that?

By Mr. Shearman—Well, no matter. That was hanging on the wall when you went there? A. Hanging on the wall, I believe, right opposite the door.

Mr. Fullerton—Nothing at all.

The Witness—Thank you, Sir.

Mr. Shearman—Your Honor will excuse a little delay. We have both telegraphed and sent a messenger for the only remaining witness that we have. If he does not come in a few minutes, why, we will give him up.

Mr. Fullerton—If your Honor please, Mr. Shearman suggests that while waiting for their witness to come in we may call a witness, so as to save time, and I will do so.

Mr. Beach—With the understanding that they have but one witness more.

Mr. Fullerton—They have but one witness to call. Mr. Bowen, come forward.

TESTIMONY OF JOHN ELIOT BOWEN.

John Eliot Bowen, a witness called and sworn on behalf of the plaintiff, testified as follows:

By Mr. Fullerton—You are the son of Henry C. Bowen, I believe? A. Yes, Sir.

Q. And your own name is John Eliot Bowen? A. Yes, Sir.

Q. Do you reside home with your father? A. Yes, Sir.

Q. And have you so resided for a number of years past? A. Yes, Sir; always.

Q. What is your present occupation, if any, Mr. Bowen? A. Studying.

Q. At school? A. Yes, Sir.

Q. In this city? A. Yes, Sir.

Q. I want to call your attention to the month of December, 1870, and ask you whether you recollect during that month of delivering a letter to Mr. Freeland from your father? A. I recollect delivering a letter, but I could not state whether it was that month or not.

Q. What is your best recollection upon the subject? A. My best recollection is that it was on a holiday, from the fact that my father called me to deliver this note in the afternoon, and it was light when I carried it there, and he never was home from business before dark at that time of year except on holidays.

Q. To whom did you deliver the note? A. To Mr. Freeland, to the best of my recollection.

Q. State to whom it was addressed? A. To Mr. Freeland, I suppose. I could not swear to that.

Q. You saw the address, did you? Did you see the address of the letter? A. Yes, Sir; I probably saw it.

Q. But have no recollection? A. I do not recollect; I could not swear.

Q. Now, what reply, if any—did Mr. Freeland take the note? A. Yes, Sir.

Q. Did he read it in your presence? A. Yes, Sir.

Q. What reply did he send, if any, to your father? A. Something like, "I will attend to it" or "It is all right," or something like that—equivalent to that.

Q. And did you give the message to your father? A. Yes, Sir, I returned it to him.

Q. Where did you find Mr. Freeland when you gave him the note? A. I believe he came to the door himself.

Q. At his own dwelling? A. At his own dwelling.

CROSS-EXAMINATION OF JOHN ELIOT BOWEN.

By Mr. Evarts—Mr. Bowen, if he did not come to the door, you had no interview with him? A. How is that, Sir?

Q. If Mr. Freeland did not come to the door you had no interview with him? Did you go into the house? A. I went into the house, right inside of the hall.

Q. The door? A. Yes, Sir.

Q. Well, if Mr. Freeland did not open the door for you, did you see him personally at all? A. I saw him personally.

Q. Well, did he open the door for you? A. To the best of my recollection he did.

Q. Have you any recollection of seeing him, excepting that he opened the door? A. I recollect his, as I think, opening the door and delivering a message to me to return.

Q. And all at one time? A. What, Sir?

Q. All at the moment? A. Yes, Sir, right at the moment.

Q. What was your age at that time, in 1871? A. About 13.

Q. 1870, I mean? A. 1870; I was not quite 13 then.

TESTIMONY OF MARSHALL J. MORRELL.

Marshall J. Morrell was called and sworn on behalf of the plaintiff, and testified as follows:

By Mr. Morris—Mr. Morrell, where do you reside? A. In Brooklyn.

Q. What is your business? A. Architect.

Q. How long have you been in that business? A. Fourteen years.

Q. And carried on business in Brooklyn? A. Yes, Sir.

Q. Have you made an examination of the rear of premises No. 148 Hicks-st.? A. Yes, Sir.

Q. Mr. Ovington's? A. Yes, Sir.

Q. When did you make it? A. This morning.

Q. Did you prepare this diagram? [Producing diagram.] A. Yes, Sir.

Q. Does this correctly represent the situation in the rear of that house? A. Yes, Sir.

Q. Now, will you take the diagram, and I will ask you a question. [Handing witness the diagram.] State how the rear of the houses 146, 148, and 150 are situated—whether they run back the same distance. A. They are not quite on the same line; 146 and 148 are on the same line, and very nearly alike, having each a piazza in the rear and a small room finished from the piazza; No. 150, from which we made the measurements, has no piazza, except an inclosed one, as it is called; that extends a little beyond—two feet beyond—No. 148, and four feet of the piazza of 148 extends beyond that.

Q. Mr. Ovington's is 148, between the two that you are speaking of now? A. Yes, Sir; Mr. Ovington's is 148.

Q. Now, on which side is the house that you are now speaking of, 150? A. On the south.

Mr. Beach—Which way does the piazza front? A. West; very nearly west.

Mr. Morris—What is the point of compass there? Which way does the house front? A. Very nearly east.

Q. The house stands nearly east and west? A. Yes, Sir.

Mr. Beach—Then the piazza fronts south?

The Witness—No, Sir; the piazza fronts west; it is directly on the rear.

Mr. Morris—Now, did you observe the houses adjoining, 150 and 146? A. Not adjoining 146; but adjoining 150 is a three-story house, having an extension of nine feet, two stories high; the whole of the extension and one foot of the main building extends beyond No. 150.

Q. You did not observe the house on the other side, ad-

joining 146? A. No, Sir; my impression is that it does not extend beyond 146.

Q. You are mistaken; it extends nearly the whole length; that is immaterial; that is on the other side. Now, Mr. Morrell, will you state how that piazza of 148 is situated; just describe the piazza. A. The floor is about four feet from the yard, in hight. The piazza itself is about nine feet three inches from floor to ceiling; it is six feet in depth from the house to the outside of the columns, and is inclosed on all sides except directly west.

Q. And is there a small room there, in the rear of the house? A. There is a room, four or five feet, as nearly as I could judge, on the north side of it.

Q. Now, is there any arbor over—extending from the piazza? A. A grape arbor; yes, Sir.

Q. Just describe that arbor? A. The perpendicular portion of it is 12 feet from the piazza—from the columns.

Mr. Beach—How far, Sir?

The Witness—Twelve feet; about that. Then, probably at a hight of ten feet—perpendicular hight of ten feet—rafters are extended to the piazza roof.

Q. That along the whole length of the piazza? A. No, Sir; it is short of the building about four feet at each side.

By Mr. Morris—And any grape vines? A. Yes, Sir.

By Mr. Beach—How well covered is the arbor?

By Mr. Morris—How large are the vines? A. I should say they were old vines, 15 or 20 years old.

By Mr. Beach—Covering the whole arbor? A. Well, they are trimmed now; one of the vines reaches to the piazza roof; others fall short.

By Mr. Morris—Now, in the yard adjoining 148 and 150, are there any trees? A. There is a tree in the yard of 150, thirty-nine feet from the rear of 150, about thirty-four feet from the rear of the piazza of 148, and six feet six inches from the line between 148 and 150—a cherry tree.

Q. How large a tree? A. The average of the trunk, about four or five feet from the ground, is four feet six inches in circumference.

By Mr. Beach—The average of the trunk of the tree? A. Yes, Sir.

By Mr. Morris—And as to its hight, about how high? A. About 35 feet, I should judge, judging from the hight of the buildings adjoining.

Q. A cherry tree? A. Cherry tree; yes, Sir.

Q. A large top? A. Yes, Sir; quite spreading.

Mr. Beach—Well, that is on the south? A. That is on the south of No. 150—of No. 148.

Mr. Morris—And the buildings in the rear, fronting on Willow-st., how are they located? A. There are two three-story and attic brick buildings, each 46 feet and 6 inches from the dividing line—the line dividing the lots at the rear. There is a frame house, 50 feet, between the two, and more nearly opposite No. 150, that is lower, about a three-story house.

Q. Is that tree that you have spoken of situated so as to break off the rays of the sun from the piazza of No. 148 in the afternoon? A. That I am not sure of, Sir.

Q. But the arbor is directly over? A. The arbor is directly over; yes, Sir.

Mr. Morris—That is all.

CROSS-EXAMINATION OF MR. MORRELL.

By Mr. Shearman—I did not catch your name, Sir? A. Morrell.

Q. I was not able to hear what your business was? A. Architect.

Q. Have you ever visited the rear of these premises before, Mr. Morrell? A. No, Sir.

Q. What time in the day did you visit them? A. Between 9½ and 10½ this morning.

Q. The sun was on the front of the house then? A. The sun was on the front; yes, Sir.

Q. Where do you reside yourself? A. Pacific-st., between Third and Fourth-aves.

Q. Pacific-st. runs diagonally with Hicks-st.? A. Yes, Sir.

Q. Then you are not able to judge from your own experience the way the sun strikes the house? A. No, Sir.

Q. You never have seen this house in the afternoon? A. No, Sir.

Q. Well, Sir, judging from the position of the house, from the aspect of the sun at present, is it not the fact that the sun shines about this hour of the day, directly upon that piazza? A. Yes, Sir.

Q. It would shine full and square upon it, wouldn't it? A. With no obstruction it would; yes, Sir.

Q. Now, did you not observe that behind that house, No. 148, that the position which the sun would take now is such as to cause the rays of the sun to go between the two houses? Did you notice that there were two houses that were rather high? A. Yes, Sir.

Q. And two houses that were quite low between them? A. Yes, Sir.

Q. Is it not your judgment that in the position which the sun occupies at this hour, half-past two, that the rays of the sun would go directly between those two high houses and over the low ones? A. I should say that the sun would be above any of the buildings there.

Q. Well, at this time it would be above any of them; when it comes to a lower point, are not those houses so situated that even at a later hour than this, when the sun falls below the level of those high buildings, the rays would go between the high buildings and above the low ones? A. I think they might, Sir.

Mr. Beach—Well, so as to strike the piazza?

Mr. Shearman—Yes, so as to strike the piazza.

Mr. Beach—Well, I don't understand him to say so.

Mr. Shearman—The rays of the sun, if they came between those two high houses, would still strike the piazza full, would they not, Mr. Morrell? Do you recollect the position of those two houses? A. Yes, Sir, because the two high houses are in the rear of the adjoining houses.

Q. Yes, and the low houses are in the rear of No. 148? A. Yes, Sir.

Q. And, therefore, the sun's rays coming square on No. 148 would strike the piazza at the time when the rays of the sun came between those two high houses, wouldn't they? A. Yes, Sir.

Mr. Beach—That would depend upon the position of the sun and the angle of the light.

By Mr. Shearman—Do you know anything as to the condition of this grape arbor, or rather the grapevine upon it? Did you have any means of judging as to whether it was a fruitful one or a barren one? A. Not any at all, Sir.

Mr. Fullerton—Fruitful of leaves, I guess.

Mr. Shearman—Well, that he does not know.

Mr. Fullerton—Well, then you had better leave that out. [Laughter.]

By Mr. Shearman—There is no building projecting on either side of that piazza, if I understand you correctly, at all, so as to project beyond the piazza? A. No, Sir, not immediately adjoining it.

Q. Now, is there any building, either immediately adjoining, or near adjoining, which could possibly intercept the rays of the sun from that piazza, I mean any building on the same side of Hicks-st.—is there any building which could possibly intercept the rays of the sun between 2 and 5 o'clock in the afternoon? A. I should say not, Sir.

Q. The rear of this building, No. 148 Hicks-st., faces almost directly west does n't it? A. Very nearly directly west.

Q. Faces the setting sun? A. Yes, Sir.

Mr. Shearman—That is all, Sir.

JOHN C. SOUTHWICK RECALLED.

John C. Southwick was then recalled and examined as follows:

By Mr. Shearman—Mr. Southwick, do you recollect an interview between yourself and Mr. Franklin Woodruff at your house, in which he said to you, in substance, that Mr. Moulton had placed to his credit in his firm shortly before $5,000 or $5,300? A. I do.

Mr. Beach—I do not see what materiality this has, Sir.

Mr. Shearman—This first question is simply to identify the interview with the one mentioned by Mr. Woodruff. That is all. [To the witness.] Did Mr. Woodruff in that interview tell you that Mr. Moulton had deposited that money that very day, and that Mr. Moulton said it was to be drawn out for Theodore Tilton? A. Yes, Sir; he did.

Mr. Beach—I wish to be considered as objecting to this, Sir; it is on a collateral subject and not proper.

Q. Did you say to Mr. Woodruff on that occasion that you thought your uncle, H. B. Claflin, might pay that money.

Mr. Beach—I object to that.

Judge Neilson—Whether he did or not?

Mr. Beach—Well, Sir, it is totally immaterial. The question is whether we shall take this contradiction upon collateral points when it is objected to.

Mr. Evarts—There is not anything new in the situation.

Mr. Beach—Well, if there is not anything new in the situation we had better not have it repeated.

Mr. Evarts—I say there is nothing new in the question of law raised in the matter; it has been frequently passed upon.

Mr. Beach—I know it has been frequently passed upon and disposed of against the evidence.

By Mr. Shearman—Did not Mr. Woodruff on that occasion ask you whether you didn't think it was your uncle, Mr. Claflin, who had paid it?

Mr. Beach—I object to it, Sir.

The Witness—Shall I answer?

Mr. Evarts—Mr. Woodruff has been inquired of in a proper way to lay the foundation for his collateral impeachment by calling the witness to whom he made the statement; there is nothing in the situation——

Mr. Beach—That is not the ground of objection, Sir; the objection is that this is an entirely collateral matter upon which Mr. Woodruff was examined. The rule has been too often discussed before your Honor to require reiteration now.

Mr. Evarts—Mr. Woodruff was recalled to contradict Gen. Tracy, and at least partly—wholly, perhaps, the last time, and we have asked him, in reduction of his evidence, whether he did not say so and so out of court to Mr. Southwick. He says he did not. Now, we bring Mr. Southwick to say that he did.

Mr. Beach—Well, that is a most unmeaning statement, Sir, of the condition of this objection and evidence offered. We called Mr. Woodruff to contradict Mr. Tracy in regard to material matters. They then cross-examined Mr. Woodruff in regard to those supposed declarations made to Mr. Southwick in regard to collateral matter, and now, I object that they are concluded by the answer which Mr. Woodruff gave; that these declarations in regard to this $5,000, or where it came from, has no sort of reference or materiality to the issue.

Judge Neilson—Well, I think Mr. Evarts will agree with you that that came out on cross-examination; it seems to me so.

Mr. Shearman—Well, Mr. Southwick—I will take your answer.

Mr. Beach—No, you won't.

Judge Neilson—No; we won't take the answer.

Mr. Shearman—I beg your Honor's pardon; I thought you said the question was to be answered.

Judge Neilson—No; when you come to something that is more vital we will proceed.

Mr. Shearman—I take it, your Honor, that this subject was brought out in connection with Mr. Tracy's evidence—Mr. Tracy having testified that it was in respect to this matter relating to this $5,000; then he went into this question which was cognate to that.

Judge Neilson—There was a question about the $5,000.

Mr. Shearman—That is the whole point; the whole question between Mr. Tracy and Mr. Woodruff was whether the conversation related to $500 or $5,000.

Mr. Evarts—That is the point of our evidence.

Judge Neilson—Anything that will illustrate that would be proper.

Mr. Shearman—With all deference we think this does illustrate it.

Judge Neilson—Ask him whether anything was said about the $5,000.

Mr. Shearman—Exactly; but he asked him whether the money was referred to and spoken of as money that came from Mr. Beecher, and at the same time that we claim a conversation was had with Mr. Tracy, and we propose to show that Mr. Southwick heard this statement about the $5,000 at this time, and to show that Mr. Woodruff is unable to recollect with any kind of accuracy, without imputing anything further to him, what he did tell Mr. Southwick about the $5,000, and on that ground we claim that he is mistaken in his impression as to what he told Gen Tracy.

Judge Neilson—Well, there are two separate interviews.

Mr. Shearman—There are two separate interviews, but they are at the same time, as we claim, and our evidence is that they were the same day.

Mr. Beach—Now, Sir, the proposition is avowed and discussed that they put this question to Mr. Woodruff and proposed this contradiction to Mr. Woodruff upon a separate and distinct matter to show that his recollection was faulty in that transaction, and from that to argue that it was faulty in regard to the transaction that occurred with Mr. Tracy.

Mr. Shearman—The matter that I say——

Mr. Beach—No, Sir.

Mr. Shearman—Well, I say that is your evidence.

Mr. Beach—No, Sir; nothing upon the subject, for nothing was said in regard to the $500 in the conversation with Mr. Southwick; they did not propose that.

Mr. Shearman—The gentleman is begging the question.

Mr. Beach—I am begging no question: I am asserting a fact. They propose to prove a faulty recollection in regard to one circumstance or fact for the purpose of impeaching recollection in regard to another.

Mr. Shearman—Gen. Tracy is asked on cross-examination whether he had a conversation with Mr. Woodruff about the sum of $500. He answers no; in effect, he had a conversation only at the time the $5,000 were paid, and on the very same day that money was paid. Now, we ask Mr. Woodruff, as Mr. Woodruff comes on to contradict Mr. Tracy on that point, and he says he did not talk with him about the $5,000, but did talk with him about the $500; we ask Mr. Woodruff whether he did not on the very same day on which Gen. Tracy testifies that he had this conversation with him, speak to Mr. Southwick on the subject of the $5,000, and then we question Mr. Woodruff as to his recollection of that conversation. It differs entirely from the recollection of the witness whom we now put upon the stand, and having given Mr. Woodruff an opportunity to set that right, we claim the right to show that his recollection of what happened on that very day when he had a conversation with Gen. Tracy is entirely inaccurate and as confirming Gen. Tracy's conversation with him on the very same subject concerning which Mr. Southwick talked. Now is n't that legitimate? The subject is the same, the principal party to the conversation is the same.

Judge Neilson—And the day is the same.

Mr. Shearman—The day is the same; the only difference is that one is Mr. Southwick and the other is Mr. Tracy.

Mr. Beach—I don't know, Sir, whether the last word is to control in this matter; I am objecting to evidence; we have discussed it; I have presented my views to you; the gentleman insists upon having apparently the last of the argument. Now, I can only repeat Sir, that there are two distinct conversations relating to a distinct and different subject, and the proposition is to prove Mr. Woodruff's faulty recollection in regard to the conversation with Mr. Tracy, by proving, if you please, that it was inaccurate, or that he talked upon the same subject with Mr. Southwick, and without offering to prove that what he said to Mr. Southwick was untrue. Mr. Tracy swears that he had no conversation upon a given day with Mr. Woodruff in regard to a $500, that it related to the $5,000. Mr. Woodruff swears that upon that day he did communicate to Mr. Tracy information regarding $500, and that it did not relate to the $5,000. Now, they propose to prove by Mr. Southwick that upon that same day Mr. Woodruff had a conversation with him in regard to the $5,000 and what he said. And they propose to prove that for the purpose of inferring or reasoning from it that because Mr. Woodruff spoke of a $5,000 on that day in a conversation with Mr. Southwick, that therefore he must have spoken of it in a conversation with Mr. Tracy; and that is the sort of argument, if your Honor please, by which this evidence upon an entirely collateral conversation is sought to be given.

Judge Neilson—I think we cannot take it, Mr. Shearman; it is collateral matter; and if there were a contradiction, it is upon a collateral matter which is of no moment to us.

Mr. Shearman—No moment except to the question of the ——

Mr. Beach—Well, now, I object to a further argument on the question.

Mr. Shearman—Well, when the Court makes a further suggestion, I have a right ——

Judge Neilson—It is of no moment that Mr. Tracy and Mr. Woodruff had not agreed on that collateral question. That is of no moment at all.

Mr. Shearman—Well, we except—

Judge Neilson—I think I must exclude it—

Mr. Shearman—Your Honor will be so good as to note our exception.

Judge Neilson—Yes.

By Mr. Shearman—Mr. Southwick, do you recollect an interview with Mr. Woodruff at your house shortly after the publication of this scandal, and on the subject of that scandal? A. Yes; I recollect a great many interviews.

Q. Well, Mr. Woodruff testifies to an interview of that kind; I want to identify the occasion simply. Do you recollect Mr. Woodruff at such an interview saying to you: "Is it best for us to drive Mr. Beecher out of Brooklyn, or not?" A. I do.

Mr. Beach—That is objected to.

Judge Neilson—I think we will take that.

By Mr. Shearman—You do? A. I do; yes, Sir.

Q. And did you, in answer to that, say to him in substance, that he had "a head of sufficient level to drive the salt and fish business; but that when he undertook to drive Henry Ward Beecher out of Brooklyn, you thought he had taken a contract that he could not carry through?"

Mr. Beach—I object to this; it is not important to take this gentleman's declarations to Mr. Woodruff. If this evidence is admissible at all it is admissible only for the purpose of showing the state of mind and the feeling upon the part of Mr. Woodruff toward Mr. Beecher, and not the state of mind or feeling of this witness as toward Mr. Beecher or Mr. Woodruff. The declarations of this witness to Mr. Woodruff upon that occasion are entirely immaterial and inadmissible.

Mr. Shearman—This is part of the conversation, your Honor.

Mr. Beach—No matter if it is.

Mr. Shearman—And consecutive conversations we may give.

Judge Neilson—An independent interview would of course be inadmissible, but it is a connected conversation; I think we will take it.

By Mr. Shearman—What is your answer? A. I did make, in substance, that remark to him.

Mr. Beach—Your Honor will note me as excepting, Sir, to the admission of this evidence.

Judge Neilson—Yes, Sir.

By Mr. Shearman—Did Mr. Woodruff say to you, "I will show you a letter which, if published, or shown generally, would drive him out of Brooklyn?" A. He did.

Q. Did you ask Mr. Woodruff if the charge against Mr. Beecher was adultery? A. I did.

Q. What answer did Mr. Woodruff make? A. He said that it was not.

Mr. Shearman—That is all.

Mr. Beach—That is all, Sir; I won't.—[As the witness was leaving the stand]—Have you made any bets on the result of this case? A. No, Sir, not one dollar; no, Sir.

Q. Have you had any wager upon the result of this case? A. No, Sir, I have not any.

Q. Have you had? A. I have had at the first of it, but I have not now, not one dollar.

Q. When did you have them? A. I had about two weeks—three weeks ago, I think.

Q. And did you cancel the bets for the purpose of being a witness? A. Yes, Sir, I did for that very reason.

Mr. Beach—You can leave, Sir.

The Witness—Yes, Sir; I thought I would be asked that question.

Mr. Beach—Thought what.

The Witness—I thought I would be asked that question; that is the reason I canceled; it was only a small amount any way.

THE TESTIMONY IN THE CASE CLOSED.

Mr. Shearman—How much was it?

The Witness—One hundred dollars.

Judge Neilson—We won't take the amount.

The Witness—I like to back up my opinion any how, even if it is wrong.

Mr. Evarts—We rest. In regard, if your Honor please——

Mr. Beach—The evidence, then, is closed; I understand it?

HOW THE SUMMING UP IS TO BE DONE.

Mr. Evarts—Yes. In regard, if your Honor please, to the completion of the cause, so far as the labors of counsel before the jury are concerned, it has seemed to us, after a very careful consideration of the matter, very desirable, in consequence of the long period of our engagement and the large accumulation of matter, as the summing up is to first fall on our side, that we should have a little interval, which we desire to make as brief as possible. Of course we feel that any interval is undesirable in many aspects of the case, and the shorter it is the better. It is undesirable of course that the time of the jury should be exhausted any more than is absolutely suitable to the proper administration of justice in the case, and it is very undesirable for us counsel that we should be delayed our dismissal from the case any longer than is necessary. It is very desirable that your Honor should be at liberty to attend to your usual judicial duties, free from engagement in this

case, that has occupied so much of the public time. We have understood from our learned friends that their expectation was that only one counsel on their side would sum up; and though it places us at some disadvantage, perhaps, in the length of our arguments that we are not advised, by hearing one on their side, what the real grounds insisted upon, upon the completion of the proofs are, yet, of course, it is entirely proper that that arrangement should be made. Judge Porter and myself have advised your Honor early in the case that we should desire both to be heard, and the purpose we have is, that neither should repeat what the other may say, and that we should not together take more time than we necessarily or properly might take alone. It is our expectation that both of us together will not occupy more than the usual sittings of a week. Four days we should hope to compress what we have to say in. We do not think there is any danger of our running over five, together. I have been obliged, as your Honor knows, to attend in court up to this very moment, and have had no opportunity to hold conferences, or to make arrangements as to the division of this matter between Judge Porter and myself, in the consideration of the evidence. It would seem very convenient to us, and, as we think, very suitable to the conduct of the case, and not likely to postpone at all the date of the final conclusion of our adjustment, that when we adjourn to-day your Honor would allow us to adjourn until Wednesday morning. I have spoken to my learned friends, and they, with great courtesy and kindness, though they feel some inconvenience from it, no doubt, are disposed to agree to our wishes in that regard. I am quite sure, if your Honor please, that the time will be well spent in reducing to order and within lesser limits what we may have occasion to say to the jury, and if your Honor should take that view of it we should hope that the jury, although probably not very agreeable to them, would not feel that it was unreasonable on our part.

Mr. Beach—I should greatly prefer personally, Sir, that the argument of this cause should proceed at the usual day of adjournment upon Monday, passing over to-morrow, which is a session day in our ordinary practice. From my own engagements it is exceedingly oppressive to me that there should be any extension, when we may hope to conclude this cause and be rid of it. But my friend, Mr. Porter, has sent a request to me, and it is fortified by the application of my friend, Mr. Evarts, and although there is some personal sacrifice about it, and some inconvenience, I must, of course, very cheerfully concur in their desire. I could not reasonably refuse without being somewhat discourteous, and I would rather suffer than bear that character.

JUDGE NEILSON SEEKS AUTOGRAPHS.

Judge Neilson—The arrangement which the counsel, out of consideration to each other, agree upon, is of course acceptable to me; indeed, any arrangement would be to me, and I have no doubt will be agreeable to the jury. With reference to another matter, I wish to ask the several counsel in the case if they will see me in the other room before they leave. The reporters and gentlemen connected with the press who have not yet given us their signatures in this book, and who may be present, will find it with the clerk, and it will be very agreeable to us if they would take the trouble to see it and write their names in it. Gentlemen, we then separate until Wednesday morning next, at 11 o'clock. Please to make that as agreeable as you can to yourselves.

The Court thereupon adjourned until next Wednesday morning at 11 o'clock.

EIGHTY-SIXTH DAY'S PROCEEDINGS.

JUDGE PORTER BEGINS THE SUMMING UP.

EMPHATIC DENUNCIATIONS OF THEODORE TILTON—JUDGE PORTER CONDEMNS IN STRONG LANGUAGE MR. MOULTON AND OTHER WITNESSES—THE LIFE AND CHARACTER OF PLAINTIFF AND DEFENDANT CONTRASTED—MR. BEECHER'S CAREER OUTLINED—LETTERS BETWEEN MR. AND MRS. TILTON READ TO SHOW THAT ADULTERY ON HER PART WAS IMPOSSIBLE.

WEDNESDAY, May 19, 1875.

It was nearly 15 minutes after 11 o'clock when, after Judge Neilson had requested the audience to keep perfectly quiet during the proceedings, Judge Porter slowly arose in his place and, addressing the Court and jury, began his argument.

The attention of the audience was enchained from the beginning, and they listened in perfect silence. The jurymen showed more continuous interest than they exhibited while the testimony was being taken, and not one of them grew inattentive during the whole day.

Judge Porter, after contrasting the lives and characters of the plaintiff and defendant, hastily sketched the more salient events in the life of Mr. Beecher, and pronounced Mr. Tilton to be an adulterer and a perjurer. Describing the discussion of the paternity of the boy Ralph, Mr. Porter exclaimed with electric force, and facing Mr. Tilton: "If there be a beast upon earth capable of holding such a conversation over his own boy, with the paramour of his adulterous wife, he has lived too long upon earth—it is time for him to die. What are such men for, unless they have a mission in hunting down clergymen, crucify-

ing women, and committing perjury in courts of justice?" The denunciations of Mr. Moulton and several other persons were only less severe than those launched against Mr. Tilton, but as the persons who were denounced were not present, the effect was much less marked.

In describing the circumstances of the publication of Mrs. Tilton's letters, Judge Porter repeated supposed expressions used in selecting the letters which were to be published in a way which stirred up a breeze of merriment in the audience.

Judge Porter afterward read some of the letters which passed between Mr. and Mrs. Tilton previous to 1870. By the tone of these he sought to prove that it was impossible that there should have been adultery between Mrs. Tilton and Mr. Beecher when she mentioned Mr. Beecher so frequenely in her letters to her husband.

After reading the opening words of one of Mr. Tilton's letters, which begins, "My dear angel, I dreamed of you all last night," Judge Porter turned to Mr. Tilton with a sarcastic smile and exclaimed, "Ah, that was a long dream!"

The chief aim of Judge Porter's argument yesterday was to prove, from the character both of Mr. Beecher and Mrs. Tilton, and from the tone and nature of Mrs. Tilton's letters to her husband, the great improbability that any adulterous intercourse had taken place between Mrs. Tilton and Mr. Beecher. A curious feature of the argument was the force with which little points of evidence, mere momentary flashes of light cast by brief and almost unnoticed expressions of the witnesses, were brought to bear by the skillful orator.

Judge Porter was interrupted only two or three times during the day, and these interruptions came from his own counsel.

THE PROCEEDINGS—VERBATIM.

THE BEGINNING OF THE END.

Judge Neilson—It is expected that the audience will keep perfectly silent. Any interruption seriously disturbs the speaker, and detracts the attention of the jury from what they ought to hear. It is especially desirable, therefore, that we should have perfect quiet.

MR. PORTER BEGINS THE SUMMING UP.

MAY IT PLEASE THE COURT—GENTLEMEN OF THE JURY: Each of you is one hundred and thirty-five days older this morning than when this trial commenced; and that one hundred and thirty-five days of your life has been taken from your business, from your families, from your domestic occupations, in the interest of an adulterer who brings this suit for the purpose of establishing by your verdict that he slept for four years with an adulteress. You have been pressed for five months of your lives into the service of Theodore Tilton, in the forms of law, and in obedience to a mandate which you are bound to obey, in the discharge of a duty from which you cannot shrink.

There has been much plain-speaking, gentlemen, on the part of the prosecution in this case. Men are apt to be bold of speech when two stalwart champions like Moulton and Tilton make a joint assault upon a clergyman and a woman, the one forbidden by his profession to return evil for evil; the other weak, powerless, held as in the hollow of the hand by a man [turning toward Mr. Tilton] who has but to look upon her to subdue her to his will. My client has, from the beginning of this case, dealt on Scripture principles with those who assailed him. They struck him upon the one cheek, and he turned the other also; and they failed not to strike that, too. The wife was dutiful, loyal, carrying loyalty to the point of personal dishonor, but she received no thanks for it; and she stands to-day in the view of mankind, the subject of scoffs, of calumny, and of derision, all originating there. [Pointing to Mr. Tilton.] Although the multitudinous channels through which it has passed are as numerous as the presses of the country, they have been reduced from time to time to the uses of this ignoble prosecution. There is one thing, gentlemen, that I think we all saw in your manner and bearing before the evidence was closed on the part of the prosecution. It seemed to us—you can judge whether we were right—it seemed to us that you were impressed, upon their own showing, with the air of general untruthfulness that pervaded their case, with the air of dramatic and artistic skill with which it had been gotten up in the first instance. I think, if the cause had stopped then, every juror in this box would have said that he felt in his heart that the action was one which never should have been brought. But when we come to view the case in the light of the whole of this evidence, when we see it illumined as it is by the written as well as the oral disclosures of these parties; when we have their acts for four years, their declarations for four years—all in direct conflict with their oaths—you will be pretty apt to say when you come to render your verdict that this case stands along with the great Tichborne case in England as one of the two leading impostures in the jurisprudence of the nineteenth century.

A GLANCE AT THE GROUP OF ACCUSERS.

The plaintiff, and gentlemen, and those who aided him in setting this accusation on foot, represent a very different class from the defendant, and the phalanx of friends who close around him to protect him from thi

prosecution. On the one side we have Tilton and Moulton, Bowen under a friendly mask, the informer Jayne, the friendly adviser of Moulton at the Fifth Avenue Hotel; Woodhull and Claflin and Andrews, the apostles of free love and spiritualism; Gen. Butler, the chamber counsel and strategist of the campaign, Joe Richards, stealing up softly from behind to strike his sister in the back, Kate Carey, vulgar and flaunting, but a fitting associate in this motley group. These are the parties who appear as the sponsors of this accusation against a man whose name is a tower of strength, not only to his church, but to the city which boasts him as its noblest citizen, and to the republic which is illumined by his genius, and associated with his fame. Those are the parties who appear in the character of the champions of domestic purity and of elevated Christian morality. Here we have, you will observe, gentlemen, in the names I have mentioned, grouped together in conjunction, the original fabricators of the accusation, its publishers, its authors, its advisers, advocates and chief witnesses. And these are those who commend the accusation to the confidence of the church of God, of the country, and of the world.

MR. BEECHER'S SUPPORTERS.

Against this we have the jury of the vicinage. Ah! your Honor, it was one of the proud features of the old English law that every man was to be tried by those who knew him, those nearest him, those who, if he was a rogue, knew that he was a rogue. We have, in favor of this defendant, the unanimous voices of the jury of the vicinage, the unshaken confidence of the wife, the children, and the grandchildren who find shelter beneath his roof, the unbounded confidence of the 3,000 worshipers at the Plymouth Church, the Claflins, the Sages, the Ovingtons, the merchant princes of Brooklyn and New-York, the professional men of your city and of ours, the mechanics, the artisans, the laborers, the old men, the matrons—those who look up to him with grateful and reverent love, and the young men, and the maidens whom he has been leading upward to Heaven, even the clustering around of the young children who love his name, and will live to bless his memory when you and I will be sleeping beneath the sod—nay, more, the great body of the population of Brooklyn, that larger jury of the vicinage, men, women, and children, who honor him, and who loathe the name of Theodore Tilton and Frank Moulton, his treacherous and perjured accusers. We have with us the almost unanimous and enthusiastic support of his professional brethren, not in his own denomination alone, but in every form and of every faith. We have with us the judgment of enlightened Christendom, anticipating your judgment which will accord with it, and we do not believe, where we have the truth with us, this accusation will thrive under the eye of man, for it cannot triumph under the eye of the Great Defender of the innocent.

THE TRUTH EVER TRIUMPHANT.

False judgments are rarely rendered in the tribunals of public justice. They have sometimes occurred, but rarely with an upright judge on the bench and honest men in the jury box. The attempt has often been made, false accusations are frequent in every land, in every condition. He, who said thousands of years ago on the top of Sinai, "Thou shalt not bear false witness against thy neighbor," knew the weakness of those whom he addressed, and that that command would be needful to the latest day of human history. Malice, greed, and vengeance often lead to attempts to strike down the innocent. The class of men who cherish these passions have great faith in the efficacy of craft and lies. But their best laid plans, their most cunning contrivances, their boldest perjury come to naught when they are brought to the light of day, and subjected to the scrutiny of an impartial jury. In the tribunals of justice innocence is secure. It is the whole object of our system of law to secure it, and our system of jurisprudence is not a failure. John Milton was right when he told us two centuries ago—"Though all the winds of doctrine were let loose upon the earth, so truth be in the field, we do injuriously to misdoubt her strength. Let her and falsehood grapple. Whoever knew truth put to the worst in a free and open encounter. For who knows not truth is strongest next to the Almighty. She needs no policies, no stratagems to make her victorious. Those are the shifts that error uses against her power. Give her but room, and do not bind her when she sleeps." Men of a hollow and theatric nature like Theodore Tilton, men of plausible and unscrupulous cunning like Moulton, think truth is a thing to insinuate, that all its need is an ingenious arrangement of drapery, and the support of competent false witnesses. They think with Aaron Burr, "truth is that which is boldly asserted and plausibly maintained." They ask with jesting Pilate, "What is truth?" Nowadays, jesting Pilates do not find their way into the jury-boxes, nor upon the judgment seat.

THE OBSTACLES IN THE WAY OF THE ACCUSERS.

When these men come into a court of justice to prefer their infamous accusation, they must submit to the ordeal which Justice herself has ordained. They come here in substance imputing black and beastly guilt to an aged and honored clergyman and to a feeble but unstained matron. The first obstacle they encounter in their undertaking is the shield which the law lifts before each in the legal presumption that both are innocent. That shield shelters them at every stage of the case, from the hour of their arraignment down to the rendition of the final verdict. The lances of the accusers must be driven home with a strength sufficient to penetrate that double shield before there can be a verdict. That shield

is the protection which the law extends to every woman, to every man; it is yours and mine. The second obstacle these accusers encounter is the defendant's oath of his innocence and hers, the oath of an honest man, the oath of one who never was forsworn, an oath which will be accepted by God though it were rejected by man. Bear in mind that that oath of the defendant harmonizes with the presumption which the law raises in her protection that she is innocent, in his defense that he is innocent; that it is absolutely conclusive in his favor unless it is borne down by impartial, reliable, and trustworthy evidence, so overwhelming in its strength as to convict him of falsehood and of perjury. The third obstacle they meet presents itself in the unblemished character and the unspotted purity of the life of the lady and the clergyman up to the very day when they are charged with this joint act of crime and infamy. The fourth obstacle they must encounter is that both Tilton and Moulton, for four successive years after their pretended knowledge of the crime, in private and in public, by their words and their acts, orally and in writing, falsified the accusation which they now ask you to indorse. They meet a fifth and fatal obstacle in the fact, opposed to all human observation and experience, that Tilton cohabited, slept, with the alleged adulteress as a pure and unsullied wife for years after he knew that she had polluted his marriage bed! You feel and you *know* that the charge is false. Nay, more, that he and Moulton both maintained, through all those four years, relations of social and family intercourse and of professed friendship and good-will toward the alleged adulterer, a fact at war with the truth of their accusation, and utterly revolting to public decency, if, as they now pretend, they were accessories to dishonor after the fact. They met a sixth obstacle in the fact that they both admit that they are now here, with the oath upon their lips, in a mood of mind which they admit to have been for a long period that of bitter and malignant hostility, hostility so malignant that each of them frankly avows that one of them meditated shedding blood, and we have proved as to the other that he declared that all he wanted was the countenance of the man whom he was talking with to cut down Henry Ward Beecher. Are these the fair, the honest, and the impartial witnesses on whose testimony you are going to become the pall-bearers of Henry Ward Beecher? They encounter a seventh obstacle in the fact that they are compelled to swear that in respect to the very transactions as to which they now stand as witnesses and accusers *they lied* for years; and this they must do in order to induce you to believe that they are not lying now. The eighth obstacle they have to encounter is, that on points vital to their credit as trustworthy witnesses they are overborne by explicit and overwhelming contradictions, proceeding from witnesses of the best character, some of them ladies of known purity and elevation, many of them among the foremost citizens of Brooklyn and New-York, and all entitled to a confidence and respect which neither Tilton nor Moulton can ever command after the revelations they have invited during the present trial. A ninth obstacle is presented in the inherent improbability of the truth of the accusation, in view of the antecedents and the surroundings of all these parties. There is an old maxim of the law, familiar even in the days of Rome: Witnesses are to be weighed, not counted. In the one scale you have Henry Ward Beecher and his life, Elizabeth Tilton and her life; in the other you have Theodore Tilton and his life, Frank Moulton and his life!

HOW WITNESSES ARE TO BE WEIGHED.

I lay out of view the minor accessories with which I do not at present have occasion to deal. You all recognize this as a wager of battle joined between Theodore Tilton and Henry Ward Beecher, and because Tilton is to fight a woman as well as a clergyman, he calls in Moulton to help him. Tilton is to swear down Beecher, and Moulton is to crush her; for it would be a little ungracious in Theodore to be crushing her, when he swears that she is such a white-souled woman, even to the present hour. He leaves that for "Frank!" [Sensation.] Gentlemen, what is the import of that wise maxim of the law: Witnesses are to be weighed, not counted? Simply this: no number of dishonest men can, by their joint attestation, make the truth a lie. One honest man speaking what *is* the truth, will so state that truth that a jury shall be able to discern, to comprehend, to read, the inner man, and to know whether that which he utters is the truth of God or a lie of the Evil One. This confidence which rogues have in the power of lying is a mistaken one. We are accustomed to judge the truth not by the number of those who speak it, but by the probability of the thing spoken. You look at your own observation. You lay side by side with your observation and your experience, the narration which is to be put to the test. If it accords with your observation and experience, with the ordinary probabilities of human affairs, is spoken with apparent candor, is spoken without motive and without malice, is attested by the oath of a man who respects the Being from whom the oath derives its solemnity, you accept it as true. Let us look for a moment at the probabilities of this matter before we come to consider the details. Is the story probable?

MR. BEECHER'S EARLY STRUGGLES.

Who is the alleged culprit? A man three score years of age, mature, self-disciplined, well poised, not merely a Christian, but a veteran Christian; not merely a veteran Christian, but a veteran minister; a man who from his youth up has dedicated himself to the service of God and man. Fortunate in his antecedents,

in the teaching of that honored father whose name will stand up in luster and in light through all the future generations; still more fortunate in the training of that beloved but honored mother whose short but radiant life left a stream of light on the ecclesiastical history of New-England; a woman of whom, in his better days, Theodore Tilton was the eulogist; a woman who, if ever God sent an angel of mercy on earth, was sent on a mission of mercy when she was sent to that rude New-England home. Are these they who teach their boys the lessons of lust and licentiousness which, after a time, shall mark your criminal calendars and disgrace the records of your jurisprudence? And what had been his early training? You twelve embrace in your experience a large variety of the vicissitudes of human life, but I undertake, without intimate knowledge of the fact, to say that not one of you twelve went through the same stern, rigid schooling of humble poverty and honest endeavor, of sterling culture of all the manly and Christian virtues, that Henry Ward Beecher did when going out into what was then comparatively a new pioneer region; he labored for a less salary than a day laborer at the work of his Master, and with the joy of one who knew that He was a Master that, in the life beyond, would give him a crown of stars for his everlasting reward. Do you believe that that is the kind of training and tuition, that that is the kind of endeavor, that leads men to pollute their own souls with the ideas of base and filthy debauchery? Again, it is hardly probable that one of you twelve as early as he, turned to a face of love, which he wished to make the face that should be the light of his future home—the noble matron whom you have seen and admired here in her faithful loyalty and devotion to the husband whose innocence she *knows*, then a bright, beautiful school-girl, the daughter of an honored and eminent physician; the center of a noble social circle, a woman of Christian faith and loveliness, a woman of Roman firmness even from her girlhood; one who possessed those intellectual gifts and those spiritual traits which won the love of the foremost man of the age, and have held it from that hour to this. He and she pledged themselves like Jacob and Rachel. For seven years he was struggling in poverty and gaining his education, and the means of a future livelihood; and this man, then in the heyday of youthful blood, then with a vigor and a power such as no man in this assembly—not even my splendid friend Beach—ever had, with a physical strength and a glowing, earnest, and daring nature—this man passed through that ordeal, and did not yield. *Then* he was an honest man; *then* he was a pure man. Going from log cabin to log-cabin, he left nowhere the trail of the seducer. Going from one to another humble school-house to teach the Word of God to those who had no stated preacher, he left nowhere those who bore the blush of shame after he had passed from among them. He could wait. He did wait, until he had the means; on the first day he was called to a position which promised him a support, when he took to his single unfurnished, rude room the wife of his youth, who is to-day the wife of his age. Do you believe that the man who was faithful to her through those seven years, and who was faithful to her not only then, but down to the year 1868, on the 10th of November in that year called a woman into his house, took that woman to Mrs. Beecher's bed, and left it, he an adulterer, and the woman a prostitute? That is not in accordance with our observations of human experience, of human affairs. It is not true!

If you look again, what was the position and character of the man in the meanwhile? Probably there is not one of your number who has not at some time or other seen or heard of that little volume of sermons, the first publication that ever appeared from his pen, written in early life, the "Lectures to Young Men," which I undertake to-day to say, from a fresh reading of it, surpasses all that he has written—nay, more, surpasses any book of equal magnitude in the English language in the purity of its teachings, the elevation of its conceptions, the grandeur of its execution. He was then engaged in teaching those lessons of purity and chastity to young men and young women in which he had been rooted and grounded in his father's and his mother's house. What more of him? Ordinarily, if young men pass the Rubicon of manhood and preserve their characters unspotted and undefiled, they are deemed safe for the time to come. This man did more. His little library grew with his means; his work enlarged as his power enlarged; he became the foremost man in his profession in the West, and then came to your beautiful city to do a work such as no ten men in the United States have ever done before. A life so crowded with work, a life so devoted to the good of his church, of his countrymen, of mankind, of his Master's cause, and the cause of the poor, the cause of an oppressed race—every cause which commends itself to the warm, generous heart—so devoted to all these that he gave to them the hours which you and I give to recreation and to rest; a man of ceaseless avocation, not on the Sabbath day alone, not in the church alone, but on the platform, in the ecclesiastical council, in the editorial rooms, in the study of the author, even, when occasion came, in front of those assemblages of his countrymen who came to hear his inspired words, before they went, taking with them his oldest son, to fight the battles of the country. Nay, abroad, standing alone in the midst of our enemies, where no other American could stand, and changing the tide of public opinion so that England, which was all against us when he went, became divided, and the laboring men of England were our allies from that hour.

IMPROBABILITIES IN THE CASE.

This man who don't read his own letters, who don't pay his own bills, who don't receive his own salary, who gives everything to the charge of the honored wife, who is equal to the task; this man performing labors, not like a modern Hercules, but like a Christian man, labors at the thought of which most men would stand abashed; this man has the leisure, and the opportunity, and the taste to devote a year and a half of his life to a low debauch! Why, gentlemen, even Theodore Tilton was too conspicuous a man to keep his amours concealed, and yet they would have you believe that the foremost man in the American pulpit, who lived in the blaze of noonday, who was known by every man and woman in Brooklyn, known to the school children, known to the serving girls, known to each poor negro that pursued his calling in the streets—that a man like this could be pursuing a secret amour in open day, that he should be debauched and live a year and a half in debauchery with a woman who worshiped God at his own altar, who took the bread of the covenant from his own hand, that such an intrigue could be carried on through a year and a half, and no eye see it, and no ear hear it, until the last woman on earth to tell it is said to have told it, and the last man on earth to tell it is said to have told it, and that woman is represented to have told it to the last man on earth she would ever have told it to; and Henry Ward Beecher to have told it to the very man on earth who, of all others, he would have shrunk from telling it to! Is it probable? rational? Do you believe it? What shall be required to commend such a story to your confidence, against a man of hitherto unspotted life and morality, of hitherto unblemished name, against the oath of a man who never was forsworn, against the presumption of innocence, which the law directs as a defense against accusation!

Now, let us look at the probabilities with reference to the woman. Whatever else in this case may be doubtful, one thing is agreed upon. If down to the 10th day of October, 1868, there was one woman in all Brooklyn who could command the good word, the earnest commendation, the warmest love of all her sex, and all ours, her name was Elizabeth R. Tilton; a woman wedded when she was 20 years old to a man whom she made the subject of an idolatry that was almost impious: a woman who, having many severe crosses and trials, always accepted them as the just penalty of her own weakness and infirmity, and never cast the blame upon the husband to whom she was yoked by a yoke so hard that when her husband did not follow it was dragged, even if she was stranded; a woman so faithful to her children, so faithful to her church, so faithful, so reverent, so trusting in her Father; a woman who so labored to bring back her husband to the faith of her youth and of her womanhood; a woman so earnest for those dear children whom she attempted to bring up in the way in which she believed the Savior would have led them if he had been upon earth—this woman, with all her feebleness of health, and the letters that he has introduced show that it ran a steady thread through the whole structure of her life; but a woman, as he would have you believe, unfortunate in her mother, as she was unfortunate in her husband, and yet whose heart was so full of generous and noble sympathy and affection that when she could hear of the sick, she was at the side of the sick bed; when she could hear of the destitute, she was there with her poor loaf to divide with them; and when she could not find in private families the means to satisfy her craving for relieving human infirmity, adding to her other care the charge of that Bethel which she was continuing during the very period that Theodore Tilton says she was in the arms of a paramour! Do you believe it? A woman so pure that the very man who, to strike Beecher, would send the lance straight through her heart, even he stands before you with the oath of God upon his lips, and declares her to be the whitest soul he has ever known; a woman who, he tells you, had no lust; a woman of clear intellect, of high sense of duty, faithful in every relation, loyal to him, loving her children; and yet, without lust, without passion, fresh from the grave of her dead boy, walking up to the house of her pastor, and tendering to him the use of her body in prostitution! Why, the very fiends would laugh to scorn an accusation so horrid and contemptible. And yet, gentlemen, to such an accusation you have given five months of the very best of your lives, you, each of you, to satisfy the malignant hate of the man who, sitting within 20 feet of his wife, dares to curse her life and her children's lives. And then again, the foolish assertion that this woman, who had no lust and no passion, that this woman was debauched, upon the shallow pretense addressed to her by the same man who had pronounced the curse of God upon the adulterer, in her hearing, Sabbath after Sabbath and year after year, the assurance from that man that love was innocent, and that any expression of the love was just as harmless as a kiss or a caress. Gentlemen, the idea that a woman who could write such letters as the husband has put in evidence before you could be deceived by such a bald and paltry statement!

Oh, but the infamy all lies behind this. This language which he and Moulton put in the mouth of Mr. Beecher as the means of seducing his wife—this is the language which he used in the bedchamber of Bessie Turner on the night when he put his hand in her bosom and told her that these things were done in the highest society, and that they were mere expressions of love, and that any form of expression of love was as innocent as a kiss or a caress. You see the mint from which the alleged confession was coined.

Gentlemen, there is another feature which goes to the probability of the narration, and to the degree of evi-

dence you will require to override your understandings into the acceptance of what both your intelligence and conscience rejects. Now, suppose that by one of those sudden transmutations, of which we have no example in this direction, but of which we have one in the other, when the penitent thief on the Cross was changed from darkness to light, but it was only by the power of the crucified God who suffered at his side—suppose that this monstrous and incredible thing did occur, that the man who all his life had been teaching the precepts of his Master, making bad men good and good men better, had suddenly, when he had turned the edge of three-score years, been transformed from a Christian minister to a vulgar libertine. Suppose another equally extraordinary coincidence; a lady, pure, benevolent, generous, beloved, faithful to man, faithful to God, had suddenly become as one of those poor creatures that walk like spirits of darkness in your streets by night, to entrap the unwary into houses of degradation and shame; suppose this to have occurred. They were reasonable beings, were they not? They were intelligent people. They had ordinary understanding. He knew that he lived in the blaze of the noon-day sun; she knew it. If they had abandoned themselves to a life of a year and a half of debauchery and shame where would they lay the venue of crime? Where did they lay it, according to Theodore Tilton and Frank Moulton? Where did they lay it according to the complaint which lies before his Honor? A year and a half of debauchery, all committed either at the house of Henry Ward Beecher, or at the house of Theodore Tilton, the house of Mr. Beecher never deprived for a year and a half, nor for a year, nor for a half year, of the light which then and now brightens his dwelling; a house frequented by his sons and his daughters, his grandchildren, his friends, his brethren of Plymouth Church, his brethren of every denomination, his clerical friends, and all. But I rejoice at it, and if my noble friend on the other side had experienced the hospitality which I have since this case commenced, if he had been in that household, as it has happened to me to be, and seen the light and the joy, the atmosphere of purity and love which pervades it, if he could see every member of that family from the oldest to the youngest of those grandchildren, all fused together in one spirit of kindliness and love, how could he sum up this case? He could not do it; he could not do it. He will do it better without. Why, the idea of Henry Ward Beecher, if he were capable of having a mistress, taking that mistress beneath his roof, putting that mistress where his servants and his grandchildren might see, and bringing her within the door which, if you knock at it to-morrow, will be opened to you by Mrs. Beecher, as it was opened to Mrs. Tilton by her the only time that Mrs. Tilton ever entered that house—why, gentlemen, can you conceive anything more absurd! Mark you, not an instance of sudden yielding to passion, but they state that by his confession, through that year and a half, from August 10, 1868, to the Spring of 1870, in his and 'n her house, this prostitution was being perpetrated. Two houses, neither of which know privacy, two houses where no door is locked except upon some special occasion, two houses where every servant can look into every room, two houses where every child has free access from garret-roof to the cellar-stone; yet the monstrous story is told by Theodore Tilton that Henry Ward Beecher confessed to him that in those two houses, and through that period, he was debauching this poor sick woman. And then the still more monstrous and incredible story, which, if I remember right, Tilton himself had not the effrontery to make, which was left for Moulton to put forth, that when this God-fearing man and God-fearing woman came to the conclusion that it was better to stop, that they had better go no farther, the reverend gentleman takes the flax to the fire, goes down to her bedside, gets her out of her bed, and they kneel down together, and the inference would be that their arms probably would encircle each other while they were sending up their joint prayer to the God Almighty whom both worshiped, that He would give them strength not to get nearer together than they were at that particular time. [Sensation.] That is the blasphemous prayer which was imputed by Moulton and Tilton to Henry Ward Beecher and this white-souled saint. If their story is true, that is true; if their story is true, that other story is true; and they, knowing that she was an adulteress and he an adulterer, sent for him to go one morning to their house, walked up into a private chamber, talked over the question together as to when it was that he did him the honor to pollute his marriage bed, asking him for the particular dates, telling him that he had a business interest in it, that there was a boy, that white-haired Ralph, who ought to have been here, that you might have seen whether Henry Ward Beecher or Theodore Tilton was his father; holding an inquest over that living body to determine when it was that this act of sacrilege was committed between a clergyman of the altar and one of his parishioners, and in the house of one who claimed to be his nearest friend.

He says, "Really, Mr. Tilton, I did not make a record of these transactions; I kept no minutes of it." "Well," he says, "Elizabeth says that the first time was on the 10th of October, 1868." "Well," he says, "I cannot tell you how that is, because I did not make an entry of it at the time, but you know Elizabeth is a woman of truth and if she says so, it must be so." And so, though the child was born in the ninth month of pregnancy, eight months and ten days after that 7th day of August, Theodore Tilton comes to the conclusion that it could not have come from that, and that the child is legitimate. Why gentlemen, if there be a beast on earth in living form that is capable of holding such a conversation over

his own boy, with the paramour of his adulterous wife, he has lived too long upon the earth; it is time for him to die! [Sensation.] What are such men for, unless they have a use in hunting down clergymen and crucifying women, and committing perjury in courts of justice? This is the story that is commended to you.

HOW THE LETTERS WERE SPREAD BROADCAST.

Now, gentlemen, without stopping to discuss these probabilities further, I wish, in order to enable you to look at this as it should be looked at, to call to mind in the first place, the oath of this man as to the condition of his home prior to the alleged act of the seducer. I wish then to compare it with another record, more reliable, a record made by his wife's hand and by his own, in the confidence of conjugal affection, which he has since betrayed to the public by an act of infamy and dishonor, but which is properly before you, and which now rises against him to condemn his false swearing. He told you, you will remember, that down to 1868 his home—I do not, of course, use his language, for it would take me too long to go through with it in detail, but you remember the general effect of it—his home was one of singular and unalloyed purity and domestic peace; his wife loving, loyal, faithful, devoted; his children tender, beautiful, affectionate; their relations harmonious, loving, mutually devoted; all light within the dwelling, all peace there, no jar, no discord; such a home as even you and I feared was impossible, while he was giving the narration of it. We had read of it in romance and in poetry. It has happened to me to have a bright and happy home, and I presume has happened to each of you; but the home in which the sun always shines and no cloud appears, the home in which all is light and no darkness ever descends, the home in which all is music, and harmony never broken, the home that we look for only in that purer and better land to which Henry Ward Beecher was endeavoring to guide this man's wife and children, while he was endeavoring to stab them both! Now, let us refer to what will not mislead, gentlemen; to these letters that passed between them, written with no thought, no dream on her part—at all events, that what she wrote in the confidence of conjugal affection was to be published on the house-tops, and photographed in *The New-York Graphic*, and thrown to the winds by Frank Moulton, and exposed in all its nakedness by Theodore Tilton to the cold, harsh commentaries of the world, who look very differently upon love letters from what they do who write them. You remember them, and I think—with all my respect and admiration for my honored friend Judge Morris—I think he was wrong, if it is true that he misled Theodore Tilton. Every one may sometimes be wrong; I know I am too often, and I fear he was then. When Theodore said to Morris, "I have broken open a closet and got my wife's letters. She did n't take *hem* off; I have got all her letters; it would n't do to publish them, though; that would be too mean; they were not intended for publication, and it won't do," Judge Morris says, "Well, now, Theodore, you are wrong. Justice should stand though the woman fall! Down with it! Up with the letters! Give them to the public!" "Well, I don't like to have people think I did it." "Oh! where is 'Gath!' Which of those letters is the best to have published?" Well, I don't understand from the narration whether it was my friend Judge Morris, or his client, sat down and marked these as you see them, with red marks. "*There's* a good one. *That* don't read well. There, that will do; put *that* in. No; better leave *that* out. That one won't do at all. Ah! *there* is one that will do; mark that. *There* is another; that will do. Well, now there is part of a sentence that would do, if it was not for that confounded other part of the sentence. Well, strike *that* out." That is struck out. "Now, *this* don't read quite right." "Well, just fill up the sentence; make it read." And so these garbled letters, made to serve the foul and infamous purpose, culled out with a view to falsehood, were sent out to the world; and then, not, of course, Theodore, but other people who write in exactly his style, communicate with *The Springfield Republican*, and *The Chicago Tribune*, and *The New-York Sun*, until we finally find that instead of there being one Theodore Tilton, we have forty Theodore Tiltons, and all writing for the newspapers, and all writing down Mrs. Tilton and Henry Ward Beecher. Gentlemen, those are the stratagems and policies which John Milton says Truth don't need, and which Error resorts to.

MRS. TILTON'S LETTERS AND THEIR LESSONS.

But, now, let us take these letters, even as far as we have been able to get them. My friends on the other side were right; in order to determine the truth of this accusation, in order to comprehend the evidence in its true bearings, you need to go back, as they did go back, to the interior of that home as it existed before the alleged seduction and debauchery; and, now, let us see it as it is presented in these letters. I shall not go through them at all at length, but merely call your attention here and there to a passing circumstance which they develop, showing who were the inmates of the house, who were the intimates of Mr. Tilton, who were the intimates of his wife, what were the relations between them. That they were relations of cordial love I have never denied, and never shall deny. It is one of the things which seems to me marvelous in the sight of man, and only explainable when we shall be able to look at it with the light which comes from Omniscience. That woman, loathing this man as she does to this hour, loves him as I have never seen woman love man. It is the strangest anomaly that I have ever witnessed in the

whole course of events. The most idolatrous, and, if I might so use the term, abject love; but it is no longer that love which is absolutely blind. Then it was love idolatrous and blind, but now it is love idolatrous but blasted. She can see it; she knows to whom she pledged her prostrate and abject soul. But you will find on his part all through this wholly theatrical, extravagant, absurd protestation of sentimental love that exists just as much this moment as it ever did in any hour of his life—a low born love; the love of being loved; a self-love which magnifies not only myself, but my ox and my ass, and my manservant and and my maidservant, and even my poor little wife; but not to such an extent but that he can put his foot on her for the purpose of reeking vengeance on an enemy.

I would, if I had time, gentlemen, have reduced those letters to order and analyzed them: but, as I could not do so; I give them to you just as they strike my eye. Now, observe, the alleged seduction was on the 10th of October, 1868, Paul having died six weeks before. Now, he puts in evidence the letters running through, from 1867 on, stopping, of course, then, for it would not do to put in any more letters after he had made the discovery. Well, in this letter of Jan. 7, 1867, she writes to him, addressing him as—

My Precious Husband: I find our language very poor in superlatives when I attempt to describe my soul's love.

Well, passing over all this, which seems very namby-pamby to me, but which is expressive of a noble woman's sincere affection, and which was not intended to pass under your criticism or mine, she goes on to say:

What a blessing you are to me in every way! Mrs. Belcher made a long call on me to-day, and sent much love to you. Mattie and Katy Bradshaw also called. Please mention Mr. Ovington in some of your letters; it would so gratify him that you remembered him.

I call your attention to these two or three names, gentlemen. One of the side-lights that is thrown into this case by testimony given on our part is the fact that this same Mr. Belcher, then the intimate friend of Mr. Tilton, who was his chosen representative in the church proceedings at Plymouth Church, and with whom he corresponded—that same Mr. Belcher is the man who meets him eye to eye and oath to oath, and convicts him now of perjury; who tells you that that alleged confession of his wife, which he says imported adultery—he tells you that he showed to him that confession, and that the charge was improper solicitations, a request to become a wife with all that that implied, and no more. There was the paper; that, if ever any paper was written containing a charge of adultery, contained it, and Mr. Belcher swore that Theodore Tilton with his own hand showed him that letter then written, and shown on the night of the 30th of December to Henry Ward Beecher, and that letter was a charge not of adultery—no confession, but an accusation of improper solicita-

MR. TILTON'S FRIENDS DESERT HIM.

I call your attention, gentlemen, to this just at this juncture, because, as we travel on, you will find that every man except Frank Moulton that ever Theodore Tilton leaned on has become a broken reed. Dr. Bacon was once his friend, and he now boasts that the Doctor regards him as a dog. Southwick was once his friend, and Southwick meets him eye to eye, and fixes upon him his perjury. Cleveland was once his friend and benefactor, and Cleveland meets him oath to oath. Jackson S. Schultz was once his friend, and, if Jackson S. Schultz has sworn to the truth, then Theodore Tilton has sworn over and over and over to an infamous lie. When you find that the friends of Tilton, the jury of vicinage, parted from him; when you find that Frank Moulton, once a member of the great house of Woodruff & Robinson, a man undoubtedly of great business capacity, of daring energy and administrative genius, as Theodore Tilton says—when you find him, after the inception of this, dropping out first of the principal firm, second of the secondary firm, and finally his connection prolonged one month with a view to your verdict, and then at the end of a month was summarily cut off, you can judge what the jury of Frank Moulton's vicinage think of him. These men stand alone. One after another, on the right hand and on the left hand, they have fallen away.

But where are the friends of Henry Ward Beecher, those who have known him? He never knew until this accusation who were his friends. They have multiplied as the sands upon the seashore. Surrounded once by Plymouth Church, he is surrounded now by the representatives of all creeds and all churches in America, and to a large extent in other lands. He who had no friends before except those who were among his religious and personal associates, now finds friends coming from every quarter, which shows that after all he was not wrong in that Cleveland letter for which Theodore Tilton so denounced him. From State after State, day after day, as the mails come in, we have expressions of gratulation and sympathy from all quarters of the country, and Theodore Tilton and Frank Moulton stand alone. I know the magnanimity of gentlemen of the press; I know the fertility of the pen and the readiness of diction which greet us every day as we look at the newspapers. But look at the living men! Look at the classes of men, business men, bankers, not only Christian men, but men who recognize no God. You may find them in every department of the community. Men themselves of folly, and to some extent licentious lives—even they denounce the mean, false accusation against Henry Ward Beecher.

MR. TILTON COMPARED TO THE DEITY.

But, to go on with the correspondence. You will observe here was Mr. Ovington, as one of those

friends of that date. Now, you mark this. Tilton gives us a graphic account of the interview in which he showed his manhood to his sick wife, by alleging that none of his children except Florence were legitimate, and that she had sexual intercourse with four men, and one of the four was Ovington. Do you believe that Edward J. Ovington found it necessary to intrude upon the marital rights of Theodore Tilton, with a woman for a wife who is like one of the princesses of the earth?

We have a letter here of the 9th of January, 1867, illustrating another thing, that all this while, while this was a poor, sick woman, and married to a hale, stalwart, exacting man, about January 6, 1867, she writes to him this [reading]:

About this time every year my vital forces grow poor, and thus far I have endured felons and other eruptions. I have now an inflamed eyelid and looseness of the bowels. I will try to take better care of my wretched health, because the best man in the world loves me.

Why was this letter published? Can you imagine anything more indecent, more mean, more contemptible than to publish in the newspapers of all this land a wife's letter in which she complains of her felons, her eruptions, her inflamed eye, and her looseness of the bowels? But you see there it is. This man's greed of admiration, his unbounded and stolid egotism, is such that, to get a compliment, he would publish anything.

Well, now, gentlemen, this woman is said to have used language in her "Catharine Gaunt Letter" which indicates that she is an adulteress. She talked about her sin. Why, gentlemen, when you come to read this letter you know just what her sin is. Her sin was that she was not good enough for Theodore. He would come home with his magnificent Apollo person, his grandeur and his beauty, and Bessie would comb his hair, and Mrs. Tilton must kneel and read to him, and the rest must gather around him, and the oysters must be prepared for his palate, and the delicacies for his table, and because the poor woman sometimes got tired, she was so remorseful; he complained of her as sullen, not content with her lot; married to this man with a crown, and, besides, she could not talk; she was only so high. Here was the yoke; she down here and he up there. It never occurred to him that the misfortune was at her end of the yoke and not at his. Well, she reproaches herself. "My great bugbear and nightmare is that I will hide my love or treat you ill when you return."

In the next letter of Feb. 13 she says, "Mr. and Mrs. Belcher took tea with me last evening." If he had another wife I should fear for Belcher; we would have another similar suit, and he would bring the same sort of proof against him that he does against Mr. Beecher; for all through this letter you will find Belcher, Belcher, Belcher, and Ovington, Ovington, Ovington. Luckily Ovington is across the sea, and by the time Belcher's turn comes, even if he has a new wife, he will need more aid than the oath of Frank Moulton to carry a *crim. con.* case through the courts. Now, here is this woman who is cherishing a sacred love for this diabolical seducer, as my friend called it in the opening. "I shall go to-night to hear Mr. Beecher open the Fraternity course." Now, here is one of those little touches of a woman. You will see in this letter that there is no doubt of what she thought about Theodore and the women, but then she had the feeling that whatever he did was right. This man who had moods of genius, and also the privilege of that genius, and yet we find this little woman humbly, quietly deprecating: "Pray, take care of your precious body." Well, he did. [Laughter.] "My lips hunger to kiss you." "Sunday Morning, Jan. 28, 1868." Now, here is a letter that precisely illustrates the relations of these two people, and this is before any imputation:

My beloved! Don't you know the peculiar phase of Christ's character as a lover is so precious to me because of my consecration and devotion to you? I learn to love you from my love to Him; I have learned to love Him from loving you. I couple you with Him [with the Savior of mankind], nor did I feel one whit irreverent as a man bowed down with grief for my sins.

That, perhaps, referred to her adultery with Ovington and her adultery with Dr. Dunham. [To Mr. Shearman.] Who was the other, Brother Shearman?

Mr. Shearman—James H. Bates.

Mr. Porter—Those were her sins, and this man is so like the Savior of mankind, he is bowed down with grief for her sin. Well, now, gentlemen, I have not much sympathy with that exaggerated form of expression, but then we know that there are a great many people in the world with a great many different moods of thought; but the cruelest and vilest use you can make of the very weakness you apply to your wife is to take that weakness as evidence of guilt. You will see every letter of hers is Tiltonian. When I come to read his letters you will see they come from one mind. She was clay in the hands of the potter, and he molded her in every shape he would.

The Court here took a recess until 2 o'clock.

MRS. TILTON'S DEVOTION TO HER HUSBAND.

After recess Mr. Porter resumed as follows:

Allow me, gentlemen, to read the concluding passage of this letter: [Reading.] "I bless you; I know you; I love you." Strong language! And now comes the appeal: [Reading.] "God sustain us and help us both to keep our vows." Was that a prayer for herself? You know what was in her heart; it was the tenderness of a woman's love, appealing by that love to her husband to abandon his preferences for others, and cleave only to her, who loved him as she loved the Savior at whose feet she knelt and taught her children to kneel. To show the peculiar depth of this woman's nature, and the fervor of her admiration for her husband, I read from the

letter of Feb. 4, 1868, a single passage: [Reading.] "I see you now walking in the sunshine, heartfull, joyful, praising God. You did not need me then. But I followed on and would fain catch the hem of your garment as you pass along;" and the woman who so loved him is the woman upon whose heart he asks you, Mr. Foreman, to set your heel; the woman whom he asks your Honor to advise this jury to stone as an adulteress; a woman who knelt to him as she knelt to God, and who loved him as she loved her Redeemer. [Reading.] "February 14, 1868"—mark we have come now to the beginning of the year which was to be darkened, when the Summer harvest came, by the sickle of the reaper that was to cut down little Paul as ripe for the grave, and this woman, this woman standing within eight months of the death of her boy, they would have you believe stood also within nine months and a half of the grave of her honor. Let us see what manner of woman it was that Henry Ward Beecher, with his brilliant gifts and commanding qualities and popular name, what manner of woman it is that he selects out of all Brooklyn for the purpose of making her the miserable minion of his lust. Let us see how she speaks: [Reading.] "Blessings on you, blessings on you, beloved. To hear that you are happy, cheerful and loving me"—[turning to Mr. Tilton] what other loves was it that she was deprecating—"to hear your assurances that you are cheerful, happy, and now loving me, poor girl that I am, without the attractions which win ordinary men, without the intellectual gifts which I worship in you, without those personal attractions, that win the admiration of the young and the licentious, but with a heart that is rich in love for you, when I find that you return that affection, and love even me," she says touchingly, "it is even more than my faith could hope. I wept over it, I laughed over it, I prayed over it." This woman who laughs over the returning love of her husband, who weeps when he comes to her arms, and leaves the arms which she deemed more attractive to him, and who prays for him, goes to God in gratitude and thanksgiving—this is the woman upon whom he turns and says, "Stone her; she is an adulteress!" Here we have an inside view of that household. My friend, Judge Morris, in opening this case alluded again and again to the extraordinary freedom of intercourse that marked Mr. Beecher and Mrs. Tilton, his visits, their occasional correspondence. Certainly no one doubts that Mrs. Mattie Bradshaw, whom he has brought as a witness before you, is a good woman and a pure woman, a religious and a true woman. Here is Mrs. Tilton writing to her husband: "Mattie has hungered to hear from you—" I shall meet her name, and call your attention to it frequently in the course of this correspondence. Now, how base a thing it would be to infer improper relations between Theodore Tilton and her because there were these kindly interchanges of friendship and regard, which, when they occur between Mr. Beecher and Mrs. Tilton, are turned into evidences of adultery. "I think she feels a little sore that Mr. Beecher visits here." Here is a woman, proud of Mr. Beecher's visits, telling her husband of them, saying that his friend Mrs. Bradshaw is jealous of the frequency of those visits and the degree of his attentions to her. Is that the way women hide from their husbands the names of those for whom they lust? Again, we come now, gentlemen, to a very significant letter—very, not because of what it contains, but because of the time when it was written. Little did this man, little did even my friend Judge Morris think that, when they were publishing these letters to the world, there was an unseen hand which guided them in the act and dictated the selection.

Here is a letter written, gentlemen, on the 26th of January, 1869—right out of the hot-bed of adultery, if there ever was adultery here, right in the season when those two houses were polluted with these unholy debauches—Theodore Tilton at the West, Mrs. Beecher, it is true, at home, here is the language of the adulteress to her husband. Tell me if within all your observation of human affairs, or if, according to all the probabilities by which you judge of human conduct, it is possible that this letter is written by an adulteress. "Thursday Noon, January 26, 1869. Dearly Beloved: It is with delight, and for refreshment that I hasten as opportunity offers to sit down without interruption to write and think of you. Oh, my own dear husband, could I but enjoy your companionship now a little while! I cannot understand—" Now, here is that same feeling; I read it to you in a preceding letter before anything of this kind, this taking blame to herself, because he is not contented with his home. "I cannot understand why the demons weariness, fault-finding, ungenerous selfishness, and many hateful little spirits perpetually hang about me when you are with me to modify and lessen our possible enjoyment." Gentlemen, do n't you see a little of the inside of that home there? And who is to blame? Not a word of reproach to him; not one; she, and she alone. "You are bowed with grief for my sins; I am weary when I should be strong; I am fault-finding when I should adore you; I am ungenerous while you are magnanimous; I am selfish, you are unselfish." Strangely enough, the woman believed it. "Besides, my sweet"—here is a touch of nature which appeals to every man who has ever been a father—"my sweet, you must realize the little *unborn* is growing finely." Did ever an adulteress write thus to her husband of an unborn bastard? Never, never! Did ever a woman write thus to her husband, in the confidence of conjugal love, who expected such a letter as that to be published in the newspapers and commented upon through the land as evidence of a bold, licentious, adulterous woman? "Will you write to Mattie?" It

illustrates what all these ladies say of her; she wanted all her friends to love him. He hated to have any of his friends love her. "Will you write to Mattie? I am starving for a letter. None since Thursday. * * * Good by and good night. Your own dear wife, who is fond and proud of her husband." Why the Irish bard could find no such expressions of conjugal love as that of the young matron who said to her husband: "Proud of you; fond of you, having all right in you, quitting all else for my love and delight in you." All else this woman did quit at the altar, and gave herself, body and soul, to the man who would now trample her into a grave of dishonor.

MR. TILTON'S PURPOSE IN PUBLISHING HIS OWN LETTERS.

Mr. Tilton favors us with some letters of his own. I never have been precisely able to comprehend why it was that it was thought needful to publish Theodore Tilton's letters to his wife. It is true they contain sneers at Mr. Beecher; it is true they contain a great deal of self-glorification; it is true that, in a literary point of view, they are well written. But it seems to me that even my friend Judge Morris would not tell him that it was necessary to publish his own love letters to the world. The man's infatuation was such that he could not keep them to himself, and the consequence is we have them, and I am glad of it. Now, take his letter from Crawfordsville, on the 9th of February, 1868, and we see something of what this man is—we see the sham—we see (as we see in this adultery) no acts—all words, words, words. Jingling words, I admit; lighted with the fire of genius, at times brilliant, sometimes classical, sometimes extravagant, always interesting, and always delighting his ear and hers. "My Dear Angel: I dreamed of you all last night." That was a long dream. "I regard my last evening spent with you at home as the most memorable point of my whole life." That is a memorable evening. What could have occurred, your Honor, that night—what could have occurred, Mr. Foreman? Tell us. Observe, this is in the beginning of that year, in the end of which, according to his account, his wife turns prostitute. "You opened for me that night the gate of heaven, which had so long seemed shut?" Who shut that gate? Who opened it? Why was it shut? Whose sin was it that weighed so heavily that that gate was swung to upon its hinge? What was the sin? Was it the five points of Calvinism that troubled him? Well, we get a little hint down below [reading]: "When I am doing you an injury, or slight, or hardness, I am made so miserable that I do not wish to live. When I am making you happy I walk like a prince newly come into his kingdom. * * * You have the richest of all human hearts. I am pledged to you forever." What happened that night? What pledges were given that night? What was it that led him to make that change that swung open, by the ministrations of this angel, the gate that had been closed upon him for time and for eternity? "My vows I shall keep and not break." What occasion for a married man, eight years after his marriage, to be having a night consultation with his wife, and making vows which he promised in the first letter afterward he will observe and not break? We have a hint in the next letter, Feb. 20, of a similar character. I need only refer to the form of his signature: "Faithfully yours, Theodore. P. S. That word 'faithful'" [in quotation marks] "means a great deal." It was a reassurance to his wife of that fidelity, the breach of which had closed upon him the gate of heaven, and her forgiveness had reopened that gate, and his new vows had been given, and he tells her now he will observe them, and he who was faithless before will be faithful hereafter. I come now to another letter which he furnishes of Mrs. Tilton's, dated the 3d of February, 1868. There is a touching passage in this letter which I wish to read to you as illustrative of her adoration of the man and her self-depreciation: "The picture of your dear face most constant with me is one glowing with love, but always bearing the look of one that has suffered. Can I who am the cause thereof ever again be indifferent?" Now, here is a woman who he says was as pure as an angel, untempted then by Henry Ward Beecher, or by any human being, loving him with a loyalty that knew no bounds, and yet we find her reproaching herself in her letter to him with those marks of suffering which he bore upon his face, and which made him seem to her as if it was the face of the Redeemer. "I have been thinking, my darling, that having, as you do, your immense power over an audience to move them at your will, that same power you have with all public men over any woman whom you may love;" a natural thing, is it not, for a woman to feel? "To love is praiseworthy, but to abuse your gift of influence is a sin. Therefore, I would fain help restore to you that which I broke down, self-respect." His infidelities she charges herself with having caused by her inability to make his home sufficiently attractive, but she says to him: "Do not abuse this power which you have; to love is divine, but to abuse the gift—to abuse the gift, is sin." "Your gift of influence"—that is her language. "Your manhood, and its purity and dignity, if you feel it, is stronger than love itself. I know this, because here I am strong. No demonstrations or fascinations could cause me to yield my womanhood. You have not yet replied to my inquiry whether the giving you my whole heart in my letters offends you." Gentlemen, is there any doubt about what that letter means? Is it not the modest, tender, appealing prayer of a wife to her husband not to exercise those gifts which have won her love in winning the love of others, and carrying that love to a point where it would verge on sin? And yet the dastard to whom that letter is addressed published it in a form garbled, false, and forged, in which

she is represented as confessing the very thing she imputes to him. And he says, by way of apology for it: "Well, since I commenced this suit I furnished a true copy." Furnished it to what? To *The Graphic*. What copy was it that you furnished to the people of the United States? What copy was it that you sent broadcast through the land in order to convict Henry Ward Beecher of a crime of which he was innocent, even by blasting your own wife? Now, gentlemen, accidents like this are too frequent in this case to be without a meaning. Let me again remind you of the saying of John Milton, "Truth needs no policies, no stratagems, to make her victorious. Those are the shifts that error uses against her power."

Mr. Beach—What page is that letter?

THE EVENING OF "MUTUAL CONFESSIONS."

Mr. Porter—483. Let me in this immediate connection read—but no, I must not leave this. There is more in the letter when it comes to be produced here than even this:

I was with you all day yesterday, Sunday. What holy associations cluster around that day in our experiences, the morning hours suggesting Mattie's death! and who can tell what that hath done for us? And now, the evening, memorable forever of confessions, with repentings, cleansings, and sacred vows.

You remember, gentlemen, *his* letter that I read a short time since; here is hers. Long before the alleged defection of his wife to Mr. Beecher he refers to the "memorable evening," and she to the "memorable evening," an evening indeed "of confessions, of cleansings, of broken and renewed vows."

Gentlemen, who confessed on that memorable evening? Not she. Who did it? Who took that evening for cleansing and renewing broken vows? Do you doubt that it was Theodore Tilton? Is there not here an inside light which enables you to see beneath that roof as if you were looking in upon it at that hour? How does this harmonize with that false coloring he gave, when he came to the stand, of that peaceful, pure, innocent, harmonious home? My friend Mr. Abbott calls my attention to a letter bearing date the 26th of January, 1868.

Mr. Shearman—That is the very evening referred to in this letter of Mrs. Tilton.

Mr. Porter—The evening referred to in the letter of Mrs. Tilton.

Mr. Beach—What is the page?

Mr. Porter—617. Now, here is what the husband says:

You have never seemed so noble to me as during last evening and this day. You are not only all but more than all that any man can need or ever can deserve. Life never seemed to me more full of objects and ends worth living for than since our recent long interview and mutual confessions.

What were those mutual confessions? Hers?—we see it running through all these letters—were of coldness, of sullenness, of ill-temper, of weariness, of disquietude, *because he did not return her love* in the same unlimited measure in which she tendered it to him. What were *his* confessions?—those broken vows which swung to the gates of heaven, those infidelities to her, that made the future seem to him one of darkness until she, like an angel, gave it the new form of a future of perennial light? He says:

I am by nature so frank, that the attempt to hide my feelings, to cloak my shortcomings and deny utterance to my inward sorrows, has lately almost driven me to despair. The secret of my long-continued moodiness has been dissatisfaction, not with you, but with myself. I was once well enough content to be esteemed at something better than my merit, but of late all such estimates of me have been horribly repulsive to me. They have revealed me to myself in the character of a hypocrite, a deceiver, a whited sepulcher filled with dead men's bones. Above all things, it has been dreadful for me to hear praises of myself from you and Florence. I could not rest under the idea that either of you felt that my gloom was occasioned by anything lacking in yourself, but only in my own self.

And then he reassures her that he is "now and henceforth and forever" hers. "Forever" meant until, through her body, he could strike at the heart of the man he envied and hated.

THE ORIGIN OF THE CHARGE.

Again, Jan. 28, 1867, we have a letter from her. This is a year before the alleged criminality began:

I am very sorry my letters are lost; they contain so much that stranger eyes should not see.

There is the shrinking of the modest woman from the publicity which he gives to these letters the moment he can break into her closet and it serves his ends. Now, as to Mr. Beecher, she writes: "Mr. B. called Sunday." The time will come, gentlemen—perhaps I should not say the time, but the revelation will come, in that eternity which we are all to face, that right there originated this prosecution. That single sentence has been distorted, and, in the language of Wilkeson, has grown, grown, grown, until finally it culminated in the present accusation by which he seeks to hurry his wife to the grave. And that shows how words, harmless words, if you sow them, may bring forth very harmful fruit. This woman, innocently enough, writes to her husband, who had charged her to report everything that passed whenever Mr. Beecher was there—writes to him that Mr. Beecher in going out of the house said: "What a pretty house this is! I wish I lived here." Do you believe, gentlemen, that Mr. Beecher meant adultery by that? The thing is so preposterous that no one would for an instant entertain it. Whatever other letter has been kept back from the public this, *this* would be produced.

Now, gentlemen, I come to another letter more significant by far than either of these that I have read, when I come to connect it with another which follows it. I want to show you that the Elizabeth R. Tilton, whom he alleges to have been pure and unspotted in February, 1867, was the same pure and unspotted Eliza-

beth R. Tilton in 1869, when she wrote the counterpart to this letter, and after the alleged adultery. Now, you observe that this man pretends that after the alleged confession to him in July, 1870, he never attended Mr. Beecher's church; he broke off from the church at that time. Well, you have it in proof from Mr. Halliday, who had been, I think, nine years pastor of that church (I don't remember the precise time), that he had never seen Theodore Tilton there. You have it in proof by himself in two of his own subsequent letters—in one of his subsequent communications to the Committee that he discontinued going to that church more than four years before 1873. You have here, however, a touching appeal by his wife:

The church to-night was filled with medical students, Mr. B. preaching before their Christian Union. He certainly is greatly aroused this Winter, and works most earnestly. Will you not, on your return, throw in your inspiration, and join me in fulfilling our vows as members of this Christian church? Your beautiful spirit would help many there, as it does everywhere, and to me there is no spot so sacred in all this earth as Plymouth Church.

She then proceeds to say, as indeed in almost every letter, "I am not as well in body, though I do feel that I have gained some victories over my temper." It was her sullen temper, which was not joyous when Theodore Tilton came home cross! "I have striven (she says) for Christ's sake, who has been most precious to me, and for yours, to array myself with purity of thought and action, and you know what it costs," &c. Feb. 1, 1868: "Your closing lines are, 'Have I not a great heart, when all its foundations are stirred?' Yes, most truly." But, gentlemen, do you think either of you would ever have felt less than mean if you had found that in some old letter you had written to your wife, "Have I not a great heart when all its foundations are stirred?" and your wife had answered, "You have"—would not you feel very mean to hand that letter over to a printer for publication? Again she quotes: "'Elizabeth, thou art highly favored, chosen among women,' are words ever sounding in my ears." The mockery! The same man who afterward distinguishes himself in the saloon of free love, adopting that most eloquent language of the Holy Spirit addressed to the Elizabeth of Biblical memory, and appropriating it to himself as his own language to her, and then publishing this to the world in order to show how weak she was, and how great he was.

MRS. TILTON'S DESCRIPTIONS OF MR. BEECHER'S CALLS.

"About 11 o'clock Mr. B. called." Theodore Tilton says he never had a suspicion of Mr. Beecher down to the time when this revelation was made to him on the 3d of July, 1870. Here is a letter which he produced, dated Feb. 1, 1868, written to him by his wife, in which she says:

Now, beloved, let not even the shadow of a shadow fall on your dear heart because of this, now, henceforth, or forever. He cannot by any possibility be much to me since I have known you. I implore you to believe it, and to look at me as in the Day of Judgment, when it shall be revealed to you. Do not think it audacious in me to say I am to him a good deal, a rest. Can you understand it, I appear even cheerful and helpful to him?

Not, of course, to Theodore, but to him. Now, does not that let you into the language of rebuke to her after that letter in which she told him that Mr. Beecher said "What a pretty house this is; I wish I lived here?" Do you not know the manner of talk that took place between that husband and that wife? Does not this indicate it? Again:

After seeing the children, I asked him if he would go with me to Mattie's and see the bust. Without any hesitation he said he would. I immediately got ready, and I took my first walk to the Court-st. cars without much difficulty, so that I feel free again, and will walk out every pleasant day. We found neither Mattie or Mack at home, to my great disappointment, seeing only Laura Bradshaw and Gip, and your dear head, darling, which on second seeing is more than ever to me. Mr. B. expressed great satisfaction with it, feeling that it was far better than he expected to find it, and he believed as correct a likeness as you could have. He is very desirous for Mack to try him. Nothing noteworthy occurred, save that he left me at the door with the remark that he "had had a pleasant morning." You once told me that you did not believe that I gave you a correct account of his visits, and you always felt depressed much. Sweet, do you still feel this? I strive in my poor word-painting to give you the *spirit* and impression which I give him, and he to me. It would be my supreme wish and delight to have you always with me. This trinity of friendship I pray for always.

Here, gentlemen, you can see the jealousy of a man who wanted to be jealous, who wanted an excuse for infidelity, who hated another and who would have given *boot* to have occasion to be jealous, who wanted to labor with his wife to convince her that he was jealous. He had his purposes then; he accomplished them afterward.

You have been told about gifts by Mr. Beecher. They were paraded by my friend Judge Morris in his opening, as they had previously been paraded before the public. Now, you see cropping out here, just how those gifts came to be made. Here is a letter dated April 1, 1868:

Mr. Beecher gave us a pleasant episode yesterday—a visit of more than an hour. He said, with great earnestness, you never could know the gratification your letter appreciating "Norwood" gave him. He meant to give you the American edition and me the English, or vice versa, so that we might have one each.

Yet these two poor "Norwoods" figure as the gifts of a libertine to an adulteress! Again, Jan. 22, 1867; now this, observe, is one of the letters after, according to his account, she has turned prostitute:

MY DEARLY BELOVED: Your Monday's letter from Clinton, Ohio, telling me of your convalescence I have just received. * * * * Forgive me that I want so much love—yet my soul cries "Give, give." I believe I

am big enough to supply even your big heart with love if you will only let me.

Is that the letter of another man's mistress to her own husband? Again, Feb. 20, 1868:

MY BELOVED: Will you talk with me in the future about all that interests you? Let us be more frank and free to each other. Good night. Good angels guard your sleep.

Feb. 26: "Mr. Beecher put our baby to sleep——" I am selecting out those things more particularly which refer to Mr. Beecher, because I want you to see just what passed between them. Theodore Tilton singled out every letter in that daily correspondence for years in which he could find the name of Mr. Beecher, and we find that she not only communicates to him every visit that Mr. Beecher made, every meeting with him, every time she hears him make a speech, but she goes further, and (by his express injunctions, as these letters show) in each instance repeats and reports to him what passed between her and Mr. Beecher at these interviews.

Mr. B. put our baby to sleep, laid him down, and covered him up, the last time he was here; whenever we could not quiet him, said send for him and he would come. His call amused the children very much.

This frank, hearty, rollicking manner of Mr. Beecher, which leads Tilton to call him "a great boy," and this love of fun which abounds in the man, and which is often found in men of genius, this is turned into a poisoned arrow to pierce his heart and the heart of Mrs. Tilton! If there were anything wrong in that would she have written about it to her husband? Again, here is a letter of Feb. 7, 1869, and this is the one to which I call your attention specially, in connection with one I read a little time since. I want you to watch this letter and see whether, in your belief, it is a letter written by an adulteress to the husband whom she is then daily dishonoring:

SUNDAY, Feb. 7, 1869.

MY BELOVED: I have just finished reading to Emma Lowell's "Extreme Unction," and the chapter in "Norwood" of Parson Buell's grief on the death of his wife. It is very touching, and I realized for a moment what that agony must be—the parting at the river between a husband and wife who have truly loved. How inevitable it is! God only can sustain the one who remains, while He enables the one who departed to say, "I shall be satisfied."

Allow me to say, without cant, that God has given me a blessing to-day—He has enabled me to do something for Him, and that conscious privilege overflows my heart utterly. At home He helped me to be patient, willing, yea glad, to spend myself for others; and in the Bethel—my little, little room was crowded. The interest increases in my class. They all love me, I *feel* it—because I, too, love every one. I do indeed feel grateful for the encouragement they give me, in these new labors. I tell you rather more at length than usual of my work here, because I earnestly wish your sympathy, and to feel free to talk *with you* of everything in which I'm interested, as in "auld lang syne." However imperfect we may appear to each other, yet the dear Lord does not hesitate to use us. Now, to-night, I give myself to you—my *best, my worst*—"just as I am." Take me once again into your confidence; bear with my follies as in early days. I consecrate myself to you so long as I shall live, before God this night, as a fitting close of this Sabbath day. Forgive all my infirmities, and help me to overcome to final victory. Wilt thou? So will I you, if you permit. The freedom with which you write of Paul gives me great pleasure. Then the fountain is unsealed and we flow together.

A letter from Danville. Now, observe, this is the 7th of February, 1869—right out of the hotbed of adultery.

Mr. Shearman—Judge Porter, Paul was the dead child.

Mr. Porter—Yes; this Paul was the child that had died. Now, for the letter of August 3, 1869. Here is a letter, gentlemen, which has especial import. I deny that the whole history of the human race furnishes an instance of an adulterous woman writing such a letter to a cuckold husband. Now listen:

MY DEAR HUSBAND: My heart sorrows to-night for my loss in the death of Mrs. Elliott. Pity dear mother, as one after one of her friends leave her. Minister to her if you can, my darling.

Oh, dear Theodore, may I not persuade you to love the Lord Jesus Christ? Do not let this entreaty estrange us more, for my pillow oft is wet with tears and prayers that we may come into sympathy in our religious natures. Do have patience with me, for, as the time remains to us, I feel as though my heart would break if I did not speak to you—not that I am right in any sense, and you are wrong; God forbid! but we are not one in feeling, and it is impossible for me to be indifferent, especially while God blesses me with dear children.

I once again ask forgiveness if I have offended you by showing my heart. Our dear baby grows finely, &c.

Just imagine a woman, fresh from a bed of debauchery and of lust, writing a letter to her husband, a husband who, she fears, is losing the foundations of his faith, and humbly, modestly, appealing to him, imploring him to reconsider his course. Was there ever such an absurdity as the pretense of these two men, that those letters written by Henry Ward Beecher to Frank Moulton, all breathing the spirit of the Divine Master, were written between two men who were mutual confidants in an intrigue with a dishonored woman? It is not true; it is not true. The woman who wrote that letter to Theodore Tilton was not an adulteress. She was one who loved him too well for her own good; and it was because of that love that, at the risk of incurring his displeasure, she implored him to accept that religion which was her consolation, and in which she wished him to live and to die.

Again, on the 28th of February, 1869, another of those letters written during this period of alleged prostitution:

Now, my sweet, after so long a tale, let me for our mutual refreshment turn to our own sweet love. I bless God that it abideth. Among the terrible changes of many hearts, God has kept us steadfast, with a growing love, admiration and respect for each other. Oh, let us praise His name forever! All the differences, misunderstandings we have had are, as Whittier says, "Like mountain ranges overpast."

If God be for us, who can be against us?

Give me your patience while I spread out before you the fruitage of your beautiful love.

And then she proceeds to make a series of extracts of the passages in his letters, from time to time, containing the protestations of his love and tenderness and regard for her. Is this the language of an adulteress?

A LETTER WITH AN UNFORTUNATE DATE.

Again, it is well to recur to a still earlier period in the history of these people. We have a letter here of the 28th of December, 1866. Now, observe if this letter had been published at the date of the "Catharine Gaunt letter," what power it would give to their claim that she was confessing adultery; and yet this, according to their own account, was the year before, when there is no question of her absolute purity and innocence:

My beloved, I have been thinking of my love for Mr. B—— considerably of late, and those thoughts you shall have. I remember Hannah Moore says: "My heart in its new sympathy for one abounds toward all." Now, I think I have lived a richer, happier life since I have known him. And have you not loved me more ardently since you saw another high nature appreciated me? Certain it is that I never in all my life had such rapture of enthusiasm in my love for you—something akin to the birth of another babe; anew fountain was opened, enriching all—especially toward you, the one being supreme in my soul. "I love thee with the breath, smile, tears, of all my life!—and if God choose I shall but love thee better after death."

It is not possible for any human creature to supersede you in my heart. Above all you rise grand, highest, best. I praise God that He is teaching me of His great mercy and love, shown by his gift of so great a heart as your own, to be mine. For many years I did not realize the blessing. What remorse it brings to me! Memories bitter, awful! But to return to Mr. B——. He has been the guide of our youth, and until the three last dreadful years, when our confidence was shaken in him, we trusted him as no other human being.

MRS. TILTON'S SIN.

That lifts the vail that Theodore Tilton did not in his testimony. Three years prior to 1866, before she had come to be at all intimate with him, Mr. Beecher was made, in the estimate of that woman, by Theodore Tilton, to believe that he was a man unworthy of confidence; and she frankly says to him in this letter that for those three long years "our confidence in him was shaken;" and he pretends that during all this period there was a frank and mutual friendship between them. Gentlemen, Theodore Tilton was then his secret and backbiting enemy, and that was when they were serving together in *The Independent*.

Again, here is a letter in 1866:

God is with us. We have had great experiences this Winter. He will help us, I am sure; our trust is in Him.

Let us pour out our souls in prayer that we may never sin as before, when we meet again.

Is that adultery? No. Self-depreciation, humiliation, sin, confession—not adultery; but the moment he finds it convenient to make a charge against Henry Ward Beecher, the simple use of the phrase "my sin" is converted into evidence of a vile debauch, and by the man who knows that such a construction is a forgery and a lie.

Again, on the 24th of February, 1868, we have a letter of this sort:

My Darling of Darlings: * * * I thank you for a look into your heart; for, with one or two exceptions, you have not shown it to me since you went away. * * It is too true you have given largely, grandly, and bountifully of your best love to friends, aye, even to your wife, while in return you have received most often indifference, and at best love not deserving the name, in comparison with thine own. * * * Again, in one of your letters you close with "faithfully yours—that word 'faithful' means a great deal." Yes, darling, I believe it, trust it, and give you the same surety with regard to myself. I am faithful to you, have been always, and shall forever be, world without end. Call not this assurance impious. There are some things we know. Blessed be God. I sorrow more than you can for your lost friendship—as my soul stings with remorse that I was the cause—and yet, for all this, you love me.

There is a letter with "remorse," stinging the soul of this woman, conscious of that great sin. He says that did not mean adultery; but in the "Catharine Gaunt Letter" sin—what would satisfy him but the beastly gathering of a woman and a clergyman in a polluted marriage bed!

Again, we have Mr. Tilton, on the 21st of August, 1866, giving a little insight into himself.

I would to God I were not so easily overcome by my own worldly-mindedness as to be brought so quickly and fatally down from my heavenly moods to the earth. But this belongs to the infirmity of human nature. I have walked like a king ever since that evening. * * * May God make us wise [Solomon asked that], rich [who was it asked that?], and pure.

The prayer was granted as to the wife. I appeal to Mrs. Woodhull whether it was granted as to the husband.

MR. TILTON'S "RAGGED EDGE" LETTER.

Again, December 6, 1866:

My Darling: All day long I have been reading Griffith Gaunt. * * * * It turn on jealousy. I am not jealous, nor do I know the feeling.

Of course he is not jealous; he never had a vice of any kind, in the world.

I think any man is a fool to be jealous. If he is jealous *without* cause, he is foolish; if *with* cause, more foolish.

But I am somewhat disturbed, and have been for a long while past, at the diminishing faith which I entertain for human nature. Human characters do not seem so lovely to me as they once did. [Nor divine characters either, as we remember, because it was about that time that he proceeded to dethrone the Redeemer.] During my travels I have had profound reflections on my life. I am a weak man, supposed to be strong; a selfish man, supposed to be the world's lover and helper; an earthly-minded man, supposed to be more Christian than my

fellows. I cannot endure the mockery. * * * I feel myself scarred, spotted, miserable, and unworthy. * * * My life is so unprofitable that I sometimes dare not turn round and look upon it.

What language has Henry Ward Beecher ever used like that? And yet they say Mr. Beecher's language can be satisfied with naught except adultery.

MR. TILTON EXPRESSES JEALOUSY.

Again, on the 27th of December, 1866, writing from Dubuque, Iowa. Now, observe, he has no foibles; he has no jealousy; he is not a jealous man; any many is a fool to be jealous. Somehow his wife had an idea that he was a little tending in that direction, because she had occasion to explain to him; but nevertheless he was not; that was a mistake, and so he says:

I don't expect, however, to be lonesome much longer; for I am to meet you in Chicago. Now, that the *other* man has gone off lecturing (as your letter mentions), you can afford to come to *me*. You ought to be enjoying what I am enjoying on this magnificent trip—for instance, this afternoon—a dinner party. Leave home, children, kith and kin, and cleave unto him to whom you originally promised to cleave. You promised the *other* man to cleave to *me*, and yet you leave *me all alone*, and cleave to *him*. "Oh, frailty! thy name is woman." If you can get anybody to pour tea for you, and to take sauce from the servants, and to receive pastoral visits, I shall expect to meet you under the roof of Robert Hatfield.

Mr. Beach—What page is that?

Mr. Porter—496. Now, gentlemen, every one of you know that he had not the slighest idea of being really jealous of Mr. Beecher. It was the purest affectation, but it was quite convenient when a family dialogue came up as to irregularities, that there should be two sides, and something to talk about on both sides. "Do you remember that letter in which you told me that Mr. Beecher, when he went out of the house said: 'What a pretty house this is, I wish I lived here?' When the other man married us you promised to cleave to me. Why don't you get somebody to receive pastoral visits, and leave the other man and come to me?" It was not the spirit of a man honestly jealous, but the spirit of a man who wanted to make his wife believe he was jealous, and, I am sorry to say it, he was the man who would have been delighted to know there was foundation for it.

FIRST TOUCHES OF MR. TILTON'S DEFECTIONS.

Again, on the 12th of February, 1867, a year after, he says:

I am satisfied that whoso makes no intimate or confidential friends, both among men and among women—friends with whom he girdles himself around about as with a halo—friends who are props to keep him lifted perpetually toward his highest life—friends whose friendship is a kind of sacred wedding that knows no sex—such a man neglects one of the greatest opportunities for intellectual, moral, and spiritual growth.

Here we have the outcropping which afterward brought so bountiful a harvest of free love under the active culture of the Woodhull & Claflin coterie.

Again, "The old religious teachings." Mark you, this is seven years ago. "The old religious teachings, and orthodox view, the dread of punishment, the Atonement, have less and less power over my mind. Of course you will mourn over this. But I must be an honest man. I don't believe in Orthodoxy, and therefore I will not pretend to do so."

Again, we have a very curious revelation in itself in this passage:

And this fact reveals the one prolonged mistake of my past life—my association with your mother. I can now plainly see what I might have been if, for instance, I could have lived under such a roof as sheltered me in Princeton, instead of breathing, during all these years, the atmosphere of Livingston-st. If my mother-in-law had been such a woman as Mrs. Lovejoy, and the influences of Brooklyn had been like the influences of Princeton, I believe that I might have grown by this time as unselfish as a good woman. How much more I would then have been to yourself and the children! How many pangs you might have been saved! How many unknown joys you might have experienced! I have not been a wise man or I would not have consented, eleven years ago, to pitch my tent in a bank of fog. Moreover, let us beware of the tragic and dreadful mistake of teaching to our children that when they shall be married, their first and chief allegiance will still be to their parents as heretofore, and that only a secondary fealty is sufficient between husband and wife. I have never seen so plainly as I have seen this Winter what Livingston-st. mildew I have been carrying on my garments for eleven years. Six months ago I was accustomed to say to myself in my secret hours, Theodore Tilton it is time for you to die; your soul grows not whiter but darker; die soon and save yourself from total destruction! But I believe that if I shall return to Brooklyn at all, I shall return a different man. God grant it! I know that I have tried to wash myself clean.

And don't you think he needed it? He evidently did. March 18, 1867:

During all the Winter I was as one clothed in king's apparel. * * * * I came home from the West respecting myself too highly. My crown then was suddenly taken off and cast to the earth.

All through these letters you see that if nobody else except that poor woman worshiped him, he, Theodore Tilton, worshiped Theodore Tilton from morning till night and from midnight till morning; there was nothing else to occupy his mind. Self-glorification; self-adoration. Now a prince, now a king, now a crown; now delighted with the letter in which his wife compares himself to the Savior. Now delighted with the letter in which his wife rebukes him for want of allegiance to that Savior. "Oh! the time of those things past!"

MR. TILTON GRATEFUL FOR MR. BEECHER'S VISITS.

Now, here we have another letter of his dated, "Rochester, March 21, 1867," in regard to which I wish to note one or two things:

I am, in this midnight hour, in the same hotel, and in the same room wherein you and I were quartered eleven and a half years ago on our wedding tour! * * * Gray hairs have stolen upon us since. * * *

Gray hairs! Bessie Turner said he talked of gray hairs in December, 1870, and he came back to the stand and lifted his hand in the presence of Almighty God and said, "I had no gray hairs then." What was he writing about in 1867?

Life is sober, as I now look upon it. Death is near, as I now think of it. Heaven is sweet, as I now wait for it. * * * I have less faith in my usual integrity now than at any former period of my life.

Well, I think he will have the consolation, at the close of this trial, of believing that the universal sentiment of those who have heard it is in accordance with that expressed by himself in this letter. Why, gentlemen, do you want any better illustration of the complete hollowness of this accuser than those very letters which he was weak and fortunate enough to publish to the world?

Again. Why, you marvel at the sentimental form of the letters of Mrs. Tilton. Now, bear in mind, gentlemen, she had an excuse; this man required it. It was he that dictated how her letters were to be written. Now, for instance, we have this in this letter written on the 6th of February, 1867, from Michigan:

Sometimes we allow our loves simply to be taken for granted, whereas we would both enjoy each other's love the more by coining our own into a repeated confession of words. "Confession is good for the soul," says the poet; and I hereby confess that I love you as fervently as any man ever loved any woman on the earth, or perhaps in the heavens.

And, gentlemen, that protestation was just as true as two-thirds of the testimony he gave you from that stand! Again, February 21, 1867:

I inclose to you Oliver's letter, received this morning. So you see that there are men, as well as women, who love your husband.

Does not that let in the light a little to the dialogues that had occurred between this twain?

I am sorry to hear that Mr. Beecher had a poor house in Brooklyn. In view of his kind attentions to you this Winter, all my old love for him has revived and my heart would once more greet him as of old. I sometimes quarrel with old friends on the surface, but never at the bottom.

Wise man! Woman he quarrels with at the bottom; clergymen only on the surface, until the time comes when he can strike through the woman.

MR. BOWEN THE HARLEQUIN OF THE CASE.

Again, Jan. 13, 1865, a still earlier date:

I am glad Mr. Beecher called on you. I will write to thank him for it. I have not had a line from him, but I have had two brief notes from Mr. Greeley.

And yet those calls thus social, publicly made at noon day, reported to him, and the conversations reported, are brought forward in aid of this vile prosecution as evidence of clandestine visits with an adulterous purpose.

Now, on the 25th of January, 1867, we have a letter from her, which is somewhat marked:

I think in reference to Oliver's opinions of Mr. Beecher, as his remarks were made to Mr. Bowen, and they are embittered toward one another, that what Mr. B. said of you may appear very different through the coloring Mr. Bowen may give it.

Is it not odd? Now, so far as I can see, except Frank Moulton and the counsel, of course, my adversary, Mr. Tilton stands pretty much alone. But there is one friend, and that is Bowen. The man of whom he had the least to expect, makes his appearance on the stand, and, yet, it happens unluckily that poor Bowen gets more kicks than compliments on all hands, for you cannot open an old letter written by this little woman to her husband but there is a fling at Bowen. You cannot have a midnight walk between Frank Moulton and Henry Ward Beecher but even the snow-storm is made wickeder with the exclamations that "Bowen is treacherous," "he is a traitor to you," "he is a traitor to everybody else." We have Bowen appearing and disappearing and reappearing; sometimes the author and sometimes the rejecter of all these scandals; sometimes threatening and sometimes forgiving, sometimes communing and sometimes maligning.

Wherever we have him, he is appearing under some doubtful relation.

Now, gentlemen, I have a secret feeling, like Mr. Beecher himself, that, perhaps, Mr. Tilton is more excusable than we supposed. We had Bowen, who trained Joe Richards and qualified him to make the appearance he did on that stand; that Bowen, who trained Theodore Tilton; that Bowen, to whom he attributes the origin of all these calumnies may perhaps have exercised over him a malign influence. At any rate his wife here seems to think that even at as early a day as 1867, Bowen, who appears to be a very worthy and respectable man, editor of a newspaper sometimes called religious, sometimes secular—how it happens that wherever we come to anything in the way of mischief, anything in the way of disturbing families, and disturbing churches, and disturbing communities—how is it that they always bring in the name of Theodore Tilton's friend, Henry C. Bowen? Of course I assume that he is innocent. I assume he is not at all what she describes him, but it only goes to show you what is the disadvan-

tage of having a bad character, and it enforces what I say when I claim for Mrs. Theodore Tilton and for Henry Ward Beecher the benefit of a good character. No man maligned them until the work was begun, Tilton says by Bowen; Bowen would lead us to infer by Tilton. I don't know which.

MRS. TILTON ON MR. BEECHER'S FAULTS.

Well, she goes on to say:

How my soul yearns over you two dear men.

That is, Tilton and Beecher. She evidently don't sympathize with Bowen.

You, my beloved, are higher up than he. This I believe. Will you not join me in prayer that God will keep him as He is keeping us? Oh, let us pray for it! You are not willing to leave him to the evil influences which surround him. He is in a delusion in regard to himself, and pitifully mistaken in his opinion of you. I can never rest satisfied until you both see eye to eye, and love one another as you once did. This will not come to pass as quickly by estrangement. But with all the earnestness of my being I commit you both to God's love. He has signally blessed you both, and He will keep His own beloved. Why I was so mysteriously brought in as actor in this friendship I know not; yet no experience of all my life has made my soul ache so verily as the apparent lack of Christian manliness in this beloved man.

That shows you that this was a woman who could see faults in Henry Ward Beecher; who was easily persuaded by her husband, by that same husband at whose instance, though through the hand of Carpenter, she was subsequently made to write that letter to Mr. Storrs, declaring that there had been a conspiracy in December, 1870, at the time of the Bowen transaction to which Mrs. Henry Ward Beecher was a party. "Mattie feels as I do" (that is, Mrs. Bradshaw). "I saw her to-day. She said she received two letters from you."

Here is a married man writing two letters a day to a married woman, and his wife knowing all about it. She is not jealous. Mr. Beecher has written, in the course of his life, some four or five or six letters—I don't know how many—to Mrs. Tilton, and on most of the occasions at the particular instance either of Tilton himself, or of Frank Moulton, and yet it is taken in his case as evidence of adultery. It is absurd to turn the ordinary courtesies which exist between respectable families, and which, with the freedom and publicity, carry with them the evidence upon their forefront of their innocence. It is absurd to impute to letters of this kind, or familiarities of that kind, the basis of most unworthy purposes and motives. We have from her in this letter a further statement, which shows how ready she was to blame herself:

Hereafter, I guard my temper. You shall have a true, pure wife by-and-by.

I am ashamed that I am so often unattractive to the Great Lover of my soul.

Now comes a letter written on the 13th of January, 1870. Now observe. That was the beginning of the year which ended in the midnight interview and the dismissal of Tilton from *The Independent*. [Reading.]

MY DEAR HUSBAND: You once said, and often acted, that I was always craving sentiment. It is verily true. I am what I am. Therefore, to such a nature as mine Jesus Christ, as He discovers himself to me, is unutterably precious. Let my tongue cleave to my mouth if I fail to bear testimony to His *unchangeable* love. Your letter reached me yesterday. How it lightened my day like a glory! You are well beloved by *one human*, and, therefore, it is love struggling and unperfected. I do not, however, comfort myself in my humanity—rather, whenever I am victor over it. Oh! how slow is the warfare! * * * * To-day has been a quiet day. Mr. Beecher called.

Why should she mention that if she was a paramour and his visits were clandestine? Why write to him in a remote State to tell him the fact that Mr. Beecher had called that day?

He is in fine spirits, making calls. He devotes Wednesdays and Thursdays to this work, "till further notice;" has three hundred to make; made twenty to-day; enjoys it immensely. He called on the Wheelocks to-day, and kissed them all around—Lizzie Wood included.

Is that the kind of letter you would expect a woman of this kind to be writing to her husband, and needlessly introducing the name of her paramour?

MR. TILTON'S CHIEF MISERY.

But on Nov. 3, 1868, comes a letter that I want to call to your particular attention. This is one from Mr. Tilton. It is written at his office. It was in answer to a letter that she had left there that morning. Now, bear in mind their story is that on the 10th day of October, at the house of Henry Ward Beecher, he debauched Elizabeth R. Tilton; that on the 17th of October, between his Friday night prayer meeting and his Sunday morning service, he again debauched Elizabeth R. Tilton, at the house of Theodore Tilton. Now, we have, on the 3d of November, within a fortnight after, this letter, written by that husband to that wife, and showing their then relations:

MY DEAR: Your kind and loving note falls so pleasantly on my spirits ——

Mr. Shearman [interrupting]—This was written in New-York?

Mr. Porter—Written at his office in New-York.

—— falls so pleasantly on my spirits that I would immediately go home this afternoon were it not that I have engaged to go out this evening.

There is so much sunshine pouring into my little office at this moment that I think I never knew a brighter day in my life; and I hope that some of the light and warmth will steal into and remain within my cold and cruel heart.

It is the greatest regret of my life that I do not seem constituted so as to make you as happy as you deserve to be; but I have the best of intentions—and the worst of success.

The cause of so much of my trouble at home is my general anxiety about everything.

You remember that, in order to give color to the statement that about that time there must have been adultery, he alluded to difficulties that occurred at his own home. Here is the record of what they were. Not what transpired between the wife and Mr. Beecher, transpired between Theodore Tilton and those with whom he ought not to have had communion:

It is the greatest regret of my life that I do not seem constituted so as to make you as happy as you deserve to be; but I have the best of intentions—and the worst of success.

I repeat it, because I wish to impress it upon your memory:

The cause of so much of my trouble at home is my general anxiety about everything. Latterly I worry more or less concerning every matter which I touch. I have hardly ten minutes a day of uninterrupted freedom from care. This may seem an exaggerated statement, but it is the painful truth. I feel as if I were growing old before my time. Lights that used to burn within me have been quenched. Hopes are faded; ambition is killed; life seems a failure. * * * *

Then, too, all my religious doubts and difficulties have been, and are, and I fear must be, shut up within myself, because I cannot open my mouth to you concerning them without giving you a wound. You are the finest fibered soul that ever was put into a body; you jar at my touch, and I am apt to touch too rudely.

As for my own character, I saw, at the time of Paul's death, what it was to be a man, and how far short of it I am myself; and I have ever since been utterly overwhelmed with my own worthlessness, selfishness, degradation, and wickedness. At some time I expect to recover from this slough of despond; but not now. I must remain longer in suffering before I can emerge into peace. I have been overthrown, and, before I rise, I must be made to feel, like Antæus, that strength comes from touching the ground.

But the chief of all my miseries is this—is this—"that I impart them to others. Let me say, with the utmost fervor of protestation, that neither you, nor the children, nor the house, nor the servant, nor anything that is within our gates—not one alone—nor all combined—no, none of these persons or things, *has the slightest originating share in my troubles.*"

What does that mean? What does that mean? This is not a theatric declaration for a newspaper. It is an honest confession of a man in confidence to a wife who has just left at his office a sweet remembrance of affection.

Those troubles (such as they are) are of my own making.

And this is the man who swore here day after day that they were troubles of Henry Ward Beecher's making.

Would to God they were also of my own enduring! But they have to be inflicted upon others—upon yourself and the children. It is this fact that doubles my affliction.

I come now, gentlemen, to a letter of——

Mr. Beach [to Mr. Porter]—It is 4 o'clock.

Judge Neilson [to the jurors]—Get ready to retire, gentlemen. Return to-morrow at 11 o'clock.

The Court then adjourned to Thursday morning at 11 o'clock.

EIGHTY-SEVENTH DAY'S PROCEEDINGS.

SECOND DAY OF THE SUMMING.

JUDGE PORTER CONTINUES HIS DENUNCIATIONS OF THE PLAINTIFF—HE EXTOLS MISS TURNER'S CHARACTER AND HER TESTIMONY—HER STATEMENTS AND THOSE OF MR. TILTON'S WITNESSES CONTRASTED—THE SCENES BETWEEN THE PLAINTIFF AND MISS TURNER GONE OVER—FURTHER READING OF LETTERS BETWEEN MR. AND MRS. TILTON—HENRY C. BOWEN'S EVIDENCE TOUCHED UPON.

THURSDAY, May 20, 1875.

Before beginning his argument Judge Porter explained that the reason that his words were sometimes partially inaudible was on account of a former difficulty of the lungs, from which he had not entirely recovered, and he asked reporters to remind him whenever he dropped his voice too low. He at first continued the line of argument which he had pursued on Wednesday, and read from some of the letters of Mr. and Mrs. Tilton. Among these was the letter of Mr. Tilton to his wife in February, 1867, in which he mentions his meditations on Christ as He would be in the character of a married man.

Reading one of Mrs. Tilton's letters, full of expressions of devotion to her husband, the orator eloquently described—by way of comment upon an expression in the letter—the charm of apparent youthfulness which the mutual love of husband and wife casts over the gray hairs and wrinkles which come upon them in age. In doing this he paid a graceful tribute to Judge Neilson.

PROMINENT POINTS IN THE ARGUMENT.

Yesterday Judge Porter opened the more strictly argumentative part of his address by calling attention to the dates on which the complaint particularly charges that adultery was committed—Oct. 10, and Oct. 17, 1868. These dates, he asserted, were selected because they were believed to be safe from proof of an alibi by the defendant. "I can imagine," he exclaimed, "the searching of almanacs by Tilton and Moulton, when the days were fixed upon."

The testimony of Miss Bessie Turner formed the principal subject of the argument yesterday. With great power the orator sketched the scenes between Miss Turner and Mr. Tilton as described by Miss Turner. He then analyzed her evidence, praising her character as innocent and devoted, and her statements as truthful and consistent. The testimony of the witnesses who contra-

dicted her was rapidly reviewed. Mr. Richards was denounced, Mr. Martin was sarcastically called "Tilton's spy," and Mr. Tilton himself was declared to have failed to give more than a qualified denial of the very point in Miss Turner's evidence which it was most vital to his case to contradict. Judge Porter lauded highly the manner in which Miss Turner had borne the cross-examination of Mr. Fullerton and Mr. Beach, and the general character of her testimony. With great effect the orator exclaimed, "She to-day stands proud and erect, while he," pointing at Mr. Tilton with a contemptuous look, and speaking in a harsh voice, with scornful emphasis, "slinks from the gaze of manhood and of womanhood!" Judge Porter made a powerful appeal to the jury at this point, asking the jurymen if they "believed this to be an honest man," and turning toward Mr. Tilton he exclaimed, with fierce intensity, "Hollow, treacherous, false, cowardly, base!"

The testimony of Henry C. Bowen was taken up near the close of the session, and Judge Porter imitated the manner in which Mr. Bowen had testified, putting his own interpretation upon Mr. Bowen's expressions.

THE PROCEEDINGS—VERBATIM.

MR. PORTER'S SUMMING UP CONTINUED.

The Court met at 11 a. m., pursuant to adjournment.

Mr Porter—If the jury will pardon me one moment: I have been treated so kindly through the trial by the gentlemen of the press, your Honor, that I feel bound to say to them that the difficulty which they have in hearing me is due to my physical condition. Unfortunately, before the commencement of the trial, I was attacked with a difficulty of the lungs, from which I have not yet fully recovered. It is my endeavor to be audible, and if any of the gentlemen will be kind enough to remind me when I drop my voice so as to be inaudible, I will take it as a favor instead of a criticism.

A GLANCE AT MR. TILTON'S BETTER DAYS.

Gentlemen, you cannot appreciate the feeling of earnest gratitude that a lawyer has when he is engaged in a cause that is close to his heart, and defending a man whom he believes to be innocent, to see through the long, tedious, protracted hours and days of this discussion, the kindness with which you listen, and the attention you give even to words as feeble as mine. I need say no more. I am not in the habit of making professions. I have only to say I thank you from the bottom of my heart, and shall ask of you the continuance of the same indulgence.

In reading one of these letters yesterday a passage escaped me for which, when I came afterward to see what I had omitted, I felt rebuked, and you will pardon me for returning to that letter now. It is that of Mrs Tilton, written on the 8th of March, 1868, and which seems to me to let in a flood of light upon the antecedents of these parties, and upon the interior of that household. "Nursery." Ah! what is there to a woman's heart that is so near as the nursery, in which she exercises her ministrations of love to the children of marriage, and not of lust. "Nursery, Sunday Eve." And if there ever be a time when a mother speaks from her inmost heart, it is not merely from such a place, but on the eve of that Sabbath day which too many of us ignore, but which the wives and the children whom we love cherish as the hour that brings them nearest to God. It is not in letters written by the side of the cradle and on the evening of the Sabbath day, that mothers loyal to their husbands—and especially when they write not for newspapers, but write to those whom they have pledged their unalterable love in time and in eternity—utter false sentiments. "My Beloved." March 8, 1868, six months before that mother was to bend in anguish over the boy whom Theodore Tilton even in his grave pronounced a bastard; six months and a half before the time when this Christian and true-hearted woman is said to have sought that house on Columbia Hights, which many have sought who were poor and in distress; which many have sought who were seeking their way to their Father's house; which many have sought on errands of love or appeals of charity—but when she is represented to have sought it, sought it for the purpose of offering her person to the vile embraces of the pastor to whose teachings she had listened on the very day when this letter was written.

My Beloved: All alone, save Eliza in the kitchen and the children all asleep about me, while I have been trying to imagine my state when I shall again live with you and behold your precious form. *This*, I think, I have decided—no more chidings, scoldings! An inexpressible tenderness has grown up in my soul toward you. I never saw my path as clear as now—that whatever you may do, say, or be, it becometh me to be the Christian wife and mother!

Do you believe when Theodore Tilton in that better day which, though declining, had not yet gone down in darkness, when he received that message from his loving and trusting wife, could have been persuaded that the hour should ever come when his hatred and envy toward Henry Ward Beecher would lead him to send forth this letter to the world to encounter the scoffs and the derision of those who despise sentimentalism? And is there any better illustration of the judicious blindness with which God darkens the understanding of those who turn from the light of His countenance than that this man, in his

own justification and defense, under the advice of my friend Morris, should publish to the world what rises against him in judgment this day.

I have said, gentlemen, that these were the better days of Theodore Tilton; for, while I am compelled by my sense of duty to truth, to innocence, to my client, to speak of him in terms other than I would, I cannot forget that the man who is the occasion of the investigation of this issue to-day is one upon whom Providence smiled as He has smiled upon few in this assembly; a man who was endowed with an ardor of genius which, if it had been regulated by honest, religious sentiment, elevated morality, loyalty to truth, loyalty to the domestic relation, and loyalty to God, would have put him among the men in the fore-front of this generation. As he was in other days we have all admired, all loved, all honored him; but, gentlemen, we must bear in mind that we live in a universe governed by law, and carrying with it the penalties of transgression. No fairer spirit shone in Heaven than the angel who is named to-day as the instigator of every crime in each indictment that you try when you send criminals to the State Prison. And we see in his case what we see in all others, save that of Elizabeth R. Tilton and Henry Ward Beecher, the gradations by which men of purity and of genius go down, down, down, until they reach a depth from which there is no descent.

THE LETTER TO THE "ORTHODOX WIFE."

Let me stop at an intermediate process—for I spoke of the letter written to him in 1868 as written in his declining days—let me stop at an intermediate stage, on Valentine's Day, 1867, when this man wrote to his wife—a wife who loved him and loved her Savior, a wife who loved him and loved all men, a wife who loved him and loved those innocent children—in a strain of mockery that we could readily imagine laughing on the sneering lip of Voltaire:

Feb. 14, 1867.

MY DEAR ORTHODOX WIFE: I have been speculating considerably lately on the character and career of Jesus, and I wonder whether you will be shocked when I mention one of my meditations. It is this: How would He have appeared in the character of ——

He don't write it "Theodore Tilton;" he writes it

a married man? Certainly to your reverential and adoring view of Him as "God manifested in the flesh," there ought to be nothing profane in the supposition. If He consented to be born of a woman, why might He not have consented to be married to a woman? And, if He was the son of an earthly parent, why might He not have been the Father of a mortal child? He loved some of His disciples better than others, as, for instance, John. He undoubtedly loved some few women, perhaps passionately.

Mr. Tilton—Read it correctly, Mr. Porter.

Mr. Porter—Do I not?

Mr. Tilton—No, Sir.

Mr. Porter—How is it?

Mr. Tilton—You omitted "devotedly."

Mr. Porter—I beg your pardon. [To the jury.] Mr. Tilton properly suggests that I omitted a word in my haste, of course not designedly:

He undoubtedly loved some few women devotedly, perhaps passionately. Now, why might He not have loved one, chief and chosen among those women, on whom He might have poured the whole fullness of His heart, and on whose finger He might have set a marriage ring, making her, indeed, like the Church, the "Bride of Christ?" I confess that if a new historic investigation should reveal the proof that Jesus was a married man, instead of an unmated lover of all the world, I would see an additional glory in the most wonderful of all historic characters.

The God to whom you and I, in our last hours, will address our last prayer, from parched lips, and when the death sweat is on our brow, that is the God of whom Theodore Tilton, to the wife who adores Him, uses language like this. "A historic God!"

Nor do I know of any evidence to show that He was never married.

If either Mary or Martha, or any other saintly woman, had been His wife, the fact would probably have been mentioned, and yet what would we have known of His friend Peter's wife except for the fact that her mother was once sick of a fever? Men's wives are not necessarily known to history.

Let me tell him, his will be; and he has created the necessity.

Of course, the probability is that Jesus was never married; yet this is by no means a certainty. And as there remains a possibility that He was, it is a pleasant reflection for me that, while He was living in Capernaum, in the house of Peter (one of His disciples), He might there have enjoyed, also, the still sweeter companionship of a wife of his own.

If he did does he believe that it was a wife who would lie for Him, who would be the witness of His innocence if He had committed the Nathan murder, as he told Mrs. Ovington this woman would? "I know"—not what the God who fashioned and who provided him so richly with physical and intellectual gifts—not what that God says, for that is of no account to him—"I know that even Renan"—the infidel, even Renan, that authority who rises above the crown of the Omniscient, and who wrote a book more worthy to be cited than that upon which he laid his hand when he swore that he would not make a false accusation against the wife of his bosom and Henry Ward Beecher!

I know that even Renan says, "Jesus never married." Even admitting the fact, however, this does not deny the propriety of His marrying, if He had chosen to marry.

But, if Jesus had taken a wife and fathered a family, I believe that this fact would have so completely humanized Him in the eyes of all the world that He never would have been regarded as God, or the only-begotten Son of God.

And that accounts for it, gentlemen of the jury, why this man, who talks about his "crown," and his "laying off the crown," and saying to Bowen, "God save the King," has never been recognized as the rival of your Savior and mine. He proceeds:

He never would have been regarded as God, or the only-begotten Son of God. And yet, if, as the son of Mary, He had become the husband of a Galilean girl, and these twain had dwelt in a cottage by the Lake of Genessaret, and unto them had been born children like those of whom He said, "Suffer them to come unto Me," let me inquire whether or not you would love the character of Jesus any less than you love it now? Answer. Your heterodox husband, THEODORE TILTON.

These were the teachings in a Christian household, to the mother of the children of whom he told Bessie Turner that but one was legitimate.

MRS. TILTON SORROWS OVER HER SHORTCOMINGS.

It is a relief, gentlemen, to pass from this to one of those utterances of true and simple-hearted and Christian love, which, however Tiltonian in style, come fresh and warm from a pure and loving heart. On the 31st of the same month she writes to him ——

MY DEAR HUSBAND: I have just returned from Mattie's, and saw your bust, loved it, could not bear to leave that precious head behind me. Oh! Theodore darling, I am haunted day and night by the remorse of knowing that because of my harshness and indifference to you, you were driven to despair, perhaps sin. And these last years of unhappiness ——

Oh! that happy love that was disturbed in the Fall of 1838, in the eloquent language of my splendid friend on the other side [turning to Mr. Beach], upon the entrance of the cool, calculating, diabolical seducer! Oh! that happy home from which, in January of that same year, the wife writes to him to take upon herself the blame of those long years of unhappiness!

I sometimes feel it to be the unpardonable sin. God cannot forgive me. But if you only may be restored to your former loveliness—

Husband and wife you know, gentlemen, never grow old to each other. We see upon one whom we all honor and love [turning to Judge Neilson] the marks of maturing years and advancing age. I have not the pleasure of knowing the lady who has been chosen as the light of his dwelling, but I know that she does not see him as I see him; she sees him in the health and flush of young manhood, with the glory of youth upon him, and to this hour, to this hour his age is that on which he pressed upon her finger the marriage ring; and he, while he may be looking upon one whom time has touched with some of those changes which time leaves upon the faces of us all—he sees her as she came before the clergyman who solemnized their marriage rites, fresh and beaming, glowing with youth and bright as the morning star. Here we have a husband and wife who had joined hands and hearts when both were but 20 years old; when both were pure, both radiant with hope, both glowing with joy, both adoring that Savior whom he has since dethroned so far as it is in the power of one of the poor creatures whom God has made. And she, appealing to that earlier image, to that purer man which she, in her woman's simplicity describes as "your former loveliness," says:

* Though I, by my indifference and coldness, and rebuking of your sins, have brought you to abandon the Savior whom we loved, to go after strange gods and strange women, yet I can accept that destiny even without the forgiveness of God, if it will only restore you, my beloved husband, the husband of my youth, if it will restore you to your former loveliness, and reconcile you to that Being who is the God of your children and mine, and to whom we must look for mercy, for forgiveness, for salvation.

Then again, returning to that spirit at which the world scoffs, which newspaper men deride, but which our mothers, our sisters, our daughters, our wives cherish, returning to that spirit which is willing to take upon one's self the blame and relieve all others, to bear the burden as Christian bore it until he laid it at the foot of the cross, that spirit which a Christian minister has been derided and scoffed at for uttering in his letters to men like Tilton and Moulton, she, pure, innocent, unspotted, unstained, compared with him, white as wool, she says:

I am the chief of sinners. I understand perfectly now how you have felt. I carry in my soul this burden, black, of sin, yet appear to my children and friends calm and happy. "Woe unto you, whited sepulcher," I hear perpetually. I will carry these agonies gladly, for I know a life of happiness waits.

Whom? Not "me," but "you." She had faith in God that Theodore Tilton could be redeemed by the devotion of a pure woman's love, by the appeal she could make to that fountain in his nature which she recognized as having been placed there by the ever living God, and which she could not imagine had been let wholly dry up. By one of those odd coincidences to which my learned friend, Mr. Shearman, calls my attention, this utterance was one of conception. Nine months afterward came the term of pregnancy, and a child was born. The Savior, whom he dishonors and whom we reverence, said of the tree, "By its fruits ye shall know it." But the same Savior elsewhere says, "If ye sow corn it shall not bear grapes." This is the sowing of that woman's heart on the 31st of January, and he would have you believe that these emotions, so pure, so loving, and so loyal to him, so loyal to Him above, were followed by her being debauched before the year rolled by.

"If the past," she proceeded, "were not ever present, I believe I might yet bless you. You are the only human being I have harmed. Oh? wretched woman that I am!" * * * "Darling——the appeal is ended, like a psalm of David, with some adjuration, and now the sense of duty, which in her heart was ever present, rises to admonition——" "Darling, we must both cultivate our self-respect by being what we seem. Then will be fulfilled my ideal marriage to you, and you only, a wife—but contact of the body with no other—while then a pure friendship with *many* may be enjoyed, ennobling us. Let us not have even a shadow of doubt of each other. Though all the world are weak, yet will *we* be strong. God accept and bless us *both*. Now, we are *one*.

* *See page* 601. "Faithfully yours."

And my friend Mr. Shearman, whose vigilance naught escapes that tends to the elucidation of truth in the case of his beloved and honored client, calls my attention to the fact that this letter was written five days after that night of confession, which he spoke of to her as so memorable that the recollections of it would endure through eternity.

MR. TILTON'S ALIEN LOVES.

I am wearying you, gentlemen, and yet I know you will pardon me for reading one single letter to you, because that makes you, the jury, that enables you to look in upon the unroofed habitation of Theodore Tilton in the beginning of the period which is before you for investigation. He writes to her at a time when, as he now pretends, she was the prostitute of the honored pastor of Plymouth Church, in the closing days of the Summer of 1869, one year after the death of that Paul whose grave, according to him, was dedicated to clerical lust and debauchery. He says to her:

From my early years I have loved and loved you—you. But all the past experiences of my heart's affection have been as nothing compared with the unusual and solemn sense which I have had during all the hilarities of this Newport week that the only human being who touches my highest nature is yourself.

What were those other womanly affections of which he speaks? Hers touches his highest, theirs his lowest nature.

This being the case, I am filled with distress to think that I must keep you uninformed, for the sake of your own tranquillity, of many of my thoughts and of some of my conduct. I would to God I were a man worthy of your goodness, your self-denial, and your singleness of heart. Occasionally, in some supreme hour, I am your fit mate. But at all other times you are high, high above me. But if you could know the inward reverence——

"True inwardness"—where did she learn that phrase? My friend Judge Fullerton has brought in "Norwood" and "Hannah More," and I know not what beside, in order to teach you what that woman had in view when she talked of true inwardness. Why, she had been under the teaching of a man who left upon her all such expressions rooted so that they could not but spring up and bear fruit, and when he used it in a high and noble and general sense, he yet imputes her adoption of the phrase to the vile purposes of her inward adultery.

But if you could know the inward reverence which I have borne towards you for many days past, even while appearing to be absorbed in the companionship of other ladies, and particularly at Newport, I am sure you would almost dread to be loved—to be so much loved by any human (and therefore infirm and wayward) creature like myself. I have several times tried to keep myself from writing you any such letter as this, because it is unlike most of my past correspondence.

His letters were usually not letters of true inwardness, but of sham outwardness.

It is my request that no other eye shall ever see it except your own.

And that letter she hoarded among her secret treasures with her woman's love, and it never appeared again to the light of day until the search was made for "gas," and, by the indiscretion and oversight either of the newspaper man or my friend Mr. Morris, the injunction of the sacredness of the privacy of a conjugal confession like that was overlooked, and it was sent forth to the world. Eavesdroppers rarely hear good of themselves, and when any man is so mean and so base as to go to the receptacle in which the wife and the mother keep the letters of what she flatters herself is conjugal love, and the memorials of her dead children, and the stray locks of hair that she has treasured as memories of love, and which she believes are to be reunited to the bodies of the little ones as a part of the resurrection of the body in the day of the great judgment—when these holy sanctities are invaded for the purposes of vanity and egotism and hate, God would indeed be asleep if he did not overrule the action to the disgrace and dishonor of the man who was capable of such a profanation.

I have gone, gentlemen, through the wearisome details of what has been to you and to me a most painful and yet a most instructive revelation of the unmistakable truth of the interior of that household. Tilton, on oath, painted it to you in the colors of the prism, of the rainbow, of the diamond, with its thousand flashing lights, as reflected in the sunbeam. You have seen here the affected jealousy, the cold exaction, the hard-hearted imposition upon a feeble and unprotected woman, whose mother he describes as a maniac, and whom God had deliverd over to his mercy. You have seen the secrets of that household, the wife taking to herself reproach for the infidelities of her husband who neglected her, the wife who felt called by her sense of duty at last to say: "I feel enlightened from above. My path is clear as the sun. It is my duty to save you. Be what you will, do what you will, say what you will, my duty is to be a Christian wife and a Christian mother. I fear my indifference to that lesson has cost me my hope of heaven, but my fidelity to that duty shall I hope under the hand of God be the means of reclaiming what I have so nearly lost."

THE EVIDENCE CONSIDERED.

I think now, gentlemen, we can properly advance to a hasty consideration of the evidence which it will fall within my province more particularly to discuss, with the view of relieving my able and eloquent associate from a portion at least of the labors which are cast upon him as the senior and responsible representative of the defendant.

INGENUITY IN THE SELECTION OF DATES.

The first point to which it seems to me essential to direct your attention is the state of things which existed on the 10th and 17th of October, 1868. Right there this issue hinges. The complaint puts forth those two as the only known and ascertained days of a long-

continued and infamous criminal intercourse. They are days well selected by the contrivers of this accusation, and the forgers and fabricators of these pretended confessions. We find by the evidence that they had the means of knowing, by consulting the public journals, that on the night of the 9th of October Henry Ward Beecher delivered one of those magnificent addresses at the Academy of Music which have associated his name with the first orators of all the ages. The day selected is between one of the Friday night prayer-meetings, the lectures of which have been for years reported by *The Christian Union* or in *The Independent*, as the case may be, and a Sabbath morning service, where every utterance of his is caught up by these reporters, who are the veins and arteries of intelligence through the world, and circulated over this and other lands. They were safe in fixing it on that day, unless against unusual contingencies, for it was scarcely probable that if on Friday night he delivered his usual Friday evening lecture and on Sunday morning he officiated in the presence of 3,000 people at Plymouth Church, he could prove an alibi. The next occasion is equally well chosen. It is the intervening day between the next Friday evening and Sunday morning service. I can imagine the searching of almanacs by Tilton and by Moulton when the days were fixed upon. *You* can imagine the ransacking of newspaper files to see that by no unlucky chance there had been an exchange; but it being ascertained that Mr. Beecher was there on Friday night and there on Sunday morning, it was fair to assume that he could prove no alibi on Saturday, and so on the Saturday following. The theory of these men is that your honored townsman is a gray-haired hypocrite, who has stood at the coffins of your wives, over the hearses of your children and at the heads of their graves, who has joined your daughters in wedlock, who has preached to your fellow-citizens—men and women, boys and maidens—who has baptized your children in the fear, not of the Supreme God, but in the fear of that devil whom Theodore Tilton with equal justice has dethroned as he has dethroned the Redeemer. You are told that this man has been rotten all his life; that, though all mankind beside were deceived, the secret was a viper that found a nestling-place in two hearts—in the heart of Theodore Tilton and the heart of Henry C. Bowen; that this is a man who is capable of giving the blood of the Savior on the Sabbath day to the lips of a wife and matron and mother and communicant of his own church, and of prostituting her within the week; a man, of whom they will tell you that he is capable of committing corrupt, deliberate perjury; that he regards neither the God whom he serves, nor his fellow-men, nor his own conscience, neither the sanctions of religion, of public law, nor of private morality; that he is ready to betray the honored wife of his youth, to disgrace their children and their grandchildren, and now, in the decline of life, when his head is blossoming for the grave—and already you see the marks of that sad day, which will be a dark day for Brooklyn, when Henry Ward Beecher is carried to the grave—that this man is a perjured villain. Well, here is a temptation, is there not? He is told, "on the 10th day of October, at your house, one of your parishioners sought you, and yielded herself to your arms in the embrace of base debauchery; seven days afterward you sought her house, and again, as you had before tendered to her the communion of the Son of God, you tendered to her the community of diabolical lust." What should be expected of such a man? If he be the perjured villain that he is described, where will his alibi be? Will it be on the 2d of June, 1873? No; it will be *there*. Seven years ago this crime is said to have been committed. *There* is an immunity for perjury. They tell you that these men of Plymouth Church (who are not here because these walls would not contain them)—that these men of Plymouth Church, who love and honor him, are capable of perjury to save him. How happens it, then, that of the three thousand none volunteers his testimony to prove that on that day he rode with Henry Ward Beecher to Coney Island to bathe; that on that day he went with Henry Ward Beecher on a fishing excursion to Sandy Hook; that on that day he joined him after breakfast, and walked arm in arm with him from picture gallery to picture gallery in the City of New-York, according to his well-known habitude? Nothing of the kind; nothing of the kind. Yet they tell you this man is a hypocrite and libertine—in the language of Moulton, "a libertine and a liar!" Yet, there is not one word from him, not one from his household, not one from his church, by way of alibi on those days. He frankly tells you on the stand, "I know of nothing that occurred on either of those days that enables me to distinguish them from any other Saturdays in the year."

Gentlemen, do you believe that a man goes, at the age of sixty, for the first time in his life, to commit an act of debauchery; and does not remember the day, and where he was, and what he was doing, and how the sun of that morning rose in light, but went down upon him in darkness for time, in darkness for eternity? In order to enable Theodore Tilton to walk over the body of his wife; in order to reach the heart of his enemy, he will urge you, through his counsel, to believe that fifteen witnesses on this stand have committed perjury—for if either of the fifteen have sworn the truth, Theodore Tilton is a man sworn a liar—and yet the man who can command these witnesses, fifteen men, many of them those whose bare word is good in every commercial mart on the globe; fifteen men, many of whom are connected with the interests of commerce, of literature, of finance, in the capitals of the world; fifteen men who, if they were to be stricken down in one day in your midst, would clothe Brooklyn in mourning; fifteen men who stand sustaining

the magnificent fabric of your commercial preëminence among the cities of the globe;—the man who can command such friends, such witnesses, calls none to prove that the crime charged upon him on these days could not have been committed, because he was elsewhere.

I pass from those two days. It would be idle for me to enlarge. Is there one man on that jury who does not see and feel that those days were selected by the conspirators because of the probability of the defendant being where he could have had two such interviews; or one upon this jury who can entertain a doubt that if he were the perjured villain he is described, and surrounded by hosts of others equally ready to sell their souls for him, there would have been an alibi on one or the other of those days, either of which would have broken the back of this prosecution?

[At this point Mr. Shearman made a whispered suggestion to Mr. Porter.] Mr. Porter [resuming]—My associate makes a suggestion which is valuable, but I have to look to your time, gentlemen, and mine.

PRAISE OF BESSIE TURNER.

I come now to a witness to whose testimony I shall have occasion to recur again and again during the analysis of this evidence. He has introduced her. Gentlemen, there is in the heart of Henry Ward Beecher, there is in the heart of William A. Beach, there is in the heart of each of you, there is in my heart, a feeling of tenderness and of chivalry toward womanhood which makes it painful for us at any time, without evidence, to cast unmerited, or even merited, reproach on one of the sex of our mother, our wife, our sister, our child. I feel it now. I shall feel it more deeply and intensely when I shall be compelled, in the discharge of my professional duty, to speak of Mrs. Moulton. But I am now to speak of another. There was a day in the life of Theodore Tilton when he would have scorned to lay his hand in anger on a woman. He has said that "the tongue is a wild beast which no man can tame," but he had such control over that wild beast in his own keeping that there was a time when he would have hesitated to cast unmerited reproach upon any woman, even his wife. But that day with him has long since passed onward, with the years that are gone. He knew perfectly well when he stood upon this stand that there was a living witness whom God had preserved and whom he must confront, before he left this Court with a verdict for him or against him; and with the cunning, and the subtlety, and the malice of a fiend, he undertook, as a volunteer, to prepare the way for her coming before you, by describing her in a sneering tone and with affected contempt, as "a child," a "servant," and "a waif." It turned out afterward upon the evidence that the child had matured to early womanhood, that in personal attractions she was far the superior of that Elizabeth Tilton of whom he was once so proud, and that intellectually developed as she was, in her education—which was obtained merely to screen his misconduct, but obtained from the bountiful charity of Henry Ward Beecher, and through the appeal made to him by Frank Moulton, on the ground that Theodore Tilton could not afford it—it turned out that in this way, she was reared in a seminary of learning, and had opportunities to develop those intellectual parts which you have seen illustrated before you, and which lift her, waif and servant as he calls her, high above him intellectually and morally. My friend (Mr. Beach) sneers, but, gentlemen, he did not sneer when she was upon the stand. It turns out that that waif was the daughter of poor but respectable parents; that she was subjected to early poverty, and was the object of womanly charity; that her brightness and kindliness and amiability won the heart of every woman whom she approached; that in due time she came in contact with Mrs. Tilton; that Mrs. Tilton's heart yearned to her in love and in charity; that she was able in those his better days to bring even Theodore Tilton into sympathy with her; that she was reared in the household, never receiving the wages of a servant, never treated as a servant; sitting on his lap with his own daughter; ministering to him in sickness and in health; ministering to his feeble wife; assisting her in the cares of the household with which she was overwhelmed, and assisting that faithful mother in the rearing of those children in another tutelage than Theodore Tilton would have reared them in. Faithful in all, yet proud, ambitious, seeing around her the evidence of struggle and poverty, seeking her own way in the world, under the patronage of her mistress going to a china-merchant's shop, going to a dollar-store, going as governess to the children of David Dows; and wherever she went commanding confidence, respect, and affection. And this girl came to be, in process of time, returning, as she did, from time to time, by the persuasions of that adopted mother, and with the assent of this man, who, in his letters to her, which he had forgotten, had signed himself her father, growing in that household to the stature of womanhood, developing those qualities which are attractive alike to the pure-minded lover and the lustful and base libertine, was made, on two occasions, the object of approaches, easy to explain from the family relations existing between them, and yet of so doubtful a character as to pain her with the feeling that her adopted father was so ill-trained in modesty and propriety that even so poor a girl as she could teach him that there was something due to the sex to which his wife and daughter belonged.

THE ADVANCES TO BESSIE TURNER.

Two incidents of this kind occurred. I must refer to one of them, because before we come to the inquiry as to the subsequent accusation this man makes we want to know something of the character and the truth

or rottenness of the man who makes it. If you are rearing a building you want your corner-stone to be fixed. If your verdict in this case is against the defendant, it must rest on Theodore Tilton as its chief corner-stone. Is the stone sound or rotten? In answer to my inquiry as to the incident, she gives in her own simple, truthful and graphic language the incidents as they occurred, and before I read them I want to call your attention to the fact to which she testified, that though she felt that she was the subject of approaches which were indelicate, she had at that time no thought that it was aught but the lasciviousness of the man, not reaching to lust nor meditating her destruction. Neither from this nor from the other incident could she be made to believe that the man whom she had been taught by Mrs. Tilton to love and honor was capable of destroying for time and eternity his adopted child, and she tells you she never believed he entertained that thought until she learned it at Marietta; he had communicated that at one of his seasons of confession to his own wife, which satisfied her that what she regarded as mere indelicacy had behind it a deliberate purpose to blast her young life and her young soul forever. Now, she tells you the simple facts, and I allude to them now, not for the purpose of doing him an injustice, and notwithstanding what transpired between him and his wife I will do him the justice to say that in my belief he did not dare to touch the honor of that girl, and that he was there only for the purpose of satisfying with her that maudlin greed which a depraved man feels when he is separated from those with whom he can freely indulge his lust. And yet this incident, even without the purpose of debauching her, which I do not believe he entertained, even without that purpose, shows such a selfishness, such a heartlessness and such indelicacy, so depraved an indifference to the corruption he might have wrought in a young and unprotected girl who trusted in him, that it enables you to read the heart of the man in which this foul accusation against Henry Ward Beecher and his wife had its origin.

I had gone to bed in the second story bedroom, front room, off of the sitting-room, connected by folding doors, and I had not been in bed very long before Mr. Tilton came in and said he had come to kiss me good night.

And the father would have stopped there. Tilton did n't.

He stroked my forehead and my hair, and said what nice soft hair I had, and how nice and soft my flesh was—my forehead; and then he put his hand—was putting his hand in my neck, and I took his hand out; and he says, "Why, Bessie, my dear, you are painfully modest," he says, "Why, those caresses—those are all right; people in the best society do all those things, and it is perfectly proper. Nobody but people that had impure minds think of such things as that as not being right." And I said I could not help what they did in the best class of society; that I had my own ideas of what was proper and what was modest, and I was going to carry them out; if I did n't think it was proper for him to put his hand in my neck, I was not going to let him do it.

She was growing to womanhood. She felt that he was still treating her as a child. Womanly pride revolted, not unkindly, not angrily, not distrustful; but in the assertion of that feminine pride which grows and prospers under the fostering culture of women such as Elizabeth R. Tilton, she felt it was exceeding the bounds of propriety.

He then laid down, and asked me if I did not—if I would not like to be married. Why, I asked him, what in the world put that in his head? Well, he said, I was a—an affectionate and nice girl, and ought to be married; I ought to have a good husband. I said that I supposed when the time came—the right man came along—perhaps I would get married. But I didn't think getting married was the chief end and aim of life. It didn't trouble me very much, and that if I was married, there was one thing very sure, I didn't think I would ever have a literary man for a husband; and he then asked me if I didn't think some people had affinities for each other; well, I asked him what he meant by that—what he meant by "affinities;" and he said ——

Mark you, he didn't learn this lesson from Mrs. Woodhull; this was long before he ever saw her. The disciple taught the lesson before he learned it from her.

He said that when a man saw a woman that he loved she should be his affinity and they live together as man and wife, and that was what was meant by affinities for each other. And then he went on to say that if I would allow him to caress and love me as he wanted to do that no harm should come to me, and that a physical expression of love was just the same as a kiss or a caress.

This is the language, you remember, this man put into the mouth of Theodore Tilton in the interview of the 30th of December, as having been used by Henry Ward Beecher to debauch Mrs. Tilton. Why? Talk of such language misleading a woman of the years, the character, the culture, the training, and the principles of Elizabeth R. Tilton! It didn't deceive this school-girl! He tried it on Bessie Turner, and he failed. He tried it on her before she received the education for which she supposed she was indebted to him, although it turned out that it was one of the unknown and unacknowledged benefactions so many of which proceeded from the pastor of Plymouth Church.

He then went on to describe again—to tell that he knew ministers that caressed girls and married women—it was all perfectly right and proper and beautiful. And he then told me that I was a very strange child. He says, "Bessie, you have some very singular ideas."

Gentlemen, here we get a little more of the interior of Theodore Tilton's house when his wife was away. Again:

Now, on another occasion, a day or two after that, did anything occur during the night which particularly impressed you, and, if so, state the circumstances in regard to it? A. Yes, Sir; it was in the Summer of 1868.

I think it afterward turned out to be 1869.

Mr. Shearman—She corrected it herself. It should be 1869.

Mr. Porter—She made the correction on her return to the stand, subsequently.

Mr. Beach—Correction of what?

Mr. Shearman—Of the dates.

Mr. Porter—Correction of both dates [reading]:

Mr. Greeley was there—Mr. Horace Greeley—making him a visit; he was there some three or four weeks, I think; and one night I had gone to bed, and was awakened from my sleep by seeing a man of tall figure standing over me; I jumped and said, "Who is there?" And Mr. Tilton said, "Hush! it is only Mr. Tilton;" and then I think I raised myself up, and I—it seemed as if I was in a strange place, all whirled around, because I had gone to bed in the second story back room—bedroom—and his room was next to mine, and I had gone to bed in one of the rooms—in my room, and found myself in his room, and I says, "What do you—what did you bring me here for; what are you doing?" And he said that he felt lonely, and he wanted somebody to love him; and I said, "You would not have done this if Mrs. Tilton had been home; you should not take liberties when Mrs. Tilton is away that you would not take when she is at home," and I then got up and left the bed, and went to my own room and locked the door.

There is a simple, truthful, childlike narrative of an incident, the occurrence of which no man who heard her speak has from that moment entertained an honest doubt. True, he didn't debauch her; but was that a decent thing? Is the man who is capable of thus betraying the confidence of an adopted child the man who is to be believed when he becomes the accuser of a wife so pure that he is compelled to admit her purity even in the same breath in which he charges her with foul adultery? Well, gentlemen, there are two very significant facts in this connection—facts of deep, of vital significance. After that story, once again, Theodore Tilton was on that stand. He felt its pressure sinking, sinking, sinking him hopelessly. He is not a good man; he is a bad man and a bold one. He brought himself to the point of denying the last incident, but he had not such confidence that there was no God above and no hell below that he could bring himself to deny the other. Conscience makes cowards of us all. Vital as it was to his case to destroy the credibility of Bessie Turner, he gives a qualified denial as to the last of these occurrences, and the rest he leaves undenied, acknowledged, confessed. He may bring a thousand housekeepers whom he can confuse in the recollection of dates; contradict by proxy what he dares not contradict with his own oath. You may be sure that when a fact is within the personal knowledge of Theodore Tilton, and that fact presses like a spear into his heart, it will not go undenied if he can help it. Again, by what strange accident was it that, if these incidents never occurred, when Mrs. Tilton, in the Fall of 1870, to recruit her health goes to her old friend, Mrs. Putnam, at Marietta—Mrs. Tilton, to whom Bessie had never breathed a syllable of this fact, a fact which she had kept not only from her but from every human being down to that hour—Mrs. Tilton had already told Mrs. Putnam of these incidents, and enabled Mrs. Putnam to question Bessie in regard to them? How happened it that if these were lies, Theodore Tilton had told them to his wife, and his wife to Mrs. Putnam, and it was through that wife and that friend that Bessie Turner first learned that when he entered her room on those two occasions it was with the intention of leaving her deflowered and debauched? Again, as my learned associate suggests, it is in proof that Mr. Tilton was told that Bessie Turner had so stated the fact to Mrs. Tilton, and he never denied it. Is this a lie or the truth? If it is the truth, who sinks—Theodore Tilton, or his pure and loving and loyal wife?

Judge Neilson [to Mr. Porter]—Is it agreeable to suspend the argument now?

Mr. Porter—Yes, Sir.

Judge Neilson [to the Jury]—Please return at 2 o'clock.

The Court here took a recess until 2 p. m.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Judge Neilson—Any of the gentlemen connected with the press who have not yet given their names for this book will find it at the Clerk's desk: if you will try and remember it.

THE CONTRADICTIONS OF BESSIE TURNER.

Mr. Porter—If it please the Court: While my friend is marking some particular passages to which I desired to refer, gentlemen, I will allude for the moment to the evidence which has been resorted to for the purpose of shaking your confidence in the testimony of Miss Turner. Curiously enough Joe Richards reappears in this record, the same man who, at the time of the proceeding before the Church Committee, wanted to put the sister, who came from the same womb, in a false attitude, by going before that Committee, and pretending that from solicitude for her, and in her interest, he would not testify to the truth; the bastard, reared under the malign influence of Henry C. Bowen, tutored by Theodore Tilton, his brother-in-law, capable of coming to this stand and making a theatrical exhibition of himself, which nobody could have devised without the aid of Theodore Tilton's acquaintance with the histrionics of all sham; this man is reproduced upon the witness stand, and instead of swearing to those confessions which, it was said, he had withheld on the occasion when he came here first, and which were heralded in the newspapers as to be making their appearance in the course of the rebuttal, we find him coming to the rescue of Theodore in his warfare with his servant and his waif. He is to contradict her; he is to show you that Bessie Turner should be tossed out

of the Court-house as unworthy of belief when she crosses the track of Theodore Tilton. Well, what is her story? Why, she swore that she went to see him at the Evening Post building on the 14th of December, and told him on that occasion of the indignity Theodore Tilton had offered to her, told him when there was a fitting occasion, told him when Mrs. Tilton had been driven from the shelter of her husband's roof, by indignities to which even she could not submit. And what is his story? Does he deny that she told him what she said? Not a word of it. But he says, "She did not come to the Evening Post building to tell me of it." Well, now that proves, not that Bessie Turner was wrong, but it proves that either she or he was wrong, and leaves the question unsolved, and a question wholly immaterial, because it is not of the slightest account whether it was at the Evening Post building that she told him of this, or whether it was elsewhere. But they, knowing the tenderness of this man who complains when he comes before you as a witness upon the stand, that his testimony if he only swears to what he knows, won't hurt his sister, but if he could only connect it with hearsay, which he knows is not evidence, it might—this man now says, "Well, I can't deny that she came and told me what she said she told me. But, gentlemen, please be tender-footed in the questions you put. If you will put this question, whether she ever told me that he attempted to commit violence upon her, I can say she did not, either at the Evening Post building or anywhere else." And accordingly they put that question, and he goes off the stand exultant, for he has been able to give that sister a stab under the fifth rib; he has been able to gratify his honored friend, Theodore Tilton; he can commend himself to the regards of Henry C. Bowen, and there is no enemy of Henry Ward Beecher or Elizabeth R. Tilton but what will give him a cordial grasp of the hand; for, though he did not know much, he swore to the best of the little knowledge he had.

And you have one other who is brought as a witness in order to overturn this girl. Who is that? Why, A. B.—There ought to be a C there, and they should run through the alphabet until he got down to—I believe there is no cipher at the end of the alphabet; there ought to be, for such creatures as he to end their names with—A. B. Martin, Tilton's spy. Now I have a respect for Frank Moulton, Tilton's minion, but none, none for a miserable spy, sent from his house to the Ovington's to eavesdrop and bring him report; sent to find out what is going on; sent to talk with his wife and report to him; ready whenever the occasion calls, to do his little all in the service of Theodore Tilton, in his fight with a woman; ready to meet that woman, to fawn upon her, to pretend to be her friend; ready when the time comes, if it be needful in order to raise an issue with Bessie Turner or with Gen. Tracy—ready, if need be, to swear walls where carpenters never reared them, to bring into protected shadow a piazza which was in the blaze of a torrid Summer sun; ready to do anything he could in the service of a man to serve whom is too degrading for endurance. For I venture the prediction that even that Frank Moulton, who has been the instrument of his devices, his stratagems, his fraud, and his conspiracy against Henry Ward Beecher, will in due time, as he deserves, be cursed and kicked by the man who dedicated him to his use. [Sensation.] But this man Martin tenders his services to swear down Bessie Turner, and what does he swear? Simply false swearing. He swears that he was for hours eavesdropping at a window where Gen. Tracy and Miss Turner are represented as in conversation, and broiling in the sun, with Mrs. Ovington, to the end that he might perform the miserable and degrading service to which he had been assigned by Theodore Tilton.

Gentlemen, we have one more witness, and that is Theodore Tilton himself. These are the three. Why, gentlemen, Tilton is not in a condition to undertake the job; it is too large for him; he has too much on his hands. Theodore Tilton, A. B. Martin, and Joe Richards setting themselves up to overturn that Bessie Turner who was a match for the most brilliant cross-examiner in America, who put William Fullerton at bay and compelled him to call upon the most splendid advocate now living in this or in any land, to come to his assistance in a fight with a girl! [Sensation.] The girl who can stand fire against William Fullerton and William A. Beach need fear nothing from Joe Richards, even with Theodore Tilton as his right-hand and A. B. Martin as his left-hand supporter. Her testimony stands admitted by himself; her testimony, as she gave it, commended itself to your consciences and intelligence. You believed it then; you believe it now. It is in harmony with the letters I read to you yesterday and this morning; it is in harmony with all the revelations we have of the interior of that household; it is in harmony with what you know of the character of Theodore Tilton, when we find this man, at the close of her testimony, making one last attempt to injure that girl in your estimation by asking her whether she had not been refused reinstatement in the institution in which she held (woman as she was) a professorship of character and position in the department of music; and when you saw them elicit, as they knew they could, the reply that, although the President of that institution retained undiminished confidence in and respect for her, yet the libels published by this man had made her name so notorious that she could not earn bread in an honest employment; when you have that commentary upon the spirit in which Theodore Tilton dealt with the adopted daughter who was loyal to the wife of his bosom, you need no more, no more to determine whether she or he is the most entitled to your credit and regard.

MRS. TILTON'S RETURN FROM MARIETTA.

Why, gentlemen, there are some things the mere narration of which carries to the conscience and understanding absolute conviction of their verity. There is no girl of 22, there is no woman of any age—there is no man of 22, there is no man of any age—who could invent, if they were false, conversations like those she has detailed to you, that occurred on the part of Theodore Tilton, and under his own roof. She unconsciously presented the very figure of the man who testified before you when she was absent, and he had your ear. You could see reproduced in her narration the same dramatic attitudes, the same stilted display, the same lofty and magnanimous sentences, the sudden changes, from lofty dignity to gentle, tender consideration, which were exhibited there. Just take any one of those relations. I would like that interview, beginning with the significant intimation at his own table to Mrs. Tilton and the daughter who loved her, that a lunatic asylum shadowed itself in the distance before her. These people, Mrs. Tilton and Bessie Turner, had come home from Marietta—Bessie to the disgust of Tilton and of his housekeeper, Mrs. Tilton not to the satisfaction of either. She comes to her own house, when her husband hoped she would have remained longer away, and when he had made arrangements that suited his convenience, and did not require her presence; but he meets her with a carriage and takes her home. At breakfast she finds Miss Susan B. Anthony her guest, and the head of the table, where she was in the habit of sitting, occupied by Ellen Dennis.

Gentlemen, some of you, perhaps all of you, are married men. Would n't it somewhat excite the surprise of your wife, if on her return to your house from a journey for the recovery of her health, when she came back, to find her place at the table was occupied by one socially her inferior—a domestic in the family quietly reproaching the harmless and simple attitude of the mistress of the house? Miss Ellen Dennis is in the place of Mrs. Tilton; Mr. Tilton is there. Here is that woman to whom he wrote those love letters, whom he called "my dear angel," whom he expected to love not only through time but through the eternities; this woman whom he so idolized, and she quietly takes her place by the side of Bessie Turner, and in her own house assumes a subordinate position even to Miss Susan B. Anthony. That is the morning. We come to noon—to the dinner. Miss Anthony is gone; Miss Dennis remains. "Mrs. Tilton took her seat"—I read from page 476:

Mrs. Tilton took her seat at the table beside Mr. Tilton, and the moment she sat down she began crying, and Mr. Tilton was very polite, saying, "My dear, won't you have a bit of this?" or, "My dear, won't you have a bit of that?" and she was crying so she could hardly answer him; the tears were running down in her plate, and she excused herself and got up from the table and went into the front parlor, and sat down and played some plaintive little air on the piano.

Does it happen to any of you to remember any incident in your early days between brother and sister, or husband and wife, or even father and child, when a sudden estrangement left the woman to the resource of her sex? Ah! those tears that in deep emotion womanhood cannot restrain! With touching appeal, by some plaintive melody associated with earlier days of love, she thinks she may touch the heart that is rising against her in anger. This poor woman dried the tears, could not restrain them, excused herself and left, and she remembered that man as he was in his earlier days, and she went to the next room and touched the keys of the piano, and thought that there were some old notes in those melodies that would throb even in his cold heart. Not so, not so.

After she had left the table, Miss Ellen Dennis looked at Mr. Tilton and said, "What a strange woman Elizabeth is! What is she crying about? Any one that has such a devoted husband, a nice home, and everything heart could wish for—I think she is a very singular woman." Mr. Tilton never made her an answer, but he leaned his face on his hand, and said he, "Bessie, my dear, don't you think Elizabeth is demented?"

Demented! demented! That don't mean much as it is uttered here, but oh, I tell you that when a cold and exacting husband appeals to a competent witness to know whether the poor and helpless, motherless, friendless, defenseless woman, who had no protector in him, and none elsewhere, when he asks a question, "Don't you think Elizabeth is demented?" it means something; and that girl knew what it meant, and knew it well. He says:

"Don't you think she acts like a crazy woman?" Said I—I looked him steadily in the eyes—said I, "No, I dont; but I wonder that you have n't driven her in the lunatic asylum years ago!"

And when we come, gentlemen, as we shall presently, to the time when he makes her lie for him, remember who it is that does it. It is the man who told one that he knew would tell her that he doubted her sanity; it is the man who told one who he knew would tell her that a pall hung over her, more terrible than death, and that it depended on him whether that pall should close her off from the light of day. These are no unmeaning words. They come from the heart. Ellen Dennis knew right well what she meant when she said, "This is a very singular woman." He knew right well what he meant when he said, "Bessie, my dear, don't you think Elizabeth is demented? Don't you think she acts like a crazy woman?" And Bessie knew what he meant when she made that reply, which struck right at the heart of a purpose too plainly revealed at one stage of these proceedings; and it well might make that woman shudder and fear in the presence of this man. And now let us go on with what follows. What did Mr. Tilton do then? He immediately rose. Thus Bessie's answer was not at all satisfactory.

He looked very white and very angry, rose from the table, then went from the dining-room into the back parlor, and from there into the front parlor, the two being connected by folding doors, and he tried to shut the folding doors.

THE STORMY SCENE IN THE PARLOR.

What for? What was there in a wife in tears, and playing a plaintive melody upon the piano in his own parlor, which required those doors to be closed?

They would not shut tight; there was a little crack in them. He seemed to be working with the key—he was working with the key; and he then went in, and I heard the two parlor doors, it was not these folding doors, shut and lock. Q. The other doors? A. Yes, Sir.

Now, gentlemen, the curtain rises upon a scene one of the saddest, one of the most memorable, that has ever been exhibited in a court of justice. Let us look at that scene as there described. I read from page 477:

I stood at the folding doors; they were open on a crack, and I saw Mr. Tilton right over near Mrs. Tilton, with his fist going this way very emphatically, and talking very angrily, and when I heard him say that "You have brought that girl on to use against me, and, damn it, she shall leave this house—"

Bear in mind, gentlemen, that that is the girl who he says was sent away, lest she should be used against Henry Ward Beecher; it was his tender solicitude for the pastor of Plymouth Church that induced him to send her away to the West; she had casually heard the story of the seduction by the reverend debauchee, and on his account, not at all on Mr. Tilton's, she had been sent out West, a suitable retraction having been obtained from her through the intervention of Mrs. Tilton, so that there was no longer danger to him. And yet you see he tells his wife, "You have brought that girl on to use against me." Why? How? He tells you it is all a lie about his having ever offered indignities to her. How was she to be used against him? When Bessie Turner showed him by her answer at the dinner table that she would not be used by him, he at once made up his mind that she had been brought to be used against him, and she was to be held responsible, and Bessie Turner was to be turned away. It excited the girl.

I opened the door and entered in. Said I "Theodore Tilton, this is not the first time I have heard you swearing at your wife, and you shall not damn her for my sake."

Gentlemen, the only reproach against this girl is that she has been trained in the purity which characterizes Elizabeth R. Tilton. She has not the attractions to win Theodore Tilton. She would not make a fit subject of a Woodhull biography. She has lived on until early womanhood, and yet she was able to make the proud challenge on the witness-stand, when she was asked whether she had been turned away from some place for lying:

Nobody ever charged me with falsehood but Theodore Tilton.

They have had the opportunity since of making search. David Dows has been here. They have had access to the proprietors of each of the establishments in which she attempted to earn her livelihood. They have had access to Joe Richards even, to A. B. Martin; they have had access to the spies; they have had access to the men who were ready to yield themselves to base uses, and no one human being dares come to testify against that girl, to one word impeaching her purity of character, for truth, or her integrity—not one.

Gentlemen, it may seem strange to you that the girl whom Theodore Tilton exalted in depriving her of her position at the Pennsylvania institution of learning because he had rendered her infamous before judicial investigation—it may seem strange to him that, after judicial investigation, she to-day stands proud and erect, while he slinks from the gaze of manhood and of womanhood. Let us go on with this dialogue. "He said, 'leave the room.' Said I, 'I won't leave the room.'" That is a courage that don't belong to girls, pure girls, well-trained girls, unless under circumstances that touch their inmost womanhood. This girl, if she had been alone and acting in her own cause would have shrunk in terror from the man. But she stood there with the courage of a lioness because, feeble as she was, she was defending a pure and abused woman from a tyrannical and cowardly husband. That lifted her heart and strengthened her arm and nerved her with courage. It is only a pure woman who can do that. You remember in your early reading the old story of Una, with her milk-white lamb, walking from land's end to land's end, fearless, unguarded, and alone. It was the courage of virgin purity. It was the courage of a pure heart, which is not cowed by brutal cowardice. In the cause of that adopted mother, whom she loved, she was ready to confront this man, to confront him fearlessly, and to stand by the woman whom he wronged.

I will not leave the room, and I will stand by Mrs. Tilton if I die in the attempt. He then gave me a blow that hurled me to the opposite side of the room, and I fell, striking my head violently against the door. He came forward, perfectly bland, you would think nothing in the world had happened, so composed and so calm, "Why," says he, "why, Bessie, my dear, you tripped and fell, didn't you?" I turned round to him and said, "Theodore Tilton, are you a fool, or do you take me for one?"

Gentlemen, was that invented? Is there the art in woman or in man that could invent that story? Doesn't it bear the very impress of truth upon its front? Isn't it characteristic of the man?

Q. What took place then? A. He then changed the subject entirely. He said, sitting down in a chair, "Oh, Bessie, my dear, it is no wonder my gray hairs are going down in sorrow to the grave."

You remember the last appearance he made upon this, and I suspect upon any stage. He told you Bessie Turner lied, for he had no gray hairs then, and yesterday afternoon I read you a letter in which he wrote to his wife

in 1867 about those gray hairs that had come up in the eleven and a half years of their married life. Gentlemen, he don't contradict this conversation. He has had the opportunity. They confined the inquiry to a single thing said. He denies that single thing; and the circumstance upon which he rests his denial is the fact that he had then no gray hairs. True, they were gray in 1867; but they had returned to their natural color in 1870!

He says, taking out his handkerchief and wiping his eyes, "No, my dear; you are mistaken in the woman that you place so much confidence in." Mrs. Tilton——

Poor creature! don't you pity her as you see her there, sitting at that piano-stool, paralyzed, no longer able to touch the keys, witnessing this scene between this man and that girl, and then hearing this mock heroic address?

Mrs. Tilton then got up from the piano-stool and said, "Why should not Bessie place confidence in me? She has no confidence in you. She has no protector in you. You offered to ruin her."

When and how did she know it; who told her? Bessie Turner did not tell her. She told Bessie Turner. How did she find it out? She looks this man in the eye and says, "You offered to ruin her."

He then stood up, straightened himself very straight, and put his fingers under his coat this way; said he, "Why, my dear, did I ever attempt——"

Imagine the scene! Just that mock solemnity with which he stood there and talked alternately to Mr. Evarts and to you—the same thing which he practiced on that girl he practiced on you twelve; and he thought it would succeed. I would like to have him now look at the twelve, and point with the finger on which of the twelve he supposed such an attempt would be successful. He thought it would succeed with Bessie Turner. It did not even with her. She was not an idiot.

"Bessie, my dear, did I ever attempt in any word, shape or form to ruin you, or to take any improper liberties with you?" Said I, "Yes, you did. You remember the time you was talking about affinities, and the time you lifted me out of my bed and carried me into yours?" "Oh, my dear, you are excited; you are laboring under a false—mistake." "No," said he, sitting down in the chair; said he, "The fact is this, Elizabeth is so in the habit of having men fondle her bosoms and her legs that she judges me by herself." He then got—turned over to the side of the room, and said, "Do you see that red lounge? Time and time again have I seen Elizabeth and Henry Ward Beecher having sexual intercourse on that red lounge," and not only the red lounge, but he spoke of the chair. Mrs. Tilton looked very earnestly at him, and said, "Oh, Theodore, Theodore, how can you tell that child such base lies?' He then asked me if I knew what sexual intercourse was —what sexual intercourse meant; and if I did not he would tell me. The last words he said were that "red lounge had been consecrated to their sexual intercourse."

Now, there was one scene. Is that true? Is that invented? Is it more than likely that the scene is true which he dares not to deny? Have you a doubt that it occurred? Did any human being invent it? Does not nature, does not truth, speak out in terms no juror can mistake? Is it for such a man that you are called upon to render a false verdict against an innocent minister of God? Is it for such a man that you are to lay your hand upon the throat of the woman he has betrayed? I appeal to you, man by man, as honest men, answer me now, as you will answer on one day when from the answer there is no escape—do you believe this to be an honest man? Is he the man on whom you will stake your reputation among men—your immortal souls—hollow, treacherous, false, cowardly, base? I am not talking to blocks of wood, but to mortal men with immortal souls in them. I demand your verdict!

I am glad to learn from my associate (Mr. Shearman) what I had almost overlooked, that even Theodore Tilton dared not to pass this wholly uncontradicted; that he had such a sense of shame that there was at least a qualified contradiction; that, while he had his hand in, he tried at least to make an issue on which he could stand before you. Gentlemen, you have seen the man, and you have seen the girl. He is swearing to what? If I read his complaint, it is for money. If I listen to his counsel, it is for revenge. If I read his complaint, he is endeavoring to make, by his oath through your instrumentality, his title good to $100,000—more money than he and Moulton and Beecher, by putting together all their joint goods, could raise on the earth. If he is swearing for revenge, Bessie Turner is not. She swears neither for money nor for vengeance. She swears in the interest of truth and for the protection of a woman whom she knows to be innocent. Which will you believe? You have your choice. If there be one man among your number who on such an issue would sympathize with Theodore Tilton against the girl he sought and failed to betray, his vote doesn't belong to us, but all the rest do. And because I believe he cannot point his finger to such a man on that jury, I know your verdict will be one of acquittal before you leave your seats. Let us proceed with the rest of that interview that day—a memorable day. Mrs. Tilton has taken refuge in that room where the bedside was worn by the knees of prayer, a room too familiar with sorrow and with woe.

Then he came to me and said he wanted to see me, Mr. Tilton did, and he took me in the second story back room, and related this story over and over again about the lounge and the chair, and added that not only with Mr. Beecher had she done so, but mentioned three gentlemen's names in connection with Mr. Beecher. * * * Mr. Bates, Dr. Carroll Dunham, and Mr. Ovington. * * * * He said that little Paul that was dead was Mr. Beecher's, and that he didn't claim any of his children but Florence, and that Mr. Beecher preached to forty or twenty of his mistresses every Sabbath, naming two ladies in the congregation.

In the course of that conversation, passing over other matters, he said:

That his mother had laid her hands on his head and blessed him when he had told his mother this, and she

had said, "Theodore, what a magnanimous man you have been!"

Don't you think after all that the girl's was the better commentary? She says: "I said I didn't believe there was one word of truth in it, that it was all wicked lies." I think the girl's discrediting the fact showed more sagacity, though less kindliness, than the mother's benediction upon the man who invented these fearful and wicked falsehoods.

Had you ever happened to hear the term "sexual intercourse" before the conversation that you speak of in the parlor? A. No, Sir; I never heard it before in my life.

Of course not. Your daughter of that age has never heard it. It is a thing that is to be found only in the vocabulary of free-love and its disciples. At the saloon of "Madam Roland" in New-York they talk to you of sexual intercourse and sexual relations. Theodore Tilton will talk to you of sexual intercourse and sexual relations. Frank Moulton will report to you conversation after conversation of Henry Ward Beecher, running through four years, in which a man who never uses any such expression among decent people is represented as constantly talking to him about his sexual relations with Elizabeth R. Tilton.

MRS. TILTON DRIVEN TO HER MOTHER'S HOUSE.

Well, gentlemen, suppose we pause here; what do you think of the corner-stone on which your verdict is to rest? Who is to be believed—Tilton or the adopted child? Which will you trust? If you have no other evidence, and are left even in doubt—doubt is acquittal. But you do not doubt. No man who heard this evidence doubts, not even Theodore Tilton. If there is any man in this room who knows how false a verdict would be in his favor, certainly no man knows it better than he. But is Bessie Turner corroborated or confirmed? Do not these writings confirm her? Don't the admissions of Tilton and of Moulton, oral and written, by word and by act, through four years, confirm her? Does not the correspondence I have read to you, showing the bestiality of the man, confirm her? Does not the oath of Henry Ward Beecher confirm her? Does not the character of the wife and the character of the clergyman confirm her? Do not his antecedents, his writings, his speech, his character as developed to you even upon this witness-stand, all condemn him and confirm her? Gentlemen, there is much, very much that I could say and ought to say, and am reminded by my associates that I should, but there are certain things we *know*, and I know that you do believe that girl and do not believe her maligner. There is, however, a single thing, with reference to which I will ask you to indulge me, an interview which is described on page 479. This is a memorable interview, memorable for him, memorable for Mrs. Tilton, memorable for Bessie Turner. Now, acts are more significant than words. What was the result? Mrs. Tilton had gone up to her own room. After a season of weeping and of prayer she had gone to her couch, between two of her children, when at last Bessie was relieved from this painful interview in which a young unmarried girl was compelled to listen to an explanation of what sexual intercourse meant in a private colloquy with Theodore Tilton. She goes to Mrs. Tilton's room and tells her what had transpired. What does that poor broken-hearted woman do? She rises from her bed—but no, let me give it in the touching language of the girl:

Mrs. Tilton never said a word; she rose, dressed herself, put on her waterproof cloak, went down the basement way (it was then one o'clock), and stole very softly out the basement way. She didn't put on her shoes until she got down to the basement. I wanted to go with her and she would not let me. She went around to her mother's.

Q. Did you put on your shoes? A. No, Sir; she would not let me go with her; I wanted to go with her, and she would not let me. I locked the basement door after her. * * * I went to bed with the children. * * * The next morning we went around to Mrs. Morse's; Carroll, Alice and myself went around to Mrs. Morse's.

Gentlemen, while you each, in your house that night, that Winter night, were housed under your own roofs, which sheltered a loving and a cherished family, how little either of you thought of the scene that was going on within a few blocks of you, and under the roof of a man upon whom God had conferred gifts of a lofty genius, and upon whom his fellow-men had heaped praise and honor and benefactions; how little you thought that under such a roof a man who was worshiped as this man was had within him a cold and flinty heart, that would offer such indignity to the wife who worshiped him, that could so malign her under the only roof she could call her own, that it would induce even such a woman—sick, feeble, broken-hearted—to steal in her stocking-feet down stairs and go out alone in the Winter night to find a refuge from the cruelties of her "protector" under the roof of the mother whom he has pronounced a murderess in purpose and a maniac in intellect. These are scenes which, thank God, are not often repeated in civilized society; but the marvel is that the men who are the actors in them dare to come into a court of justice and press into their service our honored and upright magistrates, and the jurors whom the law constrains to sit in judgment even upon false accusations.

BESSIE TURNER INTERCEDES FOR MRS. TILTON.

There is one more singular incident to which I ask your attention. Now, you remember that this girl in all her testimony showed that she cared no more for Henry Ward Beecher than she did for you or for me, no more for him than she did for Theodore Tilton. Hers was the loyalty of the child to the mother. It was the

loyalty of love and gratitude to Elizabeth R. Tilton. She would not turn her hand to save Henry Ward Beecher from destruction. She would not turn her hand even to destroy Theodore Tilton; but that poor, grateful girl would go to the stake, would encounter penalties such as you and I would shrink from, in the spirit of a lioness, in defense of the woman whom she knows to be innocent, and knows to be her benefactress. It is not of such stuff false witnesses are made. Now, listen to another part of her narration. Mrs. Tilton had come home faint, sick, heartbroken, almost hopeless. While she went to her usual refuge, the companionship of her children, and the entreaties which she uttered from her bended knees to her Father in Heaven, this girl goes down to make one appeal in her behalf to the man whose heart she thought could be touched.

He came. I asked him if I could see him a little while. He came into his room in the second story back room, in his room, and I shut the door, and told him that Mrs. Tilton was very sick.

You remember that this was after Mrs. Tilton had been around to her mother, had been speaking of her condition and of her hopelessness—nay, not her hopelessness but her *hope*—that through the troubles which she was penetrating then she was to be restored to the companionship of this little Paul whom he professed to love, but bastardized after he buried him!

I told him that Mrs. Tilton was very sick, and had sent around when she was around to Mrs. Morse's that she was going to die, and that her mother must not feel troubled that she was going to her home; she had only one home, and that was in Heaven; she would see her little children, Paul and Mattie, and that her mother must not sorrow for her, and I asked him please to be very kind to her, and not scold her any more and make her cry, and I then told him what the doctor in Marietta had said, that these swooning attacks that Mrs. Tilton had had he was afraid—he feared that she would die in one of them, and he didn't think she would possibly survive her confinement, and I felt very badly. I felt as if Mrs. Tilton was going to die, and I plead with him, with tears in my eyes, and I asked him if he would not be kind to her. He said there was nothing the matter with Elizabeth, that she was as well as ever she was, and that the way she was weeping was perfectly natural to her. I said I didn't think it was natural for people to cry all the time unless they had something to cry about. He said Elizabeth was as well as ever she was, and that she was not weeping because she felt so bad—because of her bodily health, but she was weeping for her sin with Mr. Beecher, that that was what made her cry.

Q. Did you mention anything in that conversation about an occurrence connected with a letter of his while you were in Marietta? A. A letter.

Q. A letter that she received from Mr. Tilton? A. Yes, Sir, I took one letter up. * * * I told him that I had taken a letter of his to Mrs. Tilton—up to Mrs. Tilton in Marietta, and she opened the letter and read it—seemed to have read it through, and she turned perfectly white and fell very heavily to the floor, with the letter grasped in her hand.

Q. Did you tell him what followed then? A. I told him that she fell to the floor and fainted, and I went and called Mrs. Putnam and she came up, and then she called Philip, the colored man, and he lifted Mrs. Tilton in bed.

Gentlemen, I don't care to go further with this narration. It is not good for us. There are certain depths of dishonor and degradation the very contemplation of which sinks and demoralizes us all. The further you go in the investigation of this man's life the slimier the trail that you recognize with every footstep of your advance. I leave this branch of the case.

BESSIE TURNER'S DISCLOSURES.

I come now, in the order of important events, to the disclosures made by Bessie Turner on the 14th of December, or thereabouts. At that time Mrs. Tilton had been so outraged that she had made up her mind she would permanently avail herself of the shelter of her mother's house, and yet she sought to take counsel of her friends, and Bessie Turner and her mother were the two friends who were the nearest to her and who knew the facts, and Bessie Turner conferred with those who were ignorant of the interior relations of this household, and we have seen with what effect. She went to Mrs. Bradshaw, an excellent woman, one whom we were told was to be a witness to prove the guilt of Mr. Beecher, but who not only proved that there was no acknowledgment of guilt by him, but even proved, by the letter which was introduced in evidence, that Mrs. Tilton never—never confessed even to her, her most intimate friend, the slightest deviation from absolute loyalty to her husband. Mrs. Bradshaw differs from Miss Turner in her recollection upon a single point. Bessie remembers that she talked with her, and in respect to the indignity which Mr. Tilton had offered to her, but does not remember that she remembered the brutal charge Mr. Tilton had made in this interview against Mr. Beecher. Mrs. Bradshaw's recollection is that it was at that time she heard it. The question is utterly unimportant in any aspect of the case. Which of them is right is immaterial. Each has stated according to her recollection the fact that there was an interview. The fact that Bessie Turner went there for the purpose of complaining of Theodore Tilton, the fact that she went there for the purpose of enlisting Mrs. Bradshaw on the side of Mrs. Tilton in justifying her in separation from her husband, as to this there is no shadow of doubt; but the diary of Mrs. Bradshaw confirms Bessie's narration. Now, Bessie swears also that she went to Mr. Beecher. To him she told, not what had been said about her, for of course maidenly modesty and reserve would have deterred her from that, but she pleaded the cause of Mrs. Tilton, and wanted him to come and advise with her. More, Mr. Beecher swears that she told him of these indecent approaches which had been made to her by Theodore Til-

ton. Mr. Beecher swears that he communicated them afterward to Mr. Bowen. Mr. Bowen began by denying, but ends by admitting them; and, to put the matter beyond any question, Mr. Tilton calls Mr. Bell to the stand, and proves by him a most important conversation, which places it beyond all doubt that Bessie Turner's statement is true, and that the statement of Mr. Beecher is also true. [To Judge Neilson.] I will ask my friend Mr. Shearman to read the passage, if the Court and jury will allow me.

Mr. Shearman—Mr. Bell's testimony is as follows [reading]:

Mr. Beecher stated to me that he had been sent for by Mrs. Tilton to consult in regard to the position of domestic affairs in her own household; that she had left her husband and was then at Mrs. Morse's, her mother's; that she was in great trouble and great anxiety; that the conduct of her husband had been in a great many ways very severe, very cruel, and everything but what a—I was going to say, a decent man's conduct ought to be to a woman; he stated that Mr. Tilton's conduct in regard to other matters, in regard to licentiousness, was very low; he stated that he had been called upon by a young girl—he did not mention any name—a young girl, who had been in Mr. Tilton's family; she had related to him circumstances occurring in the family, in the household of Mr. Tilton, which were exceedingly licentious; he stated—I presume I need not go into the circumstances of that statement; I have sufficiently indicated what it was; he stated that at last Mrs. Tilton had been forced to fly from her home; that she had done so, and had gone to Mrs. Morse's; that she had sent then for him to advise with him as to what course she should pursue; that he had consulted Mrs. Beecher on the subject, and then they thought—both thought—that it was better that they should mention the fact to some member of the church, so that they might not go on in the matter without the whole church being ignorant of these proceedings, or what advice they might give—might tender to Mrs. Tilton; they had therefore called for me, not so much to take my advice, as to inform me of the facts that were occurring, and inform me of what advice they proposed to give, if any, to Mrs. Tilton. He asked me then—he said then that he proposed to hand the matter over to Mrs. Beecher; that it was a matter that a lady could manage better than a gentleman, and Mrs. Beecher intended, by his suggestion, to go and see Mrs. Tilton the next day. The question was particularly as to what advice Mrs. Beecher should give to Mrs. Tilton. I don't know whether from Mrs. Beecher or from him, the question came up about a permanent separation, but from one or the other that suggestion was made, of a permanent separation between Mr. and Mrs. Tilton, and Mr. Beecher asked me what I thought of that. I said in answer, "Of course, nothing else can be possible; it is impossible for Mrs. Tilton to live another day with Mr. Tilton on such facts as you have presented to me." Then Mr. Beecher asked me if I thought it would be well to call in any of the ladies of the church; I am not sure whether deaconesses were mentioned then, as I am not quite sure that we had them at that time, but it is clear in my memory that he did ask me if the advice of any of the ladies of the church should be called for, or that the matter should be handed over to the ladies of the church—any of the ladies—to manage. I said, unquestionably not; it was a matter of great delicacy, it was a matter far more easily managed by a few than by many, and it would be exceedingly harmful to bring it into the church, or even to hand it over to any ladies unofficially, and that I was certain that the best management of the case would be to have it left in his own hands and those of Mrs. Beecher.

I may add that the note furnished by Mr. Bell showed this interview was on the 15th of September.

Mr. Beach—I object to your arguing here.

Mr. Shearman—I was only giving the date, as you brought it out.

Mr. Evarts—Mr. Porter can state it.

Mr. Beach—Yes.

MR. BOWEN'S TESTIMONY.

Mr. Porter—We come next, gentlemen, to the testimony of Henry C. Bowen. It is a little curious that wherever we find Bowen appearing in this case he seems to give to it a fresh and peculiar interest. He is the next actor in this drama. We should not have looked for it. What has he to do with the matter? He has no admission to the interior of the house of Henry Ward Beecher, and just as little to the interior of the house of Theodore Tilton, and yet wherever events come to thicken Henry C. Bowen is there. Of his testimony I shall speak with kindness and forbearance. It would be inhuman to do otherwise. I cannot but remember the buffets which he has received from the beginning of this trial on the part of the friend to whose rescue he has come in his extreme desperation. I refer for a moment to some of these comments of which Mr. Tilton, after a manner peculiar to himself, introduces not only our witnesses, but his own, to the favor or the censure of the jury, as he feels disposed. This is the Henry C. Bowen of whom Tilton in one of the exhibits which is before you writes, "Bowen lifted his hammer and with an unjust blow smote asunder my two contracts." Again, "The public little suspects that this act of his turned on the fear to meet the consequences of horrible charges which he made against Henry Ward Beecher." In the course of one of these exhibits he speaks of Bowen's assassinating dagger drawn against Mr. Beecher. In another portion of the same exhibit he says, "Bowen charged Beecher with the most hideous crime known to human nature." Then Tilton assigns, as the reason for not making public his written denial of the charge of adultery between Mr. Beecher and his wife: "I would put my old friend Bowen to a serious risk of being smitten dead by Beecher's hands." How far Bowen would deserve his fate I cannot say, but I know that all Plymouth Church would hound him as a rat. In his letter of Jan. 1, 1871, he arraigns Bowen as a slanderer and a libeler. He charges him with duplicity and treachery, and describes Bowen's face in the last interview as livid with rage, and his violent words as still ringing in Tilton's ears. You may judge of the estimation in which Tilton and his counsel held their case when

they thought its necessities demanded of them that they should put Henry C. Bowen on the witness stand to speak for them. And to show what—what? That Beecher didn't slander Theodore Tilton to Henry C. Bowen—that Beecher did nothing tending to the removal of Tilton from his connection with *The Independent*. It is but just to Bowen to say that he showed a noble zeal to swear all he could in favor of the party who called him. That it was not from love of Theodore Tilton I am persuaded. That it was not hatred of Henry Ward Beecher we all knew, for he worships at Plymouth Church. It must have been from the pure abstract love of truth. [Laughter.] Well, what is the truth as he tells it? His memory is viciously accurate in his denials; but it is singularly lax in taking them back on cross-examination. "Mr. Beecher never advised him to turn Tilton out of *The Independent*? He did not. Mr. Beecher thought he did. He did not. Mr. Beecher didn't tell you anything against him? No, nothing. Oh, he did talk generally against him. What did he say about him? Well, it was nothing except some little matter of fornication and adultery; it was nothing serious. What was it he told you? Really, I don't remember. I remember generally; he really didn't think Tilton was a very good man, but he knew nothing particular against him, or, if he did, he didn't tell me, or, if he did, I forget what it was he told me. He talked with me a half hour or three-quarters of an hour, but what he said I cannot for the life of me tell. I know it didn't affect me. I knew Tilton. I didn't need any information from Beecher. I had made up my mind about him. Did you tell Mr. Beecher so? Well, I am not quite sure of that, but I knew myself. Did Mr. Beecher know? Really, I don't know. Can't you think, Mr. Bowen, of something that Mr. Beecher told you? Well, he did tell me that there were—there were reports against Theodore Tilton. Oh, well, now, but, Mr. Bowen, was that all? That was all. Positively? Certainly. What! didn't they relate to women? Oh, yes, of course, they related to women. Well, what women?" Well he was in the same place as Mr. Beecher was when they were trying to ascertain about the birth of that child; he had not made an entry of the transaction. [Laughter.] "Well, but, Mr. Bowen, you know something about this, don't you? Did he mention names? Oh, he mentioned names, but the names I knew nothing about; I didn't know the people, didn't care for them, and didn't remember them. Then you mean to swear positively that Mr. Beecher didn't tell you that Theodore Tilton was guilty of foul licentious, adulterous practices with women? Oh, in a general way, and he mentioned names, but I don't know what they were. There was one—I think there was one that was in his family." Well, you see that we were in a bad way. But it so happens that, though Bowen was so forgetful then, he was not so forgetful on the afternoon of that day when he came back to his own house to meet Dr. Eggleston, his associate on his newspaper, whom he had left in that house and told that he had just come from Mr. Beecher's, and Mr. Beecher had told him horrible stories about Theodore Tilton's debauchery and adultery, and had told him how he had attempted the ruin of an adopted daughter under his own roof, and that Mr. Beecher would stand his friend; that he would be the friend of *The Independent*, and was rejoiced to know that he was ready to remove Theodore Tilton from *The Independent*. After all, Theodore, don't you think that Henry C. made a pretty poor witness? Did he better their case? We have the proof, clear, conclusive, cotemporaneous with the fact, showing that Mr. Beecher's account of that interview is true. Not showing that Woodruff and Tilton are right in showing that Bowen is treacherous, but showing that his memory is treacherous. But Bowen, who was brought here to stab Beecher, carries with him another dirk under his belt, and, to the consternation of my friends on the other side, thrusts it under the rib of the man who called him. He reveals the fact which Theodore Tilton on oath has denied, that before he had exerted that power over his wife which elicited from her the letter, whatever it was, of the 29th of December, Henry C. Bowen, his employer, had said to him on that secular Christmas afternoon, on the 26th of December, that the ax was suspended over his head, the ax which was to fall would before the year should end. That explains to you, gentlemen, what Theodore Tilton left unexplained; how it was that when he went home that Christmas week, and found his wife in her sad condition, weakened by hemorrhage, worn out in spirit, broken in heart, and, as she supposed, drawing close upon the grave which was to bring her poor and broken body side by side with that of the bastard Paul. He enters that room and proclaims, "I am a ruined man." On that proclamation Bessie Turner, who felt that his ruin was the ruin of the household to which he belonged, and of her own benefactress, sank upon the lounge, helpless and powerless; and even that old nurse felt the shock so deeply that she could not repeat the account of the event without tremulous emotion, which you noticed on the witness stand. This man comes into the room, at one end of which lies his weak, sick, suffering, prostrated wife, not to sympathize with her, but—"I, I, I, who took off my crown and laid it at Bowen's feet, and said, 'God save the King;' I, who have been in the receipt of the baronial income of $15,000 a year; I, who occupy the leading position at the head of the leading journal of America; I am ruined, ruined, ruined!" And what then? Frank Moulton is called in counsel; and, when Frank gets there, papers and statements, cards and missiles, newspapers and documents, consultations and foolscap, writing materials, and all the paraphernalia which has been so connected with that

house in Remsen-st, as also with the other in Livingston-st.; all these result in a consultation with Mrs. Tilton at which Frank is present, Theodore is present, the nurse is shut out, Bessie is shut out, and what transpires in that room you have no means of arriving at except from——

Mr. Beach—It is 4 o'clock, Porter.

Mr. Porter—If your Honor please, my friend suggests it is 4 o'clock, and as I have to refer, I will stop here.

Judge Neilson—Very well. [To the Jury.] Get ready to retire, gentlemen. Return to-morrow morning at 11 o'clock.

The Court then adjourned until Friday at 11 o'clock.

EIGHTY-EIGHTH DAY'S PROCEEDINGS.

JUDGE PORTER'S ARGUMENT INTERRUPTED.

THE ORATOR OVERCOME BY THE HEAT—AN ADJOURNMENT AFTER THE MORNING SESSION TAKEN UNTIL MONDAY—MR. BEACH AND JUDGE NEILSON DESIROUS TO LIMIT THE DURATION OF ARGUMENT—JUDGE PORTER AIMS TO SHOW POINTS OF AGREEMENT BETWEEN MR. BOWEN'S AND MR. BEECHER'S TESTIMONY—MRS. TILTON'S LETTERS OF CONFESSION AND RETRACTION EXPLAINED AS VIEWED BY THE DEFENDANT—LESS FREQUENT DENUNCIATIONS OF THE PLAINTIFF.

FRIDAY, May 21, 1875.

Judge Porter's argument to-day was full of repetitions, and consequently was rather uninteresting to the spectators, although the jurymen listened to it very attentively, and the care with which the points stated were developed was calculated to fix them firmly in their minds. Mr. Bowen's testimony was first taken up and analyzed. Judge Porter insisted that on the main point of his evidence Mr. Bowen had confirmed the testimony of Mr. Beecher. He had admitted that Mr. Beecher had told him bad stories about Mr. Tilton. Judge Porter, at considerable length, explained the transactions between Mr. Beecher and Messrs. Bowen, Tilton, and Moulton in the light in which they were regarded by the defendant's counsel. Mrs. Tilton's letters of confession and retraction were taken up and commented upon, and explained according to the theory of the defendant. Referring to the alleged letter of confession, which had been destroyed, the orator exhibited some of the cutting sarcasm for which his argument has thus far been remarkable, and bitterly denounced the acts of the plaintiff and his friends.

Judge Porter has thus far covered comparatively few points of the evidence, but those have been dwelt upon at much length, and presented in a great variety of forms.

There were more spectators present to-day than on the day before, but the proceedings were dull and monotonous, both on account of the heat and the failing strength of Judge Porter, whose voice was considerably weakened by his previous efforts. The hot sun beat down upon the exposed south side of the Court-house so fiercely that it was impossible to make the court-room comfortable even by opening wide the large windows. The dense crowd of people in the gallery, and near the doors obstructed the circulation of air. There were many expressions of disappointment, however, when at the close of the morning session, Mr. Evarts, upon whom the disagreeable task of asking for an adjournment, at the instance of either side, is usually imposed, stated that Judge Porter felt unable, on account of the heat, to go on with his argument in the afternoon, and that therefore an adjournment until Monday morning would be desirable.

Mr. Beach humorously remarked that he had resigned himself to the fatalities of this case, which continually protracted its length, and he consented to the adjournment, but with expressions of regret at its necessity. He stated that he would like some intimation of the length of time that the defendant's counsel proposed to consume in summing up. For himself he felt very sure that he should not occupy more than a couple of days, and he thought some reasonable time for the closing arguments on the other side should be fixed. It was in the power of the Court to restrict the time, if necessary.

Mr. Evarts said in reply that he thought he could fairly promise that the two hours lost by this adjournment would not defer the end of Judge Porter's argument, but more than that he could not say. Mr. Beach insisted on knowing more definitely how long the other side would take in completing their summing up. Judge Neilson stated that he had understood that Mr. Evarts would speak all of next week, and he added, smiling, that he had written to a friend in the country who was anxious to hear Mr. Beach, that he need not come until week after next. Mr. Evarts stated that he had refused to make an appointment in Washington in the latter part of next week because he desired to listen to Mr. Beach's argument. As Mr. Beach was not yet satisfied, Judge Neilson finally said that he would answer for the defendant's counsel that they would close next week, "and if not," said he smiling, "I will

make them work on Saturday." "And perhaps on Sunday," added Mr. Evarts laughing.

The court then adjourned until 11 o'clock on Monday morning.

THE PROCEEDINGS—VERBATIM.

MR. PORTER RESUMES HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Porter—May it please your Honor—Gentlemen of the jury: If you will pardon me I will, in compliance with the suggestion of one of my associates, call your attention briefly to the testimony of Mr. Bowen, in order that its importance may not be magnified unduly. To us his testimony is not injurious; to the other side, unless I mistake its effects, it is not merely injurious but damning—if believed, a qualification which I ought to add in the case of Mr. Bowen; in deference to the opinions of the other side.

HOW MR. BOWEN WAS TO BE USED BY THE PLAINTIFF.

Mr. Beecher had testified that on the occasion of the interview at which Bowen presented to him Theodore Tilton's demand that he should leave Plymouth Church and the City of Brooklyn, conversation occurred between him and Mr. Bowen, in which Bowen communicated to him statements flagrantly injurious to the moral character of Tilton, and in which Mr. Bowen himself, in the full conviction at the time of the truth of what he uttered, declared that Theodore Tilton was an immoral, a tainted man, unfit to be connected with the charge of a great religious newspaper. Mr. Beecher states that he communicated to him information which he had recently received from Mrs. Tilton; that he also communicated to him the facts which he had learned in the interview that occurred between Miss Turner and himself. As usual, the first device of the rhetorician is to get a false issue. That was illustrated, for instance, in reference to the charge made by Bessie Turner that he carried her from her room to his own, on a particular occasion, in respect to which she complained of personal indignity. The cunning rhetorician knew that if the story was told to the world as the girl told it, it might carry conviction, but that by the insertion of a single circumstance, tending to render it incredible, or at least improbable, he contrived that cunning letter in which she is made to say that "the story that Theodore Tilton carried me *screaming* from my bed-room to his own is untrue." With the same rhetorical art you saw that at the close of this case, when he felt that he was going down, down, it was needful for him to come back to the stand and swear down Bessie Turner once more, and instead of joining issue on the great facts to which she testified, he joined issue on here and there a solitary expression—as, for instance, the allusion she imputes to him about those gray hairs, and he thinks that by the suggestion of a circumstance which will render the thing improbable he gets over the effect of it, and damns the witness. "I had no gray hairs"—forgetting the letter that he had written, in which, three years before, he had complained that he had gray hairs.

Again, we find, running through the whole thread of this conspiracy, the same devices, in the cunning papers which were prepared from time to time by him, copied by Moulton, submitted to Mr. Beecher, in order to induce him to give countenance to their statements, overlooking these petty points thrown in, to which importance might be given afterward. Now, his dealing in this case with Mr. Beecher and his testimony. How is he to deal with it? "Here is Bowen. What can we prove by him? In the first place, he is Beecher's enemy. That is one good point. In the next place, it can do him no good in this case to swear against me, for I am done. I am no contributor of *The Independent*, and whatever his feeling may be toward me, Bowen's interest—that which touches the tender nerve of the pocket—Bowen's interest is to see the man go down who edits *The Christian Union*. What can we safely ask him? Now, there is no doubt that he told this story about Bessie Turner, but there is one thing which Henry C. Bowen will never do. He will never swear himself into a scrape, if he knows it. I'll prove by him that Mr. Beecher did not advise my admissal from *The Independent*. That I'll do." "Well, but," says Brother Morris, "Beecher don't swear that he did." "No matter for that; it is a good enough issue, Sam, for the jury." "Well, but we've got to meet Beecher's own testimony. What he swears to is, that he told Henry C. Bowen that you were an immoral man, that you had offered improper overtures to your adopted daughter." "Touch that lightly," and they did. "Mr. Bowen, did Mr. Beecher advise you to dismiss Theodore Tilton from *The Independent* and *The Brooklyn Union?*" "Positively no." "Did Mr. Beecher mention the name of Bessie Turner?" "No." And so on with a series of questions which might be supposed by a person who had not heard Mr. Beecher's testimony to be aimed at something that had preceded, but every question tendering a false issue upon the facts, save one, and that is, where was the interview?

MR. BOWEN PRESENTS MR. TILTON'S LETTER.

And there Bowen was material. It was at Deacon Freeland's house. Now, gentlemen, that would be all very well, if, after a direct examination, there were to be no cross-examination, but we find Mr. Bowen on his cross-examination compelled, by my learned associate, to admit that Mr. Beecher did, whether the interview was at the one place or the other—Mr. Beecher did tell him of matters that were new to him, in respect to Theo-

dore Tilton; that Mr. Beecher did arraign him for private immorality with women; that Mr. Beecher occupied half an hour in giving details which had now escaped his recollection, and in regard to persons whom, as he did not then know, he did not now remember. So that upon the only point upon which his testimony was material, Henry C. Bowen, instead of contradicting the editor of *The Christian Union*, confirms him, and that confirmation is made still stronger when we come to the report he made that night on his return to his own house, to his associate editor, in which he recounted the transaction to Eggleston, as Mr. Beecher, five years afterward, recounts it to you, and without comparison of notes. There is, however, in this connection, a matter that should not be overlooked. Mr. Bowen undertakes to contradict Mr. Beecher as to the locality of that conversation. It is utterly immaterial for every purpose in this cause, except as a simple means of ascertaining the truthfulness of witnesses; and it strangely happens that Mr. Beecher stands corroborated, even in that regard, not only by the affirmative evidence, but by the circumstantial evidence, which to an intelligent mind is more satisfactory and conclusive even than affirmative evidence. Where was that interview? Take Tilton. What had Bowen promised him? He would take that note right up to Mr. Beecher's and present it immediately after the interview. What more do we find? It was in the afternoon that the promise was made. What more? It was in the afternoon that the promise was fulfilled, even Bowen being the witness. Why not go to Mr. Beecher's? Bowen either meant to be true to Tilton, or to be false to him. In either case his road lay right straight to Columbia Hights. If he meant to betray him, as Frank Moulton told him, the moment that he stated that he had seen this letter, he went armed with that. It was to secure an alliance with Beecher; and no grass grew beneath the feet of Henry C. Bowen on that winter day, as he was rushing with this important message to cut the bond of friendship between Beecher and Tilton, and to form that bond of friendship which was to be so valuable between Beecher and Bowen. If his purpose was hostile, Henry C. Bowen is not the man who, when he is in pursuit of an enemy, and has with him a weapon of death, seeks needless witnesses. He went to the house of Henry Ward Beecher intending, as Tilton did, to stab him to the heart. He did not want Deacon Freeland by, nor any of his household. He went to deliver a simple letter, the delivery of which would, if Beecher was a guilty man, paralyze him upon the instant. If Henry Ward Beecher had been guilty with Theodore Tilton's wife, as he would have you believe, and that message had been brought to him by the hand of Henry C. Bowen, his bitterest enemy, have you any doubt what would have been the effect of it? Bowen had none. Gentlemen, when Bowen started on that message he did not know what the truth was. Of course he did not suppose adultery, because Tilton had not charged that; but he charged that guilt that was just as fatal to a minister of the Gospel; he charged improper and dishonorable proposals by a clergyman to a communicant in his own church. Bowen did not know whether it was true or false when he went to the interview. When he gets there he hands Mr. Beecher the letter; Mr. Beecher opens it, reads it, and thrusts it into his pocket. Now observe. Bowen had no interest in the matter. How did it concern him? He has delivered the letter and the old dominie put it in his pocket. He has no end to gain; he has no doubt about dismissing this man; he told him on Monday he was going to dismiss him; he doesn't want to know anything more of mischief against Theodore Tilton; he has heard enough already, and knows him to be a scoundrel, and he is going to act upon it. And yet Bowen tells you that after that letter was put in Mr. Beecher's pocket, he says to Mr. Beecher: "What about that letter?" "That letter? Why, Tilton is crazy." That settles the question with Bowen. "This is one of Tilton's lies; there is no truth in it." If this man were guilty, such a message as that would startle him and blast his very eyeballs, as they read it; but he is as cool, as calm, as indifferent as if it had been a message from a maniac in a mad-house; and the only commentary he has to make is, "Why, the man is crazy." Well, why didn't Bowen go away? His errand was accomplished; he carried the letter, he delivered it, and got his answer. Why didn't he go? He forgets; his memory is treacherous. Somehow or other he stays, and somehow or other, as he admits, he gets to talking about Theodore Tilton. Somehow or other he does tell Mr. Beecher that since he dismissed him from the editorship, and has retained him only as contributor, he keeps getting from all quarters, admonitions against his retaining him even in connection with *The Brooklyn Union* and the correspondence of *The Independent*. What then? Now he has certainly got through with his errand. Why doesn't he go? He doesn't. He stays. He thinks he did not ask any questions, but he does remember there was talk, and what the talk was he doesn't remember, except that the talk was by Mr. Beecher and about Theodore Tilton, and that that talk related to Tilton's immoralities, and that something was said about those immoralities in connection with a person in his own house. Now, gentlemen, you have the account of each. Which is most probable, Bowen's version of it or the version of Mr. Beecher, so far as they differ? It is true that Bowen was in the habit of having frequent meetings with Deacon Freeland on business; but we find, when we come to call Deacon Freeland to the stand, that there never was but one meeting between Henry Ward Beecher and Henry C. Bowen at his house, and that in the beginning of the year of which this was the end. Which will

you believe, Bowen, or Beecher and Freeland? Am I right about the circumstance? Frank Moulton made a memorandum that afternoon at 3:45 p. m.: "T. T. communicated to me the fact that he had just sent to Henry Ward Beecher, by Henry C. Bowen, a demand that he quit the City of Brooklyn." Bowen is mistaken about his sending his son at 2 o'clock to make an appointment that afternoon with Deacon Freeland for a meeting with Beecher. At 15 minutes before 4 o'clock Theodore Tilton got to Frank Moulton's, and Frank Moulton made this note, feeling the importance of the occasion; and Bowen himself admits that the last thing done at that interview was to deliver this very note to him for transmission to Mr. Beecher. Which is right? Connect this with the subsequent report of Eggleston, and you will see that, even if Henry C. Bowen had had the courage to make an issue with Henry Ward Beecher, it would have been an issue which would have cut him down, but he dodged it. Not so when it comes to the others. In regard to Tilton, there is no dodging the issue. Tilton had sworn before you, again and again, and on this very trial, that on the 26th of December, 1870, he sat secure in his own position, connected with *The Independent* and with *The Brooklyn Union*, and with a salary of $15,000 a year; that he had nothing to tempt him into a controversy with Bowen, nothing to tempt him into a warfare with Mr. Beecher, nothing to tempt him to get up an accusation which would enable him in such a warfare to bring Beecher over to his side and to use him as against Bowen.

THE FATEFUL ACT OF SENDING THE LETTER.

But Henry C. Bowen is made, in the hands of Providence, the unwilling means it may be, but still the effectual means, of striking out the corner-stone from beneath this conspiracy. And you are enabled to see, first, that the man who so swore is a perjured liar; and, second (which is more important), that on that secular Christmas Day of 1870, Theodore Tilton had received right in the forehead a blow which put him to his best endeavors to save not only his fortune but his reputation and his all. He had been warned by one that day (who, if we can trust his own description, was "as cunning, as relentless, as remorseless as an Indian") that he was to fall as he did before the year went out.

Now, we can understand, gentlemen, why it was that Frank Moulton and Theodore Tilton were as close together as two interlocked snakes through that week. Now we can understand why it was that Henry Ward Beecher was the subject of these unexpected and perhaps unwelcome attentions from Bowen on the one hand and Messrs. Tilton and Moulton on the other. An event, in which he had no concern, had made him a person of great importance in the estimation of both these parties. Bowen says he went to Beecher, and he admits that he told Mr. Beecher he was his friend. Mr. Beecher believed it, as he believed it when Frank Moulton told him that he was his friend. Now, bear in mind, gentlemen, that this was a warfare in which Theodore Tilton, who shows scruple nowhere else, would be little likely to be scrupulous. He was not scrupulous; and you have noticed one thing in the reading of this correspondence, as well as in the side revelations of this cause, that whenever Theodore Tilton was in trouble there was a little woman under his roof who was in deeper trouble. Was he reproached abroad for infidelity to the marriage vow? He came home sad and sorrowful, and she saw in his face the visage of the Redeemer bearing the burden of her sins, not his. Does Henry C. Bowen turn upon him and say, "The time has come when you must fall, but for this week the ax shall be suspended?" The poor little woman in Livingston-st. is the one who is held responsible, even for that. Is there a controversy between him and Mrs. Beecher at an earlier period, when she believes him to be treacherous to her husband, as treacherous to all else, the poor little woman in Livingston-st. takes the blame, and is permitted no longer to enter the house whose threshold he cannot cross. We find, too, that week, that Moulton, the restless intriguant, the born diplomatist, who believes that the highest diplomacy is the highest culture of the art of lying and deceit, he is busy. Plenty of occupation now. And these men gather together and form a plan of that campaign, which is to result either in the destruction of Henry C. Bowen or in the downfall of Theodore Tilton. That was the controversy then. As to Mr. Beecher, he was regarded merely as an important neutral, who should be turned into an armed auxiliary, and who would be the auxiliary of the one if he was not allied with the other. But the fight was between Tilton and Bowen.

Field Marshal Moulton is in charge of the campaign. "Theodore, you need allies." "What ally?" "You sent a note to Henry Ward Beecher; Henry C. Bowen was cunning. You signed it. He didn't. Suppose he delivers his note and makes peace with the man to whom he delivers it, and leaves you to prove your case. What then?" "I have no case. If Bowen abandons me I have given to Mr. Beecher the power to ruin me. That peremptory demand, published in *The Brooklyn Eagle* or read at a Friday night lecture-room, that insolent demand to Henry Ward Beecher would blast me forever." "Something must be done, Theodore; something shall be done." "Well, what can it be? If Bowen fails me, if he doesn't furnish the proof that there was some good cause for my charges, I am destroyed." "Have you no charge of your own, Theodore." [A pause.] "There was an old letter my wife wrote me some years ago, telling me that one night when Mr. Beecher was at my house, as he was going away

he said, 'What a pretty house this is! I wish I lived here.' I told her when I came home that man meant something by that. She denied it. But I have never been satisfied about it, and I believe, to this day, that he meant an improper approach, an overture to her of indecent communion with him." "That is it. Where is Elizabeth?" "Sick." "None the worse." Now, I do not go into details; I don't know what they were; you don't. But we both know results. We know that here was a necessity of silencing Mr. Beecher; here was a necessity ascertained, even Tilton admits, the next day, for he says then Bowen threatened to cashier him. There was a necessity that something should be done that should turn Mr. Beecher against Bowen, something that should bring Mr. Beecher to the right hand of Tilton, and enable him to coöperate with Moulton in reinstating Tilton in *The Independent*, or providing for him otherwise. What happened?

Now, I do not want, at this moment, to go on with the testimony in this immediate connection. I would rather call your attention to a little document some distance removed from this, which Theodore Tilton got up with the aid of his friend Carpenter, in the name of Elizabeth R. Tilton, and in her handwriting, on the 16th of December, 1872, to be shown to the Rev. Doctor Storrs with a view to the action of a Congregational Council. Let us get Tilton's own version of what was the probable subject of these interviews that week at Mrs. Tilton's house. The document begins in this wise, or rather contains this sentence. After allusion to the alleged communication to her husband of the fact in July, 1870, that Mr. Beecher had solicited her to be a wife to him, together with all that this implies, comes this striking fact—here you have Theodore Tilton's version of the matter six months afterward; that, you observe, is in December, 1870—"My husband felt impelled by the circumstances of a conspiracy against him, in which Mrs. Beecher had taken part, to have an interview with Mr. Beecher." How is this? There was then in this last week of 1870, between Christmas and New-Year's Day, a conspiracy against Theodore Tilton in which Mr. and Mrs. Beecher were actors, in which Mr. Tilton was to be a sufferer. What was that conspiracy that this woman was made to believe in, and to certify to? Why, it was to have him turned out of *The Independent* and *The Brooklyn Union*. Mr. and Mrs. Beecher had been the advisers of Bowen. Bowen himself admits that he was referred by Mr. Beecher to his wife, and that he saw her, and there learned the contents of the letters written by Mrs. Tilton to Mrs. Beecher, or Mr. Beecher, from the West. That was the conspiracy. Then you perceive that the instrumentality that they employed was the threat of Bowen, the advice of Mr. Beecher, the information from Mrs. Beecher, to convince this little woman that there was a purpose on the part of Bowen and Beecher and Mrs. Beecher to destroy him and her, and that, for the purpose of his and her defense, it was needful to have some charge against Mr. Beecher which should paralyze his arm and convert him from an enemy into a friend. And that is the full, the clear, the sufficient explanation of the letter which he extorted from her on the night of the 29th of December, and which was made the occasion of the interview of the following day. Without going further into detail, gentlemen, I am content to submit to your judgment whether it is not perfectly apparent that Theodore Tilton, on the Monday of that week, felt that his destruction was imminent, that it was to come at the hands of Bowen, that Bowen had entrapped him into making a charge against Mr. Beecher, under the false promise that he would sustain him in the charge and furnish the proof, and had then taken that charge to Mr. Beecher, and made it the occasion of putting him, Tilton, in the power of Mr. Beecher, so that he could destroy him, even if Bowen did not. He felt that that letter written to Mr. Beecher was a letter of destruction to him, unless he had some means of reclaiming it from Mr. Bowen's hands and putting Mr. Beecher himself in terror for his own reputation. Now, let us look at the acts of the parties. If Mr. Beecher were guilty when he received that letter of the 26th, you know what he would have done. He might not have left Plymouth Church; he might not have left the City of Brooklyn. But, if he did not, the first thing he would have done would be either to write or appeal orally to Theodore Tilton.

THE WALK TO MR. MOULTON'S.

My friend Judge Morris says that Henry Ward Beecher is a coward when he is in the wrong. All men are. Why was this man calm, fearless—fearless though threatened by a relentless enemy; fearless though the message was borne by an enemy almost equally relentless? Why was he fearless? He goes on with his duties of the week. He seeks neither Mr. nor Mrs. Theodore Tilton. The Friday night comes, and he meets the congregation that assembled there to join him in worship. Every duty of the week is discharged as usual. No, not discharged, for on his way to that place of worship, or just as he was leaving for it—enter Frank Moulton! He, too, had found his way to Columbia Hights, and for the first time in his life, in the storm of that Winter night, Frank Moulton crosses the threshold of the pastor of Plymouth Church to say to him: "You cannot go to your accustomed meeting; you must come with me, for Mr. Tilton desires to see you." "What is it about?" "He will tell you." They walk down together, and then occurs that dialogue.. "Bowen is a very treacherous man, very treacherous to you, Mr. Beecher, very treacherous to Theodore. Bowen can not be trusted." "What does Theodore want of me?" "He will tell you when you get there." "How it snows to-night." "Bowen is a very treacherous man"

"Cutting wind this," says Mr. Beecher. "Did it ever occur to you, Mr. Beecher, what a treacherous man Henry C. Bowen is?" "Almost there. It snows very hard to-night." "Mr. Beecher, what a treacherous man Henry C. Bowen is." Now, gentlemen, isn't it just as palpable as if it had been put in that bold and naked form that on that night Frank Moulton took Henry Ward Beecher down to Theodore Tilton, and carried him afterward up into that room with a view, not to Beecher's destruction, but with a view to the destruction of Henry C. Bowen, or to the reinstatement of Theodore Tilton in the throne from which he was to be cast down? That was the case. You do not expect in midnight arrangements like those that we can show you just what were the particular means these men used, and the particular purposes they had in view in this, that, or the other arrangement. But we know that they made all work together like the machinery of a watch till it should produce the one result, and they brought that machinery to bear so that Henry Ward Beecher from that time for the next three years was as completely under their control as the hour hand of the watch is under the control of the manufacturer who put together the machinery that made it. They were practicing upon a true but simple-hearted man. They were practicing upon one accustomed to confide in his fellow men. They were practicing upon one sensitive to every thought of dishonor, one full of generosity, one who, in another line of life, like Mrs. Tilton, was always ready to take reproach upon himself, always ready to give health, and strength, and vigor, and hope, and prosperity to another.

Let us look for a moment back to that night of the 29th when this woman is made to give a letter to Theodore Tilton, which shall enable him to procure an interview with Henry Ward Beecher. Now, the first thing that will arrest your attention is this. How does it happen that a husband who has been dishonored, finds it necessary to resort to this strategem in order to get an interview with the man who has dishonored him? Why had he anything to do except simply to write to Mr. Beecher if Mr. Beecher were guilty: "Sir, your criminal relation with my wife has come to my knowledge. Action must be taken, and at once. I will see you here at 8 o'clock this evening. If you need any assurance of your personal safety, I give it to you; but it is necessary for your sake and for mine that we should have a few words together." Would not that have brought him? Yes, if he were guilty, but not if he were innocent. Suppose he had written, "Henry C. Bowen charges you with preaching to forty mistresses in Plymouth Church. He told it to me confidentially fifteen years ago, and has repeated it a hundred times since, in as many confidential conversations. He told me so while you were his chief editor and his dependence. He was charging you with adultery when, if the charge was believed, it destroyed him and his paper. He charged you with adultery at the time when you were a favored inmate of his own family. He charged you with adultery when you pronounced the funeral sermon over the remains of his dead wife. He pronounced you an adulterer when you were baptizing child after child in the name of the Father and the Son and the Holy Spirit. Come and see me." Do you think Mr. Beecher would have come? There was but one person on earth who could write that which would bring Henry Ward Beecher to an interview with the man who had sent him that daring and insolent message on the 26th of December, calling upon him to quit his church, his chosen city, and his country. Who was that? Ah! that poor unfortunate woman. And how easy it was to convince her that there had been a conspiracy. "Yesterday, my wife, I had $15,000 a year, which was sufficient to provide for us, and at least for our *legitimate* child; to-day I am told that that is gone, and whom do you think it is gone through? Henry Ward Beecher! The same man who but ten days ago, with the aid of his wife, advised you to separate from me and remain with your mother; that is the man who has now turned upon me; that is the man who has deprived me of my livelihood and my hopes. I fear I am in his power unless I can have an interview with him. Unless I can have an interview with him—*with him*, all is gone. How shall I get it?" Why, she knew Mr. Beecher a great deal better than he did. "Just simply send word to him that you want to see him, and he will come. You don't need any letter from me." "Oh, no; but I must have something to threaten him with." "No threat would bring Henry Ward Beecher. Just send word you want to see him, and he will come." And you remember, gentlemen, that it turned out so. He did come. Though we got this letter for him, and supposed that this man would not come to see the person who had offered him that indignity, Moulton, who had it in his pocket, never had occasion to use it. A message with a threat that night would have prevented him from coming. I don't know that it would if it had come in the form of so cruel a threat as an unjust accusation by this poor woman. They thought they needed it. It is so certified in the paper Tilton took to Dr. Storrs, in the handwriting of his wife, and which he pretends was manipulated by Carpenter instead of himself. Well, they got it. How? Bessie Turner tells you. Mrs. Mitchell, the nurse, tells you. They tell you of the consultations that occurred before it was obtained; they tell you of the close-drawn curtains around that bed; of the doctor's precautions with a view to her singular weakness and debility; of the nurse's own fears on the 29th that she might not survive even until the following day. Moulton is there; Tilton is there; the nurse is turned out; Moulton goes away so that he shan't be a witness of what transpires; Tilton goes in and the letter is obtained, and a consulta-

tion occurs the next morning between him and Moulton. At night—*night—night*, just about the hour when the prayer-meeting is convened, Moulton goes to Mr. Beecher, and he is taken down for the purpose of this interview. I do not propose to deal with that interview, gentlemen. That falls within the province of my learned friend, the senior counsel.

PRESUMPTION IN FAVOR OF INNOCENCE.

But I do propose to make one or two suggestions bearing upon another point, that grows out of what I have already said. Gentlemen, if there were a shadow of truth in this story, do you believe that Henry Ward Beecher, when he was consulted as to a separation between Theodore Tilton and his wife, would have sent that wife *to his wife* to tell her story? Now, that is a question that is addressed to your intelligence and sagacity. Is it in accordance with the ordinary course of human affairs? Are you ready to believe it? Innocent, nothing more natural. Guilty, it is utterly, absolutely incredible. Another question. If it were true, as a matter of fact, that on the 3d of July Mrs. Tilton came down from the country as a volunteer to confess to an unsuspecting husband that she had been guilty of adultery, and with her pastor, do you believe that Theodore Tilton and she would have slept together that night, the next night, the next night, the next week, the next month, the next six months, the next twelve months, the next four years. Again; if, on the night of the 3d of July she had come and told such a story of her pastor, do you believe, when he afterward was in her house in the month of August, when she was sick, and by her request they had a private interview together *in her bed-chamber*, if he and she were guilty, and she had confessed her guilt and been his accuser, to a man of the vindictive malice, of the terrible power of hate of Theodore Tilton, that she would not have given him one solitary word of warning? Do you believe that for six months after that she would have permitted her husband and him to meet in the streets of the City of New York—nay, at his own house, which Mr. Beecher might at any moment have incautiously entered, and without knowledge that this man held in his hand the power of life and death over him? One more question, out of order of time, and yet within the range of topics! If it were true that she was a confessed adulteress, and that he would live with her for four years, writing and receiving letters like those which have been read in your hearing—if this were true, and the time came when they were finally to separate, to whom would you look for the separation? Would you expect the injured husband to drive forth the wife, or would you expect the criminal wife to leave the innocent husband?—leave him, not to join the paramour; leave him to live alone; leave him to depend upon the charity of those who owe her nothing; leave the man to whom she should look for support, and trust herself to strangers? Here it is the guilty wife that turns her back upon the innocent husband and will not return; the guilty that won't forgive the innocent! Again; there is another of these questions which arises out of the incidents of this case, and has a peculiar significance. We have all known something, seen something, heard something, and read something of the history of our fellow-men in ancient and in later days. Where, until Theodore Tilton set the example, is the instance to be found in the whole world's history of a husband who had forgiven his adulterous wife, who had had children by her, who professed to love her, taking from her a certificate in writing that she was a prostitute? Mark you, gentlemen, this man never did; but he swears that he did; and it is because I wish to expose the falsehood of his oath that I ask you the question. He did take from her a false certificate not reflecting upon herself, but accusing another. He took from her a false certificate that Henry Ward Beecher had made to her indecent proposals. But he tells you that, though he had forgiven her, though he had pledged himself never to injure the man who had wronged him, though the world did not know of his guilt or of hers, though even the adulterer did not know of his exposure, yet he, who needed no further assurance of his own dishonor, called upon his wife to write a certificate for Frank Moulton, that she had been prostituted and debauched! It is utterly incredible. The man has done mean things, and base things, but that was so mean and so base that he would have revolted from the attempt. But he did get a certificate of another kind—that was a letter. It was a letter addressed to him; it was a letter, not of confession, but of accusation. It was a letter accusing Mr. Beecher of having made indecent proposals to her. Now, have we proof of that? In the first place, gentlemen, we have the most explicit and conclusive evidence of it in the fact that that document, important as it was, was the subject, the night after it was written, of a most memorable conversation between Theodore Tilton and Henry Ward Beecher, of which both have given full and minute description at different times, on different occasions, to different parties, and in entire harmony—both agreeing that that document was not a confession of adultery, both agreeing that it was a charge of improper solicitations. Mr. Beecher gave it to you on this stand, in all minute particulars. Theodore Tilton, in December, 1872, according to his own confession, and with the aid of his own notes made at the time, and the phonographic notes of the conversations cotemporaneous with it, gave a written statement, which was *not* confirmed by Mr. Beecher, was not accepted by Mr. Beecher, which when read to Mr. Beecher aroused his indignation because of its perpetuating that indecent charge of *indecent proposals.*

Now, gentlemen, the same man who then wrote a state-

ment of what was in the paper that she signed on the night of the 29th, swears now that that statement was a confession of adultery. That night, he said in that statement—he said the language of the paper was: "Mr. H. W. Beecher, my friend and pastor, solicited me to be a wife to him, together with all that this implies;" and he says that statement, when made to him on the night of the 30th, Mr. Beecher repelled with a royal negative. But, gentlemen, we have better evidence than that of what was in that paper. Whatever the paper was, the original was in Frank Moulton's pocket. The copy was in the hands of Theodore Tilton, and he pretends he destroyed the copy that night. Ah, but he did not destroy the ineffaceable memory in the mind of Henry Ward Beecher of the contents of that paper. He said, "Mr. Beecher, if you distrust it, my house is but a few squares off; go down, ask Elizabeth, and she will confirm it."

MRS. TILTON'S RETRACTION.

He went. He asked. She confirmed the fact that she had made the statement. She admitted its falsity. She recognized his appeal to her, and recalled the falsehood; she traced with her own hand in writing the revocation of what she had written, and in that revocation, made by her, *the writer of the paper*, made to Mr. Beecher, the person charged in it, she recites the charge, and recites it as a charge of improper solicitation:

Wearied with importunity, and weakened by sickness, I gave a letter inculpating my friend, Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband.

Pointing, as you perceive, gentlemen, to the same conspiracy alluded to in the subsequent letter to Storrs.

That letter I now revoke. I was persuaded to it, almost forced, when I was in a weakened state of mind. I regret it, and recall all its statements. E. R. TILTON.

Then, feeling that she had not made it sufficiently, and frankly, and explicitly, but only in generalities:

I desire to say *explicitly*, Mr. Beecher has never offered any improper solicitations, but has always treated me in a way becoming a Christian and a gentleman.

Now, gentlemen, that paper, whatever it was, was confessedly in existence all through 1871. Whatever it was, it was confessedly in existence during a large part of 1872. It was the only paper on the face of the earth that charged Henry Ward Beecher with adultery. If the charge was anywhere, it was there. There was the man who sought to fix upon him adultery. There was the man who was, through 1871, insinuating to his confidential friends, and to those whom he supposed to be the enemies of Mr. Beecher, that he had committed adultery. There was the man who hated and would like to destroy him. There was the man who threatened the exposure of the "Apology," who threatened him with the exposure of his own letter—not to his face, but to others. And yet to no man on the face of the earth did he ever show a paper signed E. R. Tilton, charging Henry Ward Beecher with adultery. Moulton, who has not hesitated to say that he would take Henry Ward Beecher's life, if he could do it with the concurrence of a single person—Moulton, who has sworn in the spirit of a fiend—Moulton does not pretend that he ever saw in any paper, anywhere, a statement by Elizabeth R. Tilton, that Henry Ward Beecher had committed adultery with her. Tilton tells you that that paper was in Moulton's keeping. If it was in his keeping, do you believe he did not read it? Do you believe that if he did read it, he forgot it? The paper, he says, is destroyed. When destroyed? After the $7,000 was obtained from Bowen—not before. Was that important paper destroyed without even keeping a copy of it? And if a copy was ever taken, where is that copy? Even Tilton does not undertake to swear to you what that paper contained, except by implication and characterization. He calls it a confession. Moulton calls it a confession, or rather they make Mr. Beecher call it a confession. A confession of what? Where is the paper? Where are your shorthand notes of it? The man who, when Moulton came in from a visit to Henry Ward Beecher, proceeds at once to enter the conversation in shorthand for future use—did that man neglect to take a copy of the most important paper that ever was written in connection with this controversy? And Frank Moulton, you remember, stated that Mr. Beecher was fool enough to think after the "Tripartite Agreement" and the contemplated burning of the papers, that that "Apology" was burned. "I was no such fool," he says, "as to burn that paper. If I burned it, Beecher might turn upon Tilton and rend him." But the same man, who was not such a fool as to burn the Apology, tells you that he was such a fool as to burn the confession—the confession made by one of the actors in it. Gentlemen, there never was such a confession—never. That paper was an accusation. It was for a purpose; it was thought by them that they could get Mr. Beecher to an interview without the use of that paper. He came readily, cheerfully. He met Theodore Tilton. Tilton amazed him with his accusation. He denied it. Tilton referred him to the wife. He went down. He found her condition. He made his appeal to her. She said, "I accused you. The accusation is false. I recall it." He left her. The next day he was told that the woman who had made the false accusation, and who had retracted it, had recanted it, and that was his condition on that memorable 1st of January, 1871. Well, on that day—I will pass over all intermediate—on that day what is the condition?

THE PROCURING OF THE APOLOGY.

Not stopping to refer in detail to the conversations of the 30th or of the 31st, we come at once to the occasions when Moulton tells us the Apology was written; and under what circumstances was that written! I

will only allude to that now in brief, and for the purpose of introduction to another conversation. Tilton had assured Beecher in that interview on the night of the 30th of December that Mrs. Tilton's affections had been alienated from himself, and had been centered in him, her pastor, as the central and supreme being. This to Beecher was a great surprise. He was charged with having interfered in Tilton's family affairs, and advised this very wife, whose affections were so alienated, to leave her husband forever. That was true. He was told that he and his wife had made charges against the moral character of Mr. Tilton that were base and wanton fabrications. He did n't know but that was true. He was told more. "My wife charges you with soliciting her to personal dishonor." That he knew was true; but then came the challenge, and then, to his utter astonishment, came the conference of the 30th. On the 31st, after that retraction has been obtained, Moulton comes to him and demands that the retraction be returned. "Why should I return it?" "It was a mean thing." "Why mean to vindicate my honor from a false accusation." That paper does more. That paper intimates that Theodore Tilton coerced his wife into making an accusation, and on looking at the paper it turns out to be true. She then stated it. "Wearied with importunity," and almost forced, she had been led to make the retraction. "But that is not all, Mr. Beecher. What good does that do?" "Why, it, at least, is to vindicate me and my memory, if I die, from the assaults that may be made upon it—due to myself and to my own honor—due to the honor of my family that it should be preserved." "But, Mr. Beecher, of what value is that paper to you? The same woman can renew it again to-morrow. Besides, you don't know Theodore Tilton. He has a great many good points, and a great many weak ones; his temper is ungovernable, but you appeal to his magnanimity, to his generosity and good feeling, and he is one of the best fellows in the world. I know him from boyhood. All you have to do is to meet him in a spirit of frankness, and do what he wants, and you will find that he will not only not pursue this controversy with you, but he will be the best friend you have on earth. He hates Bowen, but he really loves you. What you have to do is to make peace in this matter."

Next day he comes to him, and that is the occasion of the apology, and talks the matter over. There are only one or two features about that that I want to call your attention to: that on that occasion Moulton devotes himself to establish to the satisfaction of Beecher, first, the entire and absolute innocence of Theodore Tilton. "Why," says Moulton, "you know how treacherous Bowen is. These stories started with Bowen. There has been something to confirm him, but that grows out of that mad woman, Tilton's mother-in-law. Why, Beecher, you know what Mrs. Morse is. There is where this trouble originated. She, no doubt, really believes Tilton to be one of the worst men in the world. If you were to credit her stories, you would believe he was the veriest adulterer that roamed the free pastures of Brooklyn. But there is nothing in it. Then, as to Bessie Turner. Why, Bessie Turner is his adopted child. Theodore loves her, and he would no more think of wronging her than you would of wronging your daughter, Harriet Leoville. As to Bessie, undoubtedly there were those little fondling caresses, which she would never have thought anything more of than any daughter, any school girl, except for Mrs. Morse; but Mrs. Morse put it into her head that it was Tilton's purpose to destroy her, body and soul. There is nothing in it." "Well, but, Moulton, Mrs. Tilton herself talks about Theodore. She told Mrs. Beecher so and so; she told me so and so about him and his irregularities." "Why," says Moulton, "there is nothing in that. Don't you know women like Elizabeth Tilton? Have you not seen enough of them to understand them? She is sick; she is fanciful; she is easily influenced by her mother; she is nervous; she is half the time in the family way; she has trouble with Theodore; she has trouble with her own children, and the whole of it is that the poor woman doesn't know which end he stands on half the time. Why, her mother comes and makes her believe anything. Then Theodore comes, and he makes her believe anything. The woman means no harm, but the truth about it is, Beecher, she is perfectly crazy about you." "Why, I never saw any evidence of that." "Why, Beecher, she loves your little finger better than she does the whole body of Theodore Tilton. And you see, this woman, whose stories about Theodore you credit, is just as ready to charge you, yourself, with an act of personal dishonor. You go to her and she retracts that; then Tilton goes to her, and she retracts the recantation. You see the ground has all slipped from under you." "Well," says Beecher. "I had no suspicion of this. I believed what I heard, and repeated it to Bowen. I told him what Mrs. Tilton told my wife, and what Bessie Turner told me, and I told him this man was so tainted he really ought not to be connected with this paper. Well, you see just where it is. You slandered Theodore. You have done him a great wrong. You have got him turned out of *The Independent*. Formal notice came last night. Here is a man who was in the receipt of $15,000 a year from those two papers, and he is turned out, and by your slanders; when, if you had just come and asked him, he would have explained the whole thing to you, or if you had come and asked me, or any friend of Theodore's; and then you turn on him, and, yielding credit to two gossiping women, you have destroyed Theodore; you have destroyed his reputation; you have destroyed Elizabeth; they have an unhappy home; you have been the means of breaking them up, and now what you have got to do is to join hands with me, and in some way or other must fully reinstate him." Now, it

was in just that condition that Mr. Beecher finds himself entering on the year 1871. Is this true? Now as to that Bessie Turner matter I can very readily understand; I don't know anything about the girl; the story was probable enough, but very likely that is the true origin of it. It may very well be that Mrs. Morse turned the story into the girl s head, that she means more than she did. "Mrs. Tilton—in view of her charge against me, it is perfectly evident she is broken down; she is crazy; there is something wrong about it. I ought to have been on my guard about it. If it is that I have really been the occasion of breaking up his family; if I have slandered Theodore Tilton, who was for so many years my friend; if I have brought discord into the house of one of my own congregation; if I have permitted this poor, broken-hearted woman to fasten her affections upon me to her own destruction, and the destruction of her household, and my own peril, what have I to do by way of reparation?"

Now, gentlemen, these are things not to be talked about. We feel, we *know* how it would have affected even us, and we are hard men of the world, accustomed to battle with life, to look things in the face, not treated as clergymen are, who are flattered by women and praised by men; who are admired and loved; who are surrounded by friends, and whose enemies are kept at bay; who are unused to the warfare of life, and who, when trouble comes, are so perfectly unprepared for it, unless it be that order of warfare for which they are better prepared than we. When these things happen, what should we expect of them? Now, let such a complication of affairs surround a man in our profession, of mature years, accustomed to affairs, fearless, self-reliant, resolute, ready for peace but equally ready for war, calm, self-possessed. What then? Suppose any such attempt were made upon a man like my friend, Mr. Beach, you could see that eye of his flashing with the fire that would not be content until it was seconded with a blow. But just look around this audience and say whether you cannot see, even from where you sit, men of the world—men of character? You would be exceedingly disconcerted. You would feel that this was a serious matter. What shall I do? Whom shall I talk with? My wife? What! Talk to my wife about being charged with dishonoring another man in his marital relations! No, no. My friend? What! Call upon him, tell him that I occupy the ignominious position of being accused by a woman, and a respectable woman at that! It is very easy, gentlemen, for us to see now what we would have done. It is not quite so easy to know what we would have done. But it is difficult to see, not what we would have done, but what any other man would have done. There are twelve of you. One would go one way; another, another; perhaps no two alike even among you twelve. How would Henry Ward Beecher act? Well, if we had in our midst about 12,000 Henry Ward Beechers, we should have the means of judging, because we could judge by the way one acted of how the others would; but we have no more 12,000 Henry Ward Beechers among us than we have 12,000 Theodore Tiltons among us. [Laughter.] They are men greatly unlike, as opposite as the poles, but they are men, each of them, who have few parallels, and you cannot say with absolute certainty that because you know how Gen. Tracy would do, or how Mr. Shearman or Mr. Howard would do in such circumstances, you are not sure that Beecher or Tilton would have acted in precisely the same way with either of those gentlemen. And yet it seems that there is some sort of Procrustean bed which every Beecher must be made to fit, and Theodore Tilton fixes the dimensions of the bed. Whatever Theodore Tilton would have done under those circumstances, unless Beecher did it, Beecher is guilty. Well, gentlemen, what did he do? That is the first thing. Did he write anything? Yes, he wrote something; not much—not much. All that he wrote that day was, not those three sheets—Frank Moulton wrote them. The only lines Henry Ward Beecher wrote, so far as we know, on the 1st of January, 1871, are these: "I have intrusted this to Moulton in confidence. H. W. Beecher." That is the record of that day. Does that mean, "I, Henry Ward Beecher, debauched Theodore Tilton's wife?" It don't say so, does it? Now, the man who took that paper, and cherished it, kept it in his tin box, secured it in his safe, carried it along in his pocket, showed it here, there, and everywhere, had it photographed, used it as a weapon, used it for the destruction of Tilton's enemy—that man had something much better than those two lines. If Theodore Tilton tells the truth, all he had to do was to feel in that pocket and take out a paper signed by one of the most respectable women in Brooklyn: "Henry Ward Beecher committed adultery with me on the 10th and 17th of October, 1868, and was in adulterous intercourse with me from that time during the period of 16 or 18 months;" and yet they would have you believe that, having evidence like that, they needed this, and having no evidence but this, they burned that!

* A CORRECTION OF THE RECORD.

Mr. Beach—It is about 1 o'clock, and I want to draw attention to a certain matter. If your Honor please, in the report of the argument made by Mr. Porter on yesterday, it appears in his commentaries upon the letter of the 31st of February——

Mr. Porter—That must be wrong.

On the 31st of January, 1868. It is the letter which commences, "My dear husband, I have just returned from Mattie's and saw your bust," &c. My friend Porter comments upon running and interrupted quotations

* *See page* 573.

from that letter, and this paragraph appears in the report of THE TRIBUNE:

And she, appealing to that earlier image, to that purer man which she, in her woman's simplicity, describes as "your former loveliness," says:

"Though I, by my indifference and coldness, and rebuking of your sins, have brought you to abandon the Savior whom we loved, to go after strange gods and strange women, yet I can accept that destiny, even without the forgiveness of God, if it will only restore you, my beloved husband, the husband of my youth, if it will restore you to your former loveliness, and reconcile you to that Being who is the God of your children and mine, and to Whom we must look for mercy, for forgiveness, for salvation."

That appears in the report, Sir; and I think is properly by the publisher put in the report as a quotation, because my friend then follows in apparent quotation with the language: "Then again, returning to that spirit at which the world scoffs," and correctly quotes from the letter. It was an inadvertence, Sir, into which my learned friend fell. There are no such expressions in the letter such as are here assumed to be given; and it was undoubtedly intended, on the part of my learned friend, as a paraphrase of the sentiments of the letter. I called the attention of Mr. Abbott to the circumstance, and he very kindly referred me to the original letter, and says that the passage should not have been printed as a quotation, that it is a mere statement, in substance, of the spirit of the passage, derived from the act of reading portions of the letter which had before been made by my friend; and I make this statement for the purpose of preventing such misapprehension in regard to the true language of the letter.

Mr. Porter—I am obliged to my friend for mentioning it, for my eye happened to fall this morning upon an entirely different passage in another paper, in which I found that I was made to impute to Mr. Tilton language which I was using myself; and also, on another occasion, where language which was really used by the writer of the letter seemed to be my own. But every one understands how utterly impossible it is for the reporters to know at what precise point the speaker stops reading and proceeds to talk. I think the jury throughout are able to distinguish; but my voice being in a condition in which it is even difficult for them to hear, they cannot be at the same time looking up to see when I am reading and when I stop reading.

AN ADJOURNMENT TO MONDAY.

Mr. Evarts—I have asked my learned friend and associate, Judge Porter, how he feels in regard to strength. The sudden heat, as your Honor will feel, and I hope permit us to feel, is somewhat debilitating, and Mr. Porter does not feel so adequate as to proceeding after recess as to make him wish to proceed, unless your Honor might think it wholly unreasonable on our part to adjourn, it being the last day of the session, until Monday. How inconvenient that will be to any one else I don't know, but every one has been very obliging on the part of the opposing parties, and your Honor has always been, and the jury have always been, and we must submit to your Honor in this case. The heat is excessive, and Judge Porter feels that he should like the recess, if your Honor will give it for those two hours.

Mr. Beach—If your Honor please, I have resigned myself to the fatalities of this case, and wherever it drifts I have to go with it, and must bear all the pernicious consequences of its tedious prolongation. I know how difficult it is to speak consecutively for several days, and I realize the fact that this sudden but agreeable change in the weather has made it still more oppressive to do so, and if my learned friend, Mr. Porter, feels the slightest inconvenience from the continuance of his argument, although I deprecate unnecessary prolongation of this trial, I must certainly assent to every desire he may intimate in that direction.

Judge Neilson—Then, gentlemen of the jury, we will adjourn until Monday morning at 11 o'clock.

WHEN THE END MAY BE EXPECTED.

Mr. Beach—I would like, if your Honor please, if it would be convenient to my learned friend, that he should give us some intimation as to the length of time he will occupy. We had an intimation from my friend, Mr. Evarts, and I believe it was submitted to your Honor, that they would probably occupy five days in the summing up of this case. I do not mean to say, Sir, that your Honor ought to exercise your discretionary power in the limit of this debate; but in consequence of a misunderstanding in regard to your Honor's views, which occurred earlier in the commencement of this case, the arrangements upon our side were so made that the duty of submitting the case on the part of the plaintiff has devolved wholly upon me, and it seems to me, therefore, (as I certainly shall not attempt to discuss this case to the extent which both my learned friends will occupy), that there ought to be some reasonable limitation to the extent of this discussion. I am very sure that I shall not be obliged to trouble your Honor more than a couple of days, and we have already occupied three days—two days and a half, and I think it is due to us that we should have some intimation as to the close of this discussion on the part of my learned friends. I certainly feel that it is a very unequal discussion, with my two distinguished friends occupying so much time, with their great ability, as they are to be met only by what little I can say on behalf of the plaintiff.

Mr. Evarts—I can assure my learned friend that we do not take the same view of our opponent that he is pleased to express, and we certainly have no very great disposition to congratulate ourselves upon our ability to cope with him. I think, so far as the question now arises, I

can fairly promise that the two hours that are now given by your Honor, and with the concurrence, I hope, and the indulgence of the jury, will not procrastinate the close of Mr. Porter's argument beyond that time, that no additional length of time in his argument will arise from those two hours being omitted. I think I can fairly promise that. Beyond that I cannot go.

Mr. Beach—Well, that gives us no idea whatever of the length of time which my friends ask for the discussion of this case. Your Honor is very well aware that, by the rules of court applied to ordinary litigations before it, but an hour or two hours in courts in *banque* are asked or permitted a counsel for the discussion of the most important cases. I have not supposed your Honor would make any arbitrary limitation restraining counsel in debate of this case, but it has reached now a position where it seems to me we ought to have some intimation, liberal, as to the time which is to be occupied on the part of the defense.

Judge Neilson—It would be very desirable certainly, and would be, perhaps, convenient to you. I have the impression—I don't know where I got it—that Mr. Evarts might occupy next week, and, for fear that I may have committed a mistake, I wrote to a friend in the country, who was very anxious to hear Mr. Beach, and stated to him that Mr. Beach's time to begin his argument would be the week after next.

Mr. Evarts—I will add to that, that I refused to make an appointment for the end of next week, because it would deprive me of the pleasure of hearing Mr. Beach's response. I have reserved next week. A very important engagement was offered me at Washington, which would take me away from this trial.

Mr. Beach—My friends are very gracious and complimentary indeed, but I don't get any satisfaction on the main point. We don't even get the assurance from my learned friends that they will close in the coming week, and I think we are entitled to it.

Judge Neilson—I think I will answer for them that they will close next week. I think I will see that it is done by Saturday.

Mr. Evarts—Or even Sunday.

Judge Neilson [to the Jurors]—Well, gentlemen, we will separate now until Monday morning, at 11 o'clock.

The court thereupon adjourned until 11 o'clock Monday.

EIGHTY-NINTH DAY'S PROCEEDINGS.

JUDGE PORTER'S ARGUMENT NEARLY COMPLETED.

JUDGE PORTER'S OPINION OF MR. MOULTON'S RELATIONS TO THE CASE—MR. TILTON DECLARED TO BE THE MASTER AND MR. MOULTON THE MINION—THE LETTER OF CONTRITION ANALYZED—MODES OF EXPRESSION DECLARED TO BE UNLIKE THOSE OF MR. BEECHER—SEVERAL FAMOUS PHRASES ASCRIBED TO MR. TILTON'S RHETORIC—MRS. MOULTON'S TESTIMONY REVIEWED—SHE IS DECLARED TO HAVE SWORN FALSELY ON ACCOUNT OF HER HUSBAND—EVIDENCE OF OTHER WITNESSES TOUCHED UPON.

MONDAY, May 24, 1875.

Judge Porter's address was marked by the same general characteristics as on the preceding days. He was forcible and denunciatory, but at the same time argumentative, and on no occasion has he succeeded better in holding the interest of the audience and the jurors. He is seldom interrupted except by occasional suggestions from Mr. Shearman. Once to-day Mr. Shearman caused a laugh by suddenly jumping up, when Judge Porter was in the middle of a sentence, catching the orator by the arm, and whispering in his ear. Judge Porter had slips of the printed testimony pasted upon sheets of paper, from which he frequently read extracts in the course of his argument.

The current of invective in Judge Porter's speech was partially turned from Mr. Tilton to Mr. Moulton to-day. In analyzing the Letter of Contrition the lawyer, in a manner, contrasted the two men. "Tilton," he said, "is a man of real ability. It is of the rhetorical order, it is true; but as a rhetorician and a writer Theodore Tilton to-day stands one of the foremost men on this continent. Frank Moulton"—with a contemptuous manner and tone—"he struts in borrowed plumage, and makes the most of it." Mr. Tilton, and not Mr. Moulton, was declared to have been the master from the beginning. An elaborate verbal analysis of the Letter of Contrition was entered into by the orator. The fact that in the sentence, "I can ask nothing," &c., there is a blotted "t" at the end of the word "can" did not escape the lawyer's notice, and he made use of it as an argument against the probability of Mr. Beecher's having been the author of the letter. "I can't ask nothing" was, he said, an expression which a man trained in letters like Mr. Beecher was incapable of making. The argument was that Mr. Moulton had

written the words, and Mr. Tilton had run his pen through the superfluous "t." In the same careful, scrutinizing way, Judge Porter went through the letter, basing arguments on the most unexpected suggestions. The expressions, "paroxysmal kiss," "nest-hiding," "the brink of a moral Niagara," etc., were analyzed, and declared to be like Mr. Tilton's mode of writing, and not like Mr. Beecher's. Mr. Beecher did not express himself in that way, said Judge Porter. His sentences were full of thought, and not mere sounding rhetorical expressions. There was much fine sarcasm in the manner in which the orator described the attempts that, he said, had been made to ascribe the origin of the phrase "nest-hiding" to Mr. Beecher.

Speaking of Mr. Beecher's Life of Christ and of Mr. Fullerton's remark about the possibility of Mr. Tilton's writing the life of Judas Iscariot under certain circumstances, Judge Porter exclaimed, "We might have suggested whether if Frank Moulton had happened to be one of the Twelve, Judas Iscariot would have pocketed those 30 pieces of silver. He spoke with great severity of the alleged pressure brought to bear upon Mrs. Moulton to make her swear falsely. Her story of what she had said to Mr. Beecher in the way of censure of his conduct, and advice as to what he should do, Judge Porter declared to be improbable, and inconsistent with her character. A stir ran through the audience when the orator with intense earnestness exclaimed, "That story would never have fallen from her lips, if God had not visited upon her the calamity of binding her—I hope not beyond this life—to a man like Frank Moulton!"

The testimony of Mr. and Mrs. Ovington, of the colored witness Gray, of Jackson S. Schultz, and others, was touched upon. Judge Porter commented in severe terms on Mr. Moulton's alleged threat to "make it hotter than hell" for a person who should testify against him, and on his expression about shooting Mr. Beecher. Portions of the report of the Investigating Committee were gone over toward the close of the afternoon session.

THE PROCEEDINGS—VERBATIM.

MR PORTER'S ARGUMENT CONTINUED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—If any of the gentlemen connected with the press have not yet signed their names in this book, they will find it with the Clerk. There are only 80 names as yet, and that seems to be only a part of the number. Is the editor of *The Toronto Globe* here, and of *The Bangor Courier*, who were here on Saturday, and who would be in again? I would be happy to see them at the intermission.

Mr. Porter—If it please your Honor—Gentlemen of the Jury: I can give you at least the assurance that whatever of your time I will take will be so much withdrawn from that which would otherwise be used by Mr. Evarts. Our arrangement upon that point is definite, and while I would most gladly have left the whole of the rest of the argument to him, he feels as I do, that it is due to him, in view of the extent of his labors in previous stages of the cause, that I should so far, at least as I can consistently with my own waning strength, relieve him in turn from the heavier burden of the mere details of the argument. He is unavoidably detained to-day, and I shall therefore be under the necessity of occupying to-day at least, but I hope that he will be able to take my place in the morning.

PECULIARITIES OF THE LETTER OF CONTRITION.

At the time of the adjournment I was adverting to the paper once known as "The Apology," recently as the "Letter of Contrition," for even in so small a matter as nomenclature this case has been constantly growing. It is a very curious paper. My friend, Judge Morris, is absent, and I have not, therefore, the original, but if the jury will be kind enough to look at the imperfect and reduced photograph it will serve sufficiently to explain what I desire to call their attention to. [Mr. Porter here handed to the jury *The Graphic* reproduction of the letter.] You will be struck with one thing in particular in connection with that paper. It is the first instance, probably, in all your observation and experience of any human being writing a letter to himself. It is not possible. Moulton says it happened. I don't know but it did. Another extraordinary feature about this letter, that the man who writes a letter to himself addresses himself as "My Dear Friend Moulton," a somewhat exaggerated form of expression, it would seem, for a man to apply to himself, and arising out of a friendship then of 48 hours' duration. Another noteworthy feature in the paper, and that is that it purports to begin and to end with a declaration of the trust which this scoundrel betrayed. "In trust with F. D. Moulton." "I have trusted this to Moulton in confidence." Another noteworthy feature of it is that if Henry Ward Beecher dictated that letter, word by word, from Alpha to Omega, as Moulton deliberately swears, it is the only paper he ever dictated, and contains the only sentences he has ever uttered since he came to man's estate, that were not even common, good, grammatical English. How did it happen that this man, a master in every intellectual department, an orator who, if he were in a

mad-house, would still be eloquent, comes the moment he gets into the presence of his "dear friend Frank Moulton," to be a puling school girl, who can't write his mother tongue? There is another still more noteworthy feature of this letter in connection with the evidence of Frank Moulton, and that is, Henry Ward Beecher directed him to write it, and dictated every word of it, heard Moulton read every word of it, approved every word of it, read it through himself, and then when Moulton asked him to sign it, did not sign it. Why not? On his explanation it is perfectly obvious why he should not sign the paper. On Moulton's how is it comprehensible that the man who was the author of the letter, who intended to write it, who dictated it, heard it, approved it, refused to sign it, and puts in the corner, for no purpose of disguise, for it is his own handwriting—puts a certificate at the end of that paper, "I have trusted this to Moulton in confidence." Why, gentlemen, every one of you know how that was done. Then that tea bell rang and Frank Moulton gathered together his sheets; he says. "You had better sign this." "Why, certainly not; it is not my letter." "Oh, well, it will do better with Theodore. Put something; just state that you trust this to me in confidence." Anything to get his name there. Moulton saw that he had his confidence and wanted his name. He saw that he trusted him, and he wanted him to certify that he was trustworthy. He knew what he had written there, Beecher did not. And he knew what he wanted written there, and Beecher wrote it. The one confiding as *Othello*, the other treacherous and snakelike as *Iago*.

AN ESTIMATE OF MOULTON'S ABILITIES.

In this connection, gentlemen, permit me—for I cannot dwell on these topics, and this more particularly belongs to the department assigned to my senior associate—permit me in this connection to allude to another feature in this case. Frank Moulton is a sham from the beginning. Theodore Tilton has given him the reputation of being a literary man. He has given himself the reputation of being a man of large and boundless wealth. He has acquired the cheap reputation of generosity by telling people what he would do in the way of munificent gifts if time and tide permitted. Tilton is a man of real ability; it is of the rhetorical order, it is true, but as a rhetorician and a writer Theodore Tilton to-day stands one of the foremost men on this continent. Frank Moulton—he struts in borrowed plumage, and makes the most of it. In the course of this very controversy he acquired a reputation very unmerited, and he little understood when Gen. Tracy and I were examining him the effect of the answers he gave; and the man who went from the stand advertised as the champion witness of America had no thought that he had been scuttling his own ship through the 14 days he was upon the stand

MR. MOULTON'S LITERARY PRODUCTIONS THE WORK OF OTHER MINDS.

On the simple point of literary ability, will you bear in mind, gentlemen, that Frank Moulton confesses that those letters which he wrote to Mr. Beecher, and which were afterward published in *The Graphic* romance, and in every newspaper in the land, and which were so much admired as specimens of sharp, keen literary point and spirit, were copies from Theodore Tilton's drafts; that when they were not copied they were dictated to him; and when there was real dictation, gentlemen, you don't find this kind of dramatical blunder which appears in this apology. When there was real dictating he wrote English, and masterly English, for it was the English of Theodore Tilton. To those two statements which were put forth to the world, which have given him, I might say, not merely an American but a European reputation for malignancy, for bitterness, for adroitness, but also for a high order of literary ability, he is compelled to confess that each of them, from the first word to the last, came from the pen of a celebrated American statesman, and that they were the result of two weeks' labor at Narragansett by himself, by Benjamin F. Butler and their associates. Why, the very letters that he wrote to Henry Ward Beecher, speaking of Theodore Tilton as an absent man, to whom he was under honorary obligations, which would not permit him to return to Mr. Beecher his own property, nor even permit him to look at it; one of those letters was written by Benjamin F. Butler, and the other by Theodore Tilton. The very sentence in which he tells him on the 5th of August that he will see Mr. Tilton, and endeavor to procure his consent that he (Beecher) may see his own documents, then in the hands of Frank Moulton, was penned by Theodore Tilton.

TILTON THE MASTER, NOT MOULTON.

Moulton has attempted to convince you through the whole of his testimony that he was the master and that Tilton was the minion. Not so, not so. Tilton was master from the beginning. It was in his diabolical reign that all these crafty devices wrought out with the skill of an artisan bred at Vulcan's forge. It was he, he who gave direction to Frank, and Frank Moulton's talk about his grinding Theodore Tilton to powder, and his being ready to smite him to the earth if he attempted to crucify Henry Ward Beecher, is the talk of the braggart, and the pretender, and the liar. I have said, however, that there were other circumstances in this case to which I ought to advert, for the purpose of enabling you to appreciate this apology. Of course, it is not of the slightest moment to the issue whether or no Mr. Beecher is guilty of adultery if Frank Moulton be the finest scholar in the land or an ignoramus. He is neither. It is significant, however, in another aspect, so that you may read and understand the man.

COUNTERFEIT PHRASES IMPUTED TO MR. BEECHER.

Great mischief has been done to Mr. Beecher everywhere by the publication of letters in which language is imputed to him of an extravagant and sensational character, and such as he never employs, and everybody was at once prepared to say that inasmuch as Mr. Beecher is a man of strong and vehement expression, that is Beecher. Gentlemen, do you suppose that if a scoundrel wants to forge your name, he won't make it as much like your genuine signature as he can. Do you suppose that a man of the brain and the craft of Theodore Tilton when he was undertaking to prepare a way for destroying his enemy would not see to it that there should be every work of likeness at least that he could devise. Now observe. The declarations that are attributed to Mr. Beecher by Tilton, by Moulton, and, I am sorry to say, by Mrs. Moulton, all bear the stamp of Theodore Tilton's mint. You remember that significant word "paroxysmal," which to this day furnishes occasion for those who are unfavorably disposed to Mr. Beecher to impute to him a base and an infamous crime; and yet it is a part of our public history that that "paroxysmal kiss" was never heard of from the lips of Mr. Beecher save by two men—Theodore Tilton and Francis D. Moulton. In the first place the expression itself is absolute nousense, and one of which Mr. Beecher is utterly incapable, but it is none the less Tiltonic; and there is the difference between the man of brains without heart and the man of brains with heart. When Beecher speaks, he speaks at once from the fire above and the heat within, and everything that he says comes leaping, living, burning from the heart; but the sham man, who thinks all there is in words is the sound of words, uses these incongruous, unfit forms of expression, and gives to them the *outre* significance that he desires them to take. For instance, on that night, that snowy night, Mr. Beecher is said to have taken occasion to deliver himself in this wise to a man who until that day had never crossed his threshold and to a man whose threshold he had crossed for the first time that night, not in answer to a question, a purely voluntary thing on his part: "I stand on the brink of a moral Niagara." Now, that is Theodore Tilton; it is not Henry Ward Beecher. Do you think Henry Ward Beecher would talk about a moral Niagara any more than he would about a moral haystack or a moral swamp? It is not the man. With him words have meaning; they are alive; there is thought in them; there is significance in them; there is coherence in them; but with Tilton "the brink of a moral Niagara" brings together incongruous ideas which to him have a rhetorical charm, and they are put into the lips of Henry Ward Beecher as his language, instead of the language of Theodore Tilton. I might multiply these illustrations, which are to be found running through the testimony of Tilton himself, and Moulton, and of Mrs. Moulton, imputing language to Mr. Beecher such as he never did and never was capable of using. It is against the moral constitution as well as the instinctive good taste and good sense of the man. Now, that "paroxysmal kiss" was a lie, and you know it cost Moulton $5,000—just that single lie; and yet you take up a country newspaper that happens to be hostile to us to-day and it will talk to you about Henry Ward Beecher's "paroxysmal kiss," of the woman whom he attempted to ravish.

THE EXPRESSIONS IN THE CONTRITION LETTER.

Allow me now for one moment to read this paper, and see whether you believe that a man like Henry Ward Beecher, deliberately dictating word for word, wrote such sentences as these: "I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God." "My God," as if he kept a private god of his own, and set Tilton and that god side by side, and he kneeling alternately before the one and before the other. Mr. Beecher uses strong, earnest blazing, glowing thoughts and words, but he never talks like that. Mr. Beecher, at least, would have known, if he had been capable of writing such a sentence as that, he would have known better than to end it with a comma and to continue it in these words: "as I do before my God, he would have been a better man in my circumstances than I have been." Which? God or Tilton? The immediate antecedent is the Divine Being Himself. There is an absurdity in this that carries in itself absolute conviction that this is the work either of a bungler or a knave. "I can"—"can't;" now, do you believe, gentlemen, that Henry Ward Beecher ever found occasion to say "I can't ask nothing?"—that is the way it was originally written. I might do that, for I am careless in my forms of speech; I am not a trained rhetorician; but Theodore Tilton can't do it, Henry Ward Beecher can't do it, Judge Neilson can't do it, my friend Mr. Beach can't do it; it is a form of expression that cannot pass his lips. Why, just as impossible as for a veteran to run away before the battle. Men who are trained understand what they are trained to. They maintain their position. Men who are trained in letters understand the use of language. "I can't ask nothing except—" Now, that "t" is blotted out. Do you think Frank Moulton, who made the mistake, discovered it? Not a bit. I will tell you whose hand it was that ran the pen through that "t"—I don't need to. "I can't ask nothing except that he will remember all the other hearts that would ache—" Now, you can see that if Henry Ward Beecher began such a sentence it would have an end somewhere; it would not be cut right off in that way, chopped off like half of a child, leaving the other half to represent the whole body of it.

That is not the way. You have seen this man; you know him; you have listened to him eight or ten days; you have lived with him; you know his way of talking. "'I will not plead'—that wont do! That wont do! He must have said something more than that—what was it?" "I really don't remember, Tilton." There is the thing itself; [handing the letter to the jury], and when Tilton came to read that: "That wont do!" Oh! "'For myself'"—"'I will not plead for myself'—that is it." So, that is written. Well, of course, Frank was there; the pen and ink there. They would have you suppose that there was no pen and ink anywhere except at Henry Ward Beecher's, and that that could never have been written unless it was written there! It is enough for my purpose that even there he had to correct it. If he did it on the spot, it shows the work of a bungler, it shows that he did not write from the dictation of Henry Ward Beecher. Again, "I even wish that I were dead." "Even"—that presupposes something. What does that "even" refer to? Any intelligent scholar will say to you that the man who wrote that did not understand language; or else, that there is an omitted sentence; there was something that preceded it. "I even wish I were dead. But others must live and suffer. I will die before any one but myself shall be inculpated." And yet both these men swear that this was an admission of adultery; that Frank Moulton took it as such; that Theodore Tilton understood it as such, and that a man who intended to admit that he had committed adultery does it in this way—"I will die before anybody but myself shall be inculpated." It is unilateral adultery. Tilton don't do things on the Divine principle; he rejects that as obsolete. When He created human beings, even the inferior animals, "male and female created He them." But here is a case of male adultery. What a foolish thing it was to create Eve at all, wasn't it? Adam could have been the progenitor of all the posterity that has sprung from both, according to the theory of Tilton. You perceive, gentlemen, that the very language which is here employed utterly excludes the idea that Henry Ward Beecher was confessing adultery, even if this had been his writing instead of the writing of Frank Moulton. "All my thoughts are running toward my friends, toward the poor child lying there and praying with her folded hands." Now, observe whom this is to. Frank Moulton represents this as being in a letter to him who had declared that night that he was a heathen, that he cared for none of these things. He represents Mr. Beecher as saying to him, "All my thoughts are running toward that poor child lying there, praying with her folded hands." I have n't a doubt that Mr. Beecher did, in the earnestness of his soliloquy and his self-reproaches, speak of her. But you see that this man has merely caught detached expressions. He had been an admirer of Theodore Tilton, had been worshiping him all his life, from the time they were at school together, and "folded hands" seems to him to be eloquent, and "lying there" was eloquent, and "sinned against" was eloquent; and all these phrases seemed to him to be just the thing that Henry Ward Beecher should write, and that other men should give him credit for. "She is guiltless"—an adultery in which the adulteress is guiltless! Sinned against, bearing the transgression of another. Her forgiveness I have. I humbly pray to God that He may put into the heart of her husband to forgive me." Gentlemen, you can look at that [handing it to jury]. And then I will ask you if in the mind of one man on that jury there remains a doubt that that "it" was put in afterward at the instance of Theodore Tilton, who saw that it was necessary to make sense. Look at the ink. Look at the hole in which it is crowded. "I humbly pray to God that He may put *it* into the heart of her husband to forgive me," and then follows, "I have trusted this to Moulton, in confidence. H. W. Beecher" —reading it continuously—it keeps right along. He signs it. Of course you will see the manner in which the signature is attached to the bottom.

Gentlemen, I have perhaps detained you too long on this subject (although that is a question which will be discussed by Mr. Evarts). It seemed to me so palpably absurd to suppose that the man who swore that that paper was dictated word for word by Henry Ward Beecher, and that he read it, and that he afterward signed it, could be believed! The paper itself, supposing him to have been capable of writing it, does not convict him of adultery; it is inconsistent with adultery. But I use it for another purpose. The man who swears that Henry Ward Beecher wrote it lies. He is an untrustworthy witness; he is not to be believed; he is not to be believed when he swears to that; he is not to be believed when he swears to any fact in regard to which his oath is opposed to the oath of an honest man.

"NEST-HIDING" DEFINED.

As illustrative of the same kind of trickery, gentlemen, which runs through the whole of this case, and which has led really to a great deal of public misapprehension, let me refer for a moment to the letter of May 3, 1871, page 84. Now, please to remember the circumstances under which Mrs. Tilton writes this letter, or note, to Mr. Beecher. He was her pastor. She knew that she had made a false accusation against him; she knew that, although she had retracted it, yet she had been induced in another form to repeat the accusation. She honored him; she felt self-convicted for the wrong; she felt, as was true, that it was not in his heart to reproach her; that he appreciated the circumstances under which it happened; and she writes to him, as her pastor, he not being willing to see her, and she having no opportunity to talk with him personally, this little note:

Mr. BEECHER: My future, either for life or death,

would be happier, could I but feel that you *forgave* while you forget me. In all the sad complications of the past years my endeavor was to entirely keep from *you* all suffering; to bear myself alone, leaving you forever ignorant of it. My weapons were love, a larger untiring generosity, and *nest-hiding!*

What is the occasion of that letter? Is it a letter of assignation, as this man would have you believe? Is it a letter of an adulteress to an adulterer, exulting over past lasciviousness? No; it is the letter of an humble, a broken, a contrite woman, to the man whom she has wronged. She perfectly understood that he knew how it was that she had come to commit the wrong; that there had been those household troubles of hers, and that in the course of those troubles she had become so entangled and embroiled as to be brought into the situation in which her husband was able to bring her to make that false accusation. And she, touched by the feeling that Mr. Beecher did not recognize her, did not seek her out in the congregation, and that he had the feeling while he said no word of unkindness—that he had the feeling that he could not have more to do with Elizabeth Tilton, says, "Oh, may I have the assurance that while you forget me you also forgive me?" Now, you will remember, as a part of the literary history of this case, that it was stated, and improved upon with great adroitness by Benjamin F. Butler, that keen and sharp-sighted lawyer, and that effect was given to this in this way, "Mr. Beecher and Mrs. Tilton, through their long course of adulterous intercourse, had been in the habit of defining it by the use of the term 'nest-hiding,' and she casually introduced into this letter that expression familiar to them, but unfamiliar to the public." Of course I am not using the exact language, but the idea. You had occasion to testify when you were sworn as jurors that you had read these publications which had appeared from time to time. Now, don't you see there the art of Theodore Tilton and the execution of Frank Moulton? Never since Henry Ward Beecher was born, so far as his recognized and recorded utterances go, has he used that word "nest-hiding"—never—except as he used it on this trial, and in repudiating the imputation that was cast upon her. If the truth were that that was a phrase that they had been in the habit of using, it was all important to prove it. If that was a phrase that was familiar to Mr. Beecher, he has been writing books, and books, and books, through 25 or 30 years, and they have all been searched and examined, and "nest-hiding" cannot be found there. But my ingenious and adroit friend, Judge Fullerton, goes through "Norwood," and he finds a reference there by Mr. Beecher to a robin and its nest, and he says, "Unquestionably, they got the term 'nest-hiding'—she got the term 'nest-hiding' from Henry Ward Beecher's 'Norwood.'" Well, oddly enough, if you will look at any concordance of Shakespeare, you will find Shakespeare in more than half a dozen of his plays makes the same reference, though in other connections, which is to be found in "Norwood." And, without being myself a literary man, I think that I can say with entire confidence that you could scarcely look through the works even of a stern philosopher like Lord Bacon without finding similar illustrations; for one of the peculiarities of great men, of men of genius, is that they see and use for the purpose of illustration all those analogies presented in natural objects, or in the ordinary course of affairs, and vivify them into life, and make them weapons of power. Shakespeare would be immortal if it were for nothing else than that the very growing of a blade of grass carries to him a significance which enables him to give a point to it in a play which will endure through all generations. You cannot go next Sunday morning to hear Henry Ward Beecher preach without coming away with some recollection of a phrase cut from nature, vivid as Shakespeare himself, vivid as old Homer—those things which impress men of warm imaginations, high genius, and keen observation. It is an utter absurdity to suppose that that casual use of a phrase in which the word "nest" occurs is to give a significance to a compound word where the sense is perfectly obvious. Now, what did she mean by "nest-hiding?" They say "adultery." Now, I will read it, and when my learned friend [Mr. Beach] comes to comment upon that letter I want him to summon all the resources of his ingenuity, and exercise all his commanding power of analysis and illustration, and make you understand, if he can, how "nest-hiding" there means "adultery." Now, if it means that, the substitution of the word will make good sense. Now, let me read the letter over once more, as it is short:

MR. BEECHER: My future, either for life or death, would be happier could I but feel that you *forgave* while you forget me. In all the sad complications of the past years my endeavor was entirely to keep from you all suffering, to bear myself alone, leaving you forever ignorant of it. My weapons were love, a large, untiring generosity, and"

adultery! Is that the tone of that letter? Do the parts harmonize if you substitute the word "adultery" for the word "nest-hiding." It was a dishonest device of Theodore Tilton to convert the language of purity into the language of confession of guilt.

ANOTHER "ASSIGNATION" LETTER.

Now, let me turn to another of these letters. Much injury has been done to Mr. Beecher in the estimation of those who were not willing to wait to hear his defense, by the publication of this letter of the 20th of January, 1872. My eloquent friend Judge Morris, in the course of his opening, alluded to that letter as being strikingly significant, and as showing that, even after all these developments, there was in Henry Ward Beecher that adulterous spirit which led him to press this woman to further assignations. He did not state it in terms, but

his argument meant that, or it meant nothing. You will remember Mr. Beecher's statement of this letter, a letter which he was induced to write by the request of Frank Moulton and at the instance of Theodore Tilton for the purpose of making Elizabeth more cheerful, and inciting her to do more for the purpose of making Mr. Tilton's home one such as should encourage him in his work and literary pursuits. "January 20th, 1872"—remember this was a letter not intended for publication; it was a private communication by the pastor to the penitent; it was the communication of a man who, while he wrote it, knew that the greatest wrong he ever suffered from this woman was a wrong that came from her troubles, but one who forgave her, and loved her, and pitied her—whose writing at the instance of her own husband and by the persuasion of Frank Moulton, of this note, is now sent out to the world as a clandestine and adulterous correspondence.

"Now, may the God of peace that brought again from the dead our Lord Jesus Christ, that great Shepherd of the sheep, through the blood of the everlasting covenant, make you perfect in every good work to do His will, working in you that which is well and pleasing in His sight through Jesus Christ." This is my prayer day and night. This world ceases to hold me as it did. I live in the thought and the hope of the coming immortality, and seem to myself most of the time to be standing on the edge of the other life, wondering whether I may not, at any hour, hear the call to "Come up hither."

I shall be in New-Haven next week, to begin my course of lectures to the theological classes on preaching.

My wife takes boat for Havana and Florida on Thursday. I called on Wednesday, but you were out. I hope you are growing stronger and happier. May the dear Lord and Savior abide with you. Very truly yours.

Now, that letter, written in the spirit of the purest Christian love and kindness, containing no single word of reproach to the lady from whom he had suffered so fearful a wrong; that letter is now distorted into a letter between an adulterer and an adulteress for the purpose of making an assignation for the next week. Gentlemen, there is one very simple answer to that. It was not written to say, "Come, for I shall be at home this week; my wife is going on Thursday." That was not it. It was not, "Come when my wife goes, for I shall be at home this week and gone next week." The letter is written on Saturday, and the next week was the week, not when he was to be at his house vacated by his wife; the next week was to be the week when he was to be gone all the week and his wife part of it. And yet this is called a letter of assignation! There is something so cruel in this endeavor, by contrivance, to prejudice the community against an innocent man! They knew of course; they understood it; but it is so grouped, in their presentation of the case, with circumstance and suspicion, as to lead you to believe that this innocent act of a Christian clergyman to a parishioner, at her own instance, was really an attempt on his part, even under all that had passed, to make with her an assignation of infamy at his own house. Well now, men who are capable of using for such a purpose such a letter, are men whose oaths you cannot trust, when they, dishonest, accuse an innocent woman and an honest man. You remember, gentlemen, the publication of a letter that I read to you the other day, in a forged and fabricated form, where the very imputation she makes upon him, of infidelity to her, is converted by forgery into an admission of her guilt and a declaration of her infamy.

THE THREATENED CARD.

My friend Abbott has just called my attention to another fact which is equally characteristic of the action of Tilton and Moulton. We have here a card prepared by Mr. Tilton for publication, intended for *The Brooklyn Eagle*—or rather intended for blackmail purposes, but purporting to be intended for *The Brooklyn Eagle*. This is the card which they threatened to publish after Mr. Wilkeson had published the "Tripartite Agreement." Now, if any man on earth knew the terms of that "Apology," Theodore Tilton did, didn't he? Yet here he appends this paper as the statement of Mr. Beecher. He purports to give a copy of the Apology, mutilated, of course, for nothing passes through Tilton's hands without more or less mutilation; but the point to which I wish to call your attention is there. [Showing the paper to the jury.] The paper is signed "H. W. Beecher." He has represented Mr. Beecher as signing the letter; and the memorandum, "I have trusted this to Moulton in confidence," is put *below* the signature instead of above it. Look at it. I presume that the jury can all see it. *There* [indicating] is the memorandum at the top, and then the signature, "H. W. Beecher." Now, in order to get at the look of a veritable letter from Mr. Beecher he puts the "H. W. Beecher" *there* [indicating]; he leaves this memorandum below the name, after the name instead of before it. Of course he suppresses the fact that this paper is in Frank Moulton's handwriting; and of course he does not disclose the fact, which was admitted, however, to Gen. Tracy, and proved also by Mr. Beecher, that that paper was merely Frank Moulton's minutes of the conversation.

THE ORIGINAL FORM OF THE CONTRITION LETTER.

I omitted, when speaking of the "Apology," to call your attention to one other feature which is perhaps worthy of notice. When, before, in all your observation, did you ever see a man writing a letter to another person, and adding a certificate at the bottom, "I have intrusted this" to that person. One of you has occasion to write a letter to Austin Abbott. You write it. If it is confidential, you say, "confidential" at the top, or at the bottom, and that is all. But would not Mr. Abbott or any one else be very much surprised at receiving a letter, unsigned, with a certificate at the bottom, "I have in-

trusted this to Abbott in confidence"—a letter to himself? Now, I know, gentlemen, that others entertain a different opinion, but for myself, my belief is that every word above "I ask," in that paper, was put there after Moulton came away. I do not believe that it was a letter at all, when he wrote it. I don't believe he wrote those words in Mr. Beecher's library. Still, it is possible that he did. But when you come to look at the scrawling manner in which this is written, it is very easy to see that, beginning to write it in this way as a memorandum, he afterward thought it was better to give it the form of a letter. Now, Mr. Beecher never saw that paper from that time, and certainly did not see its contents at that time.

REASONS FOR DISBELIEVING MR. TILTON.

It is desirable that you should keep constantly in view that this suit is not by Frank Moulton. It is not by Mrs. Moulton. It is a suit brought by Theodore Tilton, who alleges that he has been wronged. Of course, I shall have occasion to speak of the testimony of the two witnesses on whom he relies, but if I can satisfy your consciences and your judgment that Theodore Tilton, who makes the accusation, is a liar, that he does not believe and never did believe his own accusation, that whatever other people may think, he knows it to be false, and that he has attempted to palm that falsehood on you by his own deliberate and corrupt perjury, then you will not stop to inquire whether these other people tell the truth. It is utterly unimportant by what cunning device he has succeeded in creating the honest impression, or in procuring the dishonest statement, which may seem to be corroboration of his own. This issue is between Theodore Tilton and Henry Ward Beecher, and I propose to hold him to it; and, when you are satisfied that his accusation is false, it will not take you long to dispose of the testimony to which he resorts by way of corrobation. Now, on that point we have two very opposite views of Mr. Tilton. My friend Beach, in the course of one of the interlocutory discussions of this case, tells us that Theodore Tilton stands a prominent and an eminent leader of the Christianity of the age. Well, you know something of him now—more than you did when my friend made that address to you, and I ask you where is it that he is leading the Christianity of the age? It is to the saloon of "Madame Roland" in New-York; it is to the foot of that ladder described in the Woodhull biography, extending from her to heaven, on which the angels of free love were ascending or *descending*, as the case may be. It is such "leaders of Christianity" that demand of you a verdict that shall strike down the veteran whose hairs have whitened in the service of his Master! My friend Judge Fullerton also takes occasion, in glorifying the "Woodhull Biography," to describe Theodore Tilton, who was the champion, who was so devoted to the interests of Henry Ward Beecher, the alleged paramour of his own wife, as to hasten to encounter Victoria Woodhull, "a lioness in the way," as my friend called her; who was so generous and magnanimous to his enemy as to devote himself to the task of "extracting the teeth of this dangerous animal, and to substitute the kindly purr for the wicked and threatening growl." You recognize the language of my learned friend, which I have given to you as used by himself. And my friend in commendation of that holy zeal Theodore Tilton had to save the pastor of Plymouth Church, says, "I suppose that if to accomplish that object, Mr. Tilton had been called upon to write a glowing eulogy upon Judas Iscariot, he would have done it, and it would have received the defendant's blessing." Whether Judge Fullerton was right or not, as to Mr. Beecher, you may judge from the fact that Henry Ward Beecher was then engaged in writing the life on earth of the Redeemer whom Theodore Tilton disowns, and whom Judas Iscariot betrayed. Doubtless, if Tilton had undertaken the work suggested by his counsel, Judas would have been made to shine with all the luster which, in that other biography, was made to encircle the brows of Victoria Woodhull. Certainly he was well fitted for the work that his counsel proposed for him; the man who volunteered on that witness-stand to describe Frank Moulton, the "mutual friend," as (I use his language) "the successor of Sir Philip Sidney in all that is noble, manly, and magnificent in friendship." In language equally glowing he could have described the traduced Apostle as the mutual friend of an earlier day. But in view—I use his language again—in view of "the genius for administration and great courage of thought and action," which he swears are the characteristics of Moulton, he might perhaps have suggested to him, whether, if Frank Moulton had happened to be one of the Twelve, Judas Iscariot would ever have pocketed those 30 pieces of silver. I tell you, gentlemen, when men talk about being biographers of Judas Iscariot, it shows the estimation in which the counsel holds his client. He could not suppress his own conviction of the character of that client. I have used, and shall use, strong language, in this case. It is not my practice. In the ordinary course of our profession the cases are very rare in which we are justified, still more rare in which we are compelled by a stern sense of duty, to speak of dishonest men as they deserve. But this is no case for compromise. If Theodore Tilton's accusation is false, if he has suborned his wife to make a false accusation, even without oath, if he has made use of a villain in Frank Moulton for the purpose of doing the common work of both in the destruction of a pure and a good and an honest man, we cannot speak of them except as they deserve; and while I know that much that I have said and more that I shall say will give pain to my client, who enter-

tains more charitable views of all these parties than I do, I cannot but believe that you in your hearts feel that it is essential to the protection of innocence hereafter against kindred conspiracies that scoundrels like these, when they endeavor to force honest men into their service, shall be met in a spirit worthy of the occasion, and that there shall be an admonition to men hereafter who engage in enterprises like this; that it is not in a court of justice that swindling, conspiracy, and perjury are to be countenanced. Now, if you wanted a simple test, in any ordinary case, of the question whether a witness was to be believed, would not the first inquiry that would occur to your mind be, is he impartial? is he disposed to tell the truth? is he unbiased? Tilton tells you that for four years he was a liar. Moulton tells you that he was a liar for four years. But they say they are telling the truth now; and because you believe that they then lied, he insists that you shall believe that they now tell the truth. Well, if it were a mere question of the value of a rail-fence; if it were a question merely of a right of way, you might be disposed to accept the testimony of witnesses, even under such circumstances; but when they ask you, on testimony like theirs, to take their avowal that they are liars and the truth is not in them, and then ask you to strike down an honored fellow-citizen, whose life has been in the full blaze and splendor of noonday, and so far without spot or blemish, then I ask you, *then*, are you going to say that you will admit the oaths of these two liars as against the oath of an honest man. But there is more than this. They say they lied then because they had a motive to lie; but they tell the truth now because they have no longer a motive to lie. What motive *then* to lie? Moulton says he lied from consideration and tenderness for Henry Ward Beecher. Tilton says he lied from tenderness and delicacy to his wife. Well, motives may not be striking and obvious, and still they may exist. The friendship and devotion of Francis D. Moulton to Henry Ward Beecher, you remember, grew out of the fact that Mr. Beecher had debauched the wife of his most intimate friend. And the tenderness and delicacy of Theodore Tilton toward this woman was the tenderness and delicacy of a man who wrote to her years ago about the Redeemer whom she loved, in the terms that I have read to you here; it was the tenderness and delicacy of a man who could say, in the presence of a young girl, that he was the father of but one legitimate child; a man who could bastardize his own dead boy to gratify his malignity, his cupidity, or his revenge! But we have something more. We have from both these men admissions of a degree of present malice which would induce you to reject their oaths under any conceivable circumstances unless you believe they falsely accused themselves

AUSTIN ABBOTT'S SERVICES PRAISED.

Often, gentlemen, the great work the results of which are recognized by all men are credited mainly to those who are the least deserving, and my friend Abbott will pardon me for saying at this moment that if your verdict shall vindicate Henry Ward Beecher from this foul charge, not even my friend Shearman, with all his devotion and ability; not even Gen. Tracy, with a chivalric fidelity that has ennobled him in the estimation of his brethren here and everywhere, and has made us love and honor him; not even the splendid ability of my senior associate who is to follow me, will have contributed as much to that result as one [turning to Mr. Abbott] whose voice you have scarcely heard from the commencement of this trial. I desire to avail myself, as I am compelled to do, and as Gen. Tracy was from time to time, of his researches and his groupings of this evidence, for the purpose of bringing to your minds facts which should be controlling and vital in the discussion of this case. Now, let us take some of these declarations which characterize these two men.

MRS. MOULTON'S DENUNCIATION OF MR. TILTON.

There is one, which may be among those handed me by my friend, but which I noted myself, and will first refer to, one which struck me because of its source. Mrs. Moulton, in her testimony, lets drop two very significant facts, and certainly she was no friendly witness to us. Mrs. Moulton says she told Mr. Beecher in July, 1874, speaking of Theodore Tilton, "I thought he was treacherous; I told him that I thought Mr. Tilton was filled with revenge and anger against him." At page 734 she admits that she told Tilton to his face that he was a villain, and would betray her husband as he had Mr. Beecher. Gentlemen, when, even from the roof beneath which this whole accusation had its origin, the roof of Francis D. Moulton, you get such declarations cropping out, what do you think of these men? Was that woman deceived? She is now here swearing in the interest of the villain and the traitor whom she is compelled to admit she then denounced. Let us take the declaration, for instance, of Mr. Tilton which is proved by Mr. Storrs in July, 1874, at Mr. Ovington's house, after his wife had left him. Mr. Storrs says "the conversation on that point was that his wife had left him, and he said that he had not said anything about it, but he thought he must now smash Elizabeth and Mr. Beecher." These women-smashers come into court and ask twelve men to help them to smash the woman!

MR. TILTON'S ENMITY FOR MR. BEECHER.

Take the occasion of the interview with Mr. Wilkeson, and we find what his trouble was. Not that Mr. Beecher had committed adultery. He said that Mr.

Beecher had not come to his help—this was in 1872—and that he was a man of such power that he could with his little finger have lifted him up out of his trouble, but that he had lain on the sidewalk in Brooklyn, crushed and ruined by Bowen's treatment of him, and in consequence of it wrote the memorandum and those two papers—there was his trouble, and the injury done to his reputation; that Mr. Beecher, who with his little finger had the power to lift him up and reinstate him, had passed him by indifferent and had not helped him, but had left him lying there. Moving across the room back and forth in great excitement, he said he would pursue Henry Ward Beecher to the grave. That he may do, but can he call upon you to help him hound Mr. Beecher into the grave? Is this the kind of a plaintiff who presents his case before this eminent jurist and before you, claiming that he is entitled to occupy half a year of your time in order that he may be reinstated in respect to the pecuniary losses he sustained by making use of the reputation of his wife, the legitimacy of his children, and the character of a Christian clergyman as the means of reinstatement?

Again, in speaking in reference to a clause in the "Tripartite Agreement," the precise words he uses in a portion of that interview were: "I will never sign any agreement which will prohibit me from pursuing Mr. Beecher—from pursuing Henry Ward Beecher." He need not have been scrupulous about it. He may sign forty agreements; he was always signing agreements and always breaking them, but he seems on this occasion to have been punctilious, and for once he was unwilling to sign an agreement, although, as matter of course, no matter what form it assumed, it would have been broken just as readily as it was. His business and his life have been in undoing what he did, in violating his pledges of honor, in breaking all obligations, in promoting his own interest at the expense of all mankind, and his vanity and lust at the expense of all women.

Now, take the testimony of Jackson S. Schultz. Observe, I have given you, so far, the testimony of Mrs. Moulton. If you believe her description of Theodore Tilton, what is his character, what is his oath worth? I have given you the testimony of Samuel Wilkeson. If you believe that, what is his complaint—what is his oath worth? Now, we have the testimony of Jackson S. Schultz:

I asked him distinctly about whether he charged any criminal relations with his wife. He told me then—he spoke of the Plymouth crew, and said that he would blow the roof off that concern. Q. Did Tilton say to you in that conversation, in substance, that he could and would blow the roof off unless they came to his terms and settled with him on his terms? A. Well, I don't say those exact words, but the substance. He said that in substance.

And this man has the impudence to complain when he is charged with being a blackmailer. What has he been doing but blackmailing for years, living on blackmail, indulging his own lust on blackmail, taking blackmail in the form of benefactions, taking it in any form in which it could be got, ready to take it as a mendicant, ready to take it as a beggar, ready to take it by contrivance and fraud, and give it that character of spoliation well described by him when he tacked on Bowen's check the memorandum: "Spoils from new friends for the enrichment of old." And, bitterly as he hated this reverend defendant, bitterly as he hated that Plymouth crew, determined as he was to blow off the roof from Plymouth Church, it was only conditioned unless they came to his terms and settled with him on his terms, and this is the man that tells you that he didn't want money, and that when Frank Moulton took $5,000 and put it aside in portions of $1,000, $500, and $300; when Frank gave him that money he always closed his eyes, threw his face upward and put it in that pocket, and don't know where that money came from. There need be no record of that transaction. I don't wonder that Gen. Tracy said on one occasion, when Franklin Woodruff talked with him about this matter: "We won't discuss the question as to whether Theodore Tilton knew where that money came from." It don't need much discussion. Why, one of the leading merchants of this continent, a man of as clear integrity as any man who ever sat even upon the bench, swore Theodore Tilton told him that he would blow the roof from Plymouth Church unless Plymouth Church came to his terms, and on those terms appeased his wrath. I think Mr. Beecher was right when he told Mr. Redpath, and he is not a man that speaks against any one: "Mr. Redpath, Theodore Tilton's griefs are those which money will assuage." It was when money no longer assuaged his griefs that other means must be resorted to, and they were.

MRS. BEECHER'S DISTRUST OF MR. TILTON.

Now, take the testimony of Mr. Ovington. No one can doubt Mr. Ovington, though he is not, like Frank Moulton, an oily witness; he is a bungling witness, easily confused, and they saw it and took advantage of it and confused him; but he is a clear-headed, intelligent, honest man. While you admire the adroitness by which an honest man can be got into confusion, you at the same time felt while he was testifying that you would rather have the moral character of the witness than even the adroitness which was able to confound him and confuse him. I have more respect for Edward Ovington than I had even for the gentleman who was examining him, and he was well worthy of respect He is relating the conversation of Mr. Tilton when he follows Mrs. Tilton to Mr. Ovington's. He said: "Mr. Beecher never loved any other woman as he loves Elizabeth; Mrs. Beecher he never loved." I am sorry to say, gentlemen, that that noble woman had much to do with this calamity. All her instincts early

taught her that this man was untrustworthy, and, as he has told you, for years and years he never crossed that threshold, and he could have told you why. Theodore Tilton would never have made, I believe, those charges against Mr. Beecher, except for his hatred of Mrs. Beecher; it was the original moving cause, and it was the same kind of hatred that the snake that is trodden on has for the man that treads it down. He saw that she read him and distrusted him, and despised him, and he hated her and all her belongings from that time on. But, now, his pretext is that Mrs. Beecher he had never loved, Mrs. Beecher made his home a hell. Ah! it is a hell to which he would very much like to obtain access. It is a hell which would be much more agreeable for him to enjoy than the Heaven in Livingston-st. Of course I do not allude to the particular inmates of the house, but a home of purity and harmony and love is a home that any of us might worship, and no man more than Theodore Tilton; but the day has passed for him on earth to hope for any such result, for there is not a woman on earth who reads the story of this trial that would trust herself beneath the same roof with him if he had over her the power of a master or a husband. "Why don't he come forward and help her? He is a coward and a poltroon. I would not treat a woman so who would give me all a woman can give. Why does he let her let the only cool rooms in the house to boarders?"

MR. TILTON THINKS MR. BEECHER SHOULD SUPPORT MRS. TILTON.

Now, gentlemen, you thought, and I did, at an early stage of this trial, that we had got Theodore Tilton to the lowest depth of degradation, but we had not. Here he brings it. Now, observe his tenderness and consideration to his wife Elizabeth. She has taken refuge in the house of her friend, Mrs. Ovington, who has told her that she is welcome as an inmate of that house, she and her children, as long as they live, and he goes there to drive her away. He makes this declaration, my friend Shearman tells me, before she was there, so that he had not the excuse that he did it in anger, and it was in consequence of this declaration, and it subsequently coming to her ears, that she did leave on the 11th, but for my purpose the illustration is the same. I say you have a man professing to be tender and delicate to his wife, who has made up his mind to injure her with his old friend Ovington, and with Mrs. Ovington, by going in her absence and lying about her. Not saying it is true, and in terms, that she had been guilty of adultery, but saying that Mr. Beecher loved her as he had never loved his own wife. Then, following it up with the contemptible suggestion that Mr. Beecher ought to pay the expenses of his and her establishment, and contribute enough for her to live on without letting her rooms to boarders. Any husband and a father going to a neighbor, and in the presence of another husband and another father, and in the presence of an honored matron, saying that his wife prostituted herself, that Mr. Beecher has prostituted her, and that he wants money. Why, is there a depth to which humanity can descend that is baser than this? This is sworn to by Mr. Ovington. This is sworn to by Mrs. Ovington. Theodore Tilton has been recalled to the stand, and dared not deny it. That is one of the admitted facts in this case.

Again, Mrs. Ovington says: "He said Mr. Beecher is a coward. After Elizabeth had given all that a woman can give, or the best—I don't remember the exact expression—how did he treat her? He should have come forward like a man and helped her, but he allowed her to rent the only two cool rooms in the house to boarders. I would never have treated a lady in like manner that had served me as Elizabeth has Beecher, or has given herself to Beecher."

Now, take his declaration in the presence of Gray. You bear in mind now that I have confronted him with witness after witness, merchants, men of position and character. We have confronted him with Mr. Ovington and his wife. I now confront him with Gray, spoken of on the other side as a negro, and subject to that imputation, but I don't think there is one man of your number but would rather sleep under the same roof with that boy Gray than with Theodore Tilton. I don't believe there is a man of your number who would not sooner trust his word, his honor, or his oath.

Q. Now, do you recollect of hearing any conversation between Mrs. Woodhull and Mr. Tilton in respect to Mr. Beecher's name long before the occurrence of that speech? A. I heard them talking about his presiding at the Steinway Hall lecture.

Q. Well, Sir? A. I don't know what they said, but they were always talking about him, and I heard Mrs. Woodhull say—

Mr. Beach—One moment.

The Witness—That he had better preside at that meeting.

Q. Who had better? A. Mr. Beecher; that he, Mr. Beecher, had better preside at that meeting, or that she would make it hotter on earth for him than hell was below.

Q. Did Mr. Tilton make any reply to that? A. He said, "he has got to preside; he will do it, and I shall go over to Brooklyn to see about it."

Q. You are now giving Mr. Tilton's language? A. Yes, Sir; as he went out of the door his arm was half round her waist.

OTHERS OF MR. TILTON'S THREATS.

You may take Theodore Tilton among Christian and decent people, and you find his malice venting itself there. Take him with respectable ladies, and he will pour it upon them. You go even to those resorts in which he found greater pleasure, and even there you find the language the same. Wherever he went he carried with him the hatred of Henry Ward Beecher and of Plymouth Church. Wherever he went he carried the same spirit and menace in respect to his own wife; the same spirit of cupidity, of malice and revenge.

Again, in conversation with Mrs. Ovington, after the publication of the Bacon letter, Mr. Tilton says it was now his time for action, and he proposed to fight it out from that moment; various expressions of that kind. Figures of battle-axes and swords, and he would not sheathe his sword until Mr. Beecher went down. He may throw away that sheath; he will never have use for it. In another conversation with Mr. and Mrs. Ovington he says:

I shall be the Samson which will destroy the temple. I will pull down the pillars of the temple, and although Mr. Beecher and my family are crushed, he shall be crushed with me.

Again, in the testimony of Mrs. Ovington:

When he greeted us on the piazza he spoke of Mrs. Tilton, and said: "Lib is a trump, isn't she? I hear she spoke well before the Committee—that she made a favorable impression; but it is fiction, all fiction. I, too, could come before the Committee and weave fiction." When he spoke of the fiction, I think it was, he said: "Elizabeth will lie for me. She would tell any number of lies to clear me. She loves me. Even if I were on trial for the Nathan murder, and she had seen me commit the act, do you think that she, if called upon to testify, do you think that she would tell the truth and have me convicted? No, she would not." Said he, "Would you?" Said I, "I can hardly imagine such a case; but, Mr. Tilton, they are not parallel cases. If my husband was guilty of the murder, and an innocent man was on trial for his life, and about to be convicted, and I were called upon to testify, I believe that I should have to tell the truth, even though it convicted my husband, rather than that the innocent should suffer."

Q. What did he say to that? A. Said he, "No you wouldn't—no you wouldn't."

Q. Mrs. Ovington, what else did he say on any topic? A. He said, "Mrs. Tilton has only done the duty of a wife in coming forward and lying for me. If I committed the Nathan murder," etc.

You observe this man thinks that one of the uses of a woman is to lie for her husband, with or without oath. That is a part of the teaching of that school of which Theodore Tilton claims to be the head. I hope he has not made Mrs. Moulton a disciple in that school.

MR. MOULTON'S THREATS AGAINST MR. BEECHER.

Now, the testimony of Moulton, "Beecher is a liar and a libertine." This is the spirit in which this man comes to this Court to swear away the reputation of a pure woman and an upright man. There is his photograph, made by himself and for you. The man who uses such foul, base language, and yet pretends that all this while he was the friend of the man in respect to whom he used it—can you trust him? He tells you that Mr. Beecher trusted him, and he broke faith. He tells you that whoever trusted him he broke faith with. He admits he broke faith with Theodore Tilton. With whom has he kept faith? And it is this man who don't trust himself, whom his wife don't trust, whom even Tilton don't trust—is he to command your trust and confidence, and upon an issue like this?

Now, Mr. Storrs says (we have his testimony) that Mr. Moulton said to him, speaking of Mr. Beecher: "Beecher is a sneak and a liar, and if he said so, damn him, I would shoot him—I would shoot him." The man who said that was the same man who went out on the 1st of January, 1871, to make two calls, one on a woman and the other on a clergyman, and carried a pistol for his protection. I am wrong as to the date. It was the day before—Saturday. A man who is such a coward that he needs a pistol in his pocket to walk down to the house of Theodore Tilton in order to get from his wife a letter that would enable him to call upon Mr. Beecher; such a coward that when he goes to Mr. Beecher he wants to impress him with a sense of peril by showing him he has a pistol, although there was no occasion to use it, that is not the kind of man that had better talk much about whom he is going to shoot down. But, there is this that does appear, that Frank Moulton, if he told the truth, had in his heart this purpose—for this was after the breach—had in his heart at that time the spirit which would have been murderous, but that his neck did n't like the noose. The man who is only restrained from murder by fear of the gallows is not a man to be trusted by twelve sworn jurors. Observe, I do n't believe that it was any more than idle bravado, but the man who talks about assassination is a man of a low order of moral instinct. Let no man, let no woman, let no child trust him. Above all, do n't trust his oath; above all, do n't trust his oath against his enemy. Again, in the testimony of Mr. Storrs:

Mr. Moulton bade me the compliments of the day, and explained why he sent for me, and laughed, and said he didn't know as I would come to see a blackmailer, and went up stairs. Said he wanted me to tell my brother that he must not sign the Plymouth Church Committee's report. He said that Mr. Beecher had confessed his adulteries to him.

An honest man would have stopped there, wouldn't he? He knew himself; he knew he was not an honest man, and therefore he adds, "And I can prove it." Mrs. Moulton had been brought to the point.

Judge Neilson [to Mr. Porter]—Mr. Porter, can you suspend your argument now?

Mr. Porter—Certainly; can I close this sentence?

He said he was going to drive Mr. Beecher out of Plymouth Church, and out of Brooklyn.

Judge Neilson [to the Jury.]—Gentlemen, get ready to retire. Please return at 2 o'clock.

The Court here took a recess until 2 p. m.

THE AFTERNOON SESSION.

The Court met at 2 p. m. pursuant to adjournment.

In another of these interviews Mr. Moulton unconsciously daguerreotypes himself in the language which he applied to an honored and venerated clergyman, in

describing him, to a member of his own church—and who loved him as a brother—as "a liar and a sneak."

"Honor thy father and thy mother, that thy days may be long in the land which the Lord thy God giveth thee," the only commandment which the Redeemer said was coupled with a promise. The spirit of reverence for age—it extends not merely to the parental relation, but to every other relation, and a man like Theodore Tilton or Francis Moulton, in speaking of one who is honored, not only at home, but abroad, whom all the world reverence, undertakes to talk of him as he would of a street blackguard—"a liar and a sneak." And I am glad to intermingle these men, gentlemen, and their utterances, that you will see that you might transfuse the blood of Moulton into Tilton, and it would hardly disturb a throb of a pulse. You might change the current which throbs in Tilton's heart and put it into the bosom of Moulton, and it would find as black a resting-place in his heart as it has when it finds its home in his own. There are things which little, base, contemptible men think deceive mankind. If Henry Ward Beecher had fallen; if it were true that that great man had disgraced his lineage and his posterity; if it were true that a man so proudly gifted of God, and so much honored of men, had under a temporary influence, yielded and fallen, acknowledged, known of all men, there would be just two classes, men of the baser sort who would rejoice, and to your heart, and to his, aye, and to the heart of each of these his counsel, would have come a feeling of sadness that they could scarcely overcome; but the Moultons and the Tiltons on a false accusation rejoice, when they can find some one whose confidence they can shape in the man who is performing the holy offices for three hundred, six hundred, nine hundred, twelve hundred families of Brooklyn. These men think that a lie well stuck to is as good as the truth; that if they can double the lie or treble the lie and bring people to attest what is false, it is to impose upon the jury. You look at them as they come one by one; you meet them eye to eye, and you form your own judgment of the character of the men, before, upon their testimony, you condemn the character of others.

MRS. MOULTON'S ADVICE TO MR. BEECHER TO CONFESS TO HIS CHURCH.

Even when a woman, a mother, a wife, who has just turned the border of young womanhood, tells you that she, a lady reared in a house of gentle blood, taught to revere God, to love virtue—when she tells you that she, girl as she was comparatively, calmly looked an old, gray-headed man in the face and said to him: "Sir, you have lived four years"—and this in her own house, under her own roof, to an American gentleman, aside from his being a clergyman—"Sir, you have added to your original crime four years of lies and perjury. How have you the impudence to expect me to come to Plymouth Church and commune with you? I can hear you preach: commune with you? you, an adulterer—you, a criminal: commune with you, a liar and a perjurer! I can't do it. But I will tell you what to do, though I wont: go down to Plymouth Church, stand there and say, 'I come polluted, covered all over with leprosy; I come with the dishonor of myself and my family, to make proof of it to you; I am a liar and a perjurer;' Emma Moulton said to me this afternoon, 'Sir, you are a beast, with whom I can't commune;' she told me in her own house that if I would only come here and say to you women, men, children, that the pastor of Plymouth Church is an adulterer, though she can't forgive me, Plymouth Church will." And Frank Moulton, on that memorable 1st of June, 1872, pretending now that he knew this man was a hypocrite, a seducer, a liar, and a libertine, wrote to him: "Go to your own church and tell the whole truth, and all Plymouth Church, and all mankind will stand by you; you can stand before the world." Now, gentlemen, these ear-marks are ear-marks of probability that you cannot reject. If I were to come before you, and lifting my right hand in the presence of the living God, were to swear that since I left this court-room my friend Beach and I had gone into a household in this city of Brooklyn, and that there by common consent between him and me, your girls who rose this morning in honor had fallen, ruined, you would say, "Either Porter is infamous or he is a liar." You would not believe it; you would know that it was a lie; even although I involved myself in the accusation you would know that it was false. Now, when a lady, an American, of education, of culture, of character; a lady who would scorn to be rude even to a stranger that was within her gates; when she is made by her husband to tell you the story that she looked on this gray-haired man and talked with him of adultery, as if it was her daily pastime; told him of perjury, a man who had never taken an oath in a court of justice in his life; talked with him of living on lies and perjury; when she was brought here in order to prove that he had never lied about this matter, and had been confessing all the while his guilt—gentlemen, you don't need to know more about her than she tells you. You feel as I feel that that story would never have fallen from her lips if God has not visited upon her the calamity of binding her here—I hope not beyond this life—to a man like Frank Moulton.

Well, now, gentlemen, this is a mere episode, my allusion to her, and is out of its order; but I call your attention to it in order to show how it is that men who meditate murder, men who speculate on the question whether they can safely take human life because they hate an enemy, men who talk about their wives lying for them, men who talk about sexual intercourse, right in the heart of the City of Brooklyn, in one of those princely mansions where you would expect culture, refinement, religion, and decency. When you get into such houses,

and find such teachings and such utterances as these, you can understand how it is that woman in her weakness can bend where man in his strength cannot stand. Let us see what these men were in the habit of talking. Take this man, Moulton, who wants you twelve to believe his oath, who has the effrontery to look you in the eye, and say: "I ask you to believe me, because I have sworn in the presence of Almighty God." Why, here is his language to Herman O. Armour, at page 148 of the third volume. This is the man who appeals to the courts, to the administration of justice. You will see how he talks to witnesses; you can imagine how he would talk to jurors if he had your ears. Here is a gentleman who is stating a fact within his own knowledge. Frank Moulton endeavors to intimidate him from entering a court of justice to swear to the truth, because it is convenient for Moulton to swear to a lie:

He said he would make it hotter than hell for me or anybody that testified against him.

Hotter than hell! Are the relative degrees of heat the subject of discussion in that household in Remsen-st.? Is there a household inhabited by a respectable family where the women talk of sexual intercourse with clergymen, where the charge of perjury is made by the lips of womanhood, where the men talk of making it hotter than hell for any man who fulfills his duty and observes his oath? Are you to expect from such quarters honest, fair, unbiased evidence? To return once more to Mr. Moulton, to show that he is no unworthy consort and minion of Theodore Tilton. He said he was going to drive Mr. Beecher out of Plymouth Church, and out of Brooklyn. Who is this man who undertakes to say who shall live in Brooklyn? Is it by his mercy that you hold your place here? Is there a man who has risen to that power and position in Brooklyn that because he happens to be an employé of Theodore Tilton, and can always command the benefit of his unscrupulous craft, that then he can order men, not merely out of Plymouth Church, but out of Brooklyn? But we know where he learned the lesson, because you heard this man volunteering to say, as he sat upon that stand, in answer to no question, at least so far as the concluding clause of it was concerned—you heard him say, "I threatened to drive Henry Ward Beecher out of Brooklyn, and I will." Did it occur to him that it needed each one of those twelve to help him to do that? He thought that with the assistance of one of the ablest advocates this country has ever produced, that with the aid of Frank Moulton as a witness, and of Emma Moulton as a witness, it depended on his mercy who should be driven from Brooklyn. He forgot that it needed more than a "Tripartite Covenant" for that, and that that covenant could not be executed until each of you twelve was mansworn before God. That is what was needful, and no man should be worthy of belief who, on the witness stand, undertakes as a volunteer to defy the altar of justice itself, to defy the ever living God in whose name he is giving evidence, by saying, "I will drive him from Brooklyn." Here is one of those passages which illustrates the spirit that was constantly breaking out from Theodore Tilton without regard to the sanctities of this tribunal, even when he sat upon the witness stand. "Mr. Tilton stated that Mr. Beecher"—this is in the testimony of Charles Storrs—"Mr. Tilton stated that Mr. Beecher said he humbled himself before him as he did before his God, and says he, 'And he shall.' Mr. Moulton returned and said to him, 'What have you been saying here?' 'Oh,' said Tilton, 'not much of anything, but I said that Mr. Beecher said that he humbled himself before me as he did before God, and I say he shall.'"

MR. WOODRUFF'S TESTIMONY.

Nay, more, gentlemen; to show you how an evil man corrupts other men. Take Franklin Woodruff, a man who will have occasion to mourn as long as he lives the fatal mistake he has made in allying his fortunes on this trial with this conspiracy; a man meaning well, hurried along, carried by Tilton's craft and force of will and the plausibility and cunning of Moulton, until [turning to Mr. Abbott]—let me find Mr. Woodruff—not an original party to the conspiracy, with no animosity toward Mr. Beecher, but poisoned, unconscious of the work that virus was making within him:

Did Mr. Woodruff say to you, "I will show you a letter which, if published or shown generally, would drive him out of Brooklyn?" A. He did.

Q. Do you recollect Mr. Woodruff, at such an interview, saying to you, "Is it best for us to drive Mr. Beecher out of Brooklyn or not?"

Even Franklin Woodruff is made so far to forget the decencies of respectability that he puts it as a cool question to one of the clearest headed and ablest of that splendid band of New-York merchants who have given us so much of our prosperity, and to whom we are to look in the future for so much of the growing strength and glory of the country, to a man of unimpeached honor, of clear intelligence, a friend of Henry Ward Beecher, and true and noble in every relation of life, inheriting a princely fortune, and earning one, showing by his generosity, his manhood, his fidelity in all relations, that he is trustworthy and can be trusted in all conceivable circumstances—Franklin Woodruff is brought to say to such a man, "Is it best or not for us to drive Henry Ward Beecher out of Brooklyn?" Has it ever occurred to you, gentlemen, during the progress of the trial, that you were here by the permission of this man? I see among your number gray-haired and honored citizens; I see men of strength and character; I know by reputation those whom I do not know otherwise; I know the strength of the men before whom I stand, and yet I ask you is there one of you who can rally around him such a phalanx of friends as are always ready to come to the

rescue of Henry Ward Beecher from a false accusation? Is it not fortunate, gentlemen, that instead of striking at him, he did not strike at me, or at you? The very egotism of the man betrayed him. He struck at one who, if he would not defend himself, would be defended by others because they knew him, and they loved him; but it is a dangerous lesson to teach to the criminal classes, no matter how high or low, that by any conspiracy, for the purposes of defamation and accusation, any man can be struck down as guilty when he is innocent. And yet this same man, Franklin Woodruff, would have you believe, against the oath of Benjamin F. Tracy, that he understood the charge to be adultery, at as early a period as when he had the interview with Tracy, with Moulton, and with Tilton; he, even as late as this, and in the same conversation in which he showed his malignant animosity and his purpose and will to drive Mr. Beecher from Brooklyn, told Southwick, in answer to the direct question, that Mr. Beecher was not charged with adultery. Do you believe John C. Southwick, or do you believe Francis D. Moulton?

MORE ABOUT MR. TILTON'S ANIMUS.

Gentlemen, I have been alluding to the animus of Mr. Moulton. But Moulton is not the plaintiff. I come back to Theodore Tilton, the hinge of this conspiracy. Now, in regard to him there is no concealment, no disguise. I have made many notes which I have been compelled to discard, first, because when I came to look at them they were too cold to express the strength of my own convictions, and, second, because if I were to go over those notes I should protract my argument until your patience would be wearied, and my strength would be exhausted. But occasionally there is a passage with which I must trouble you. Here are some extracts in regard to Theodore Tilton that enable you to see the character of the man. He is talking about Mr. Beecher. I will bring some of these things together, for though he intended merely to give you his idea of Mr. Beecher, he was involuntarily giving you the means of judging of Theodore Tilton. "I always regarded him as big boy" —that is, speaking of his earlier recollections—"I was very little more than a boy myself." Then came the very natural question by my friend Mr. Evarts. "He had the free, frank, ingenuous spirit of a boy?" There Tilton saw his opportunity. "No."

Q. What, not frank, not ingenuous? A. No.

Q. You don't mean that he was a disingenuous man? A. With a craftiness——

Q. And you meant to describe a crafty man by representing him as a big boy?

Theodore didn't quite like the look of the question in that form. He thought a moment and brazened it through. "Yes," says he, "the craftiest people I have ever known have been boys, newsboys for instance." Now he meant you to understand that he thought, and at that time Henry Ward Beecher was, a crafty, designing, dishonest man. And almost in the next sentence he came back to it: "I loved him next to my own father;" and within two or three pages, "In those early years Mr. Beecher was my man of all men." Now, this lie that was thrown by way of parenthesis into his testimony was because he saw an opportunity to make a hit at Mr. Evarts. There was the cross-examining counsel, and he put a question, and it gave him an opportunity to give a thrust at Mr. Beecher, and he thrust it in. But it was a lie. He afterward in effect admitted that it was a lie. It was merely to serve the purpose of gaining an apparent advantage over the counsel who was examining him, and there was no stage of his examination at which he was not quite ready, whenever the opportunity occurred, to thrust a dagger into Mr. Beecher under the cover of a question put by his counsel. We have another little touch which is illustrative of the character of the man, in the account he gives of the church missionary discussion in Plymouth Church in 1859. He would have you understand that he had obtained a great victory at that early age over the leading orator in America. He suppresses the little circumstance that the church went with Mr. Beecher unanimously. But the newspapers went with him—and the newspapers that went with him were the newspapers in which he wrote. But Mr. Evarts asked him, "On the whole, Mr. Tilton, you felt that at any rate intellectually you had the advantage in the discussion? He folds his arms: "If I should say I overmatched him in that struggle it would be immodest; if I should say I had not I should lie." That is a very serious dilemma for Theodore, who never lies and never boasts.

In the "True Story" there is a little clause which has some significance. By the way, there is a great trouble about this man's nomenclature. The "True Story," he says, was a lie, and he don't really understand how it got that name, forgetting the fact that he himself at an earlier period of the examination had called it the "True Story." But that was before Redpath's notes of it were resurrected; that was when he supposed it had gone to the ashes and could never be reproduced. But when the "True Story" reappeared it was not a "True Story" at all. It is a horse of an entirely different color. Well, in that he says:

During the Summer and Fall of the year 1870 I spoke of the case to a few friends, exhibiting more anger than charity toward Mr. Beecher, though to Mr. Bowen, whose two papers I was then editing, I was silent, unwilling to add any fuel to his indignation against the man whom he seemed preparing to destroy.

What! you call to the stand a man whom you swear to have been a conspirator against Mr. Beecher years and years ago, and in whose presence you chose to be silent lest it should add fuel to his flame and should burn and destroy Henry Ward Beecher? Again:

There came from Washington a story, traceable I

know not to whom, that Mr. Beecher preached every Sunday to a dozen of his mistresses.

Well, now, I can tell Theodore where that came from, and I can tell him on the authority of Frank Moulton, for Frank swore that before the breach of 1870 Theodore Tilton personally told him that story that Henry Ward Beecher preached to a dozen of his mistresses in Plymouth Church. I asked Mr. Moulton whether he believed it. That was a question he was not quite prepared to answer. He took time for deliberation "—*Curia vult advisa* "—I came to the conclusion on the whole I did not; I could not." Well, that shows, you perceive, two things: First, it shows that this man, pretending to be a friend of Henry Ward Beecher, pretending to be covering him, and shielding him from the calumnies of Mr. Bowen, was himself, to his most intimate friend, asserting a lie so absurd and palpable that Mr. Moulton himself is compelled to admit that he believed that Theodore Tilton lied. And the judgment which he formed of him then, I think you will form of him now.

Again, if he had made the proposed resignation—that is, on the 31st of May, 1873—Moulton swears Tilton said he would shoot him on the street. Tilton swears that he so told Moulton. Mr. Evarts asks Mr. Tilton:

Q. Did you mean what you said? A. I did.

Q. If Mr. Beecher had signed that paper, would you have shot him on the spot? A. I presume I would.

Now, bear in mind the occasion of that resignation was this, that Theodore Tilton threatened to publish a card which was shown to Mr. Beecher, containing what purported to be an extract from this "apology;" that he purposed in that way to destroy his reputation as a man fit to be in the pulpit, and Mr. Beecher under those circumstances said, "If that card is published, Frank Moulton, there is my answer to it—I resign the pastorate of Plymouth Church. I have sought as long as I could to avoid this issue; I have adopted, acquiesced in, all your plans and devices. They all come to naught. This war has got to be fought through. I know what the effect will be on Plymouth Church; there will be three parties there—the wedges which will be driven in will split that fabric asunder; the church will be destroyed with me. It shall not be destroyed; I resign my pastorate of Plymouth Church and then I fight alone. You know how I have loved that church. You know what I have done to avoid that issue. You know that it was not a pleasant thing to go home to my wife and tell her that I was charged with adultery, or that I was charged with improper overtures to a matron. You know it was not a pleasant thing to me to go to my friends in Plymouth Church and say to them: 'I am charged, falsely indeed, but by a respectable woman of my congregation, with an act of infamy and dishonor,' and while I have acted upon your counsels and those of your wife for the purpose of averting such an issue, I see that there is no trust to be put in Theodore Tilton. I will save my church. I will stand alone and I will fight alone." This very man, who was threatening to publish a card in order to blast the character of Mr. Beecher, says: "If he publishes that resignation, I will assassinate him," and he has the impudence to stand in the presence of the Chief Justice of this tribunal, with his lips fresh from the Book of God, in the presence of twelve honest and sworn jurors, and say that "if Henry Ward Beecher had signed a paper which it was his perfect right to do, I would have assassinated him." Is it on the oath of an assassin that you would destroy this man's character? And is he who swears that nothing saved him from executing his threat except the fact that Mr. Beecher did not publish the resignation—is he at liberty to say, "Am I any the less an assassin because I am not in fact, though I was in intent?"

Nay, more; go back to an earlier period, on the afternoon of the 26th of December, 1870, after the pretended pledge he had given to his wife never to injure Mr. Beecher, while, as he pretends, he was still prosperous, still in a leading position in connection with two of the prominent papers of the country, in the receipt of $15,000 a year, and, as he pretends, without the slighest reason to suppose that he was to be removed from that position; he writes to gratify a man whom he had denounced before as a treacherous conspirator, he writes at the request of that enemy of Henry Ward Beecher a letter calling upon him "for reasons which you explicitly understand to quit the ministry of Plymouth Church and to leave the City of Brooklyn." "Mr. Tilton, what did you mean?" His answer is, "I meant to stab him to the heart." Of course there he did not mean literal assassination. But there was a fiendish malice which, without further provocation upon the part of Mr. Beecher, with nothing to excuse it, led him, as he himself avows to entertain the fiendish malice which should lead him, for the gratification of Henry C. Bowen, to strike a death-blow to one of the foremost men of the age. I give him the benefit of another statement—it is contradicted and it is false, but he is not at liberty to allege it. In his account of the interview of the night of the 30th of December, 1870, he says he used to Mr. Beecher this language: "I have hitherto spared your life when I had the power to destroy it. I spare it now for Elizabeth's sake." It is false, but it is Tilton. He said nothing of that kind to Mr. Beecher, but it comes out of his heart now, and it was in his heart then. He meditated a murder when he swears that that idea was in his mind. It is not enough for him to glorify himself on his magnanimity to get rid of the effect of the fact that he deliberately meditated the murder of an unarmed clergyman, without even having made an accusation.

THE LETTER TO THE FRIEND IN THE WEST.

If you want to see what a perfect sham the man is you need only look at his letter to that man of straw, "The Complaining Friend," which was not written for publication, but which has been unearthed in the progress of this investigation.

Mr. Shearman—The "Friend at the West."

Mr. Porter—The "Friend at the West." There he talks in his usual self-glorifying and swaggering strain—

If you think I do not burn to defend my wife and little ones, you know not the fiery spirit that is within me.

He expresses his profound admiration of his own magnanimity in keeping his wife's innocence of adultery, for that is all there was of it, secret in his own breast, lest his fiery spirit should shoot forth in his own language, "like a thunderbolt, through other hearts." This magnanimous man would vindicate his wife's innocence, but he was afraid if he did it would wound the feelings of Mrs. Beecher, and of his friend Henry C. Bowen. That miserable false pretense is deliberately penned by him and laid away in Frank Moulton's tin box, to be produced hereafter as evidence of Theodore Tilton's magnanimous nature. It proves more, and I shall have occasion to refer to that letter presently.

Among the multitude of these things that I have noted from time to time during the progress of the trial there is one that I will detain you with just for a moment, because it is so illustrative of Moulton's opinion of him. That he thought that Tilton was slippery and unreliable, is apparent from an innocent statement of his which will be found in exhibit 81, I think: "I want to have Tilton in writing on this subject; I want him to commit himself to somebody." Why, did Frank Moulton know him so well he could not trust him? Nobody could trust him. Moulton did not. And the difficulty was that nobody could trust him any better when he was in writing than when he was not. He signed the "Tripartite Agreement" and tore it. He gave a pledge to his wife and broke it. He gave pledge after pledge to Mr. Beecher and broke them all. He was principally engaged in making and breaking covenants and continued it through the whole period of the four years. But, gentlemen, I have got to pass over that. I must call your attention a little more particularly to that letter of the "Friend in the West." It is at page 157. I attach very little importance to any of Theodore Tilton's writings intended for dress parade—those that were to be put in the newspapers. He says he lied in them all, and I have no doubt he did. But I attach—and have a right to do it—the greatest importance to those writings which were not made for the public, but were laid away as records of the truth in his own vault, and which he refused to produce, and of which he refused the benefit either to his wife or his friend. Here is a letter bearing date the 31st of December, 1872, beginning of course, as usual, with a sham—"My dear friend: I owe you a long letter." [Turning to Mr. Tilton.] "Who was it?" "Could not remember." "Was it anybody?" "Could not remember." To Frank Moulton—"Who was this complaining friend?" "I don't remember." Well, whoever he was, he had a name, had n't he? What occasion was there in a paper that he was not to give to the public at all in concealing the name? It was a sham. It was a thing used like these papers that were got from time to time, under one pretense and another, from Mr. Beecher to be used in the future for the purposes of the conspiracy—vengeance and blackmail. But the man—the man is so addicted to lying and deception that he lies even when he is alone, in his own private diary, in his own books and papers. "I am unwell, and am a prisoner in the house"—that is on the 31st day of December, 1872. And you know that happened to be a very active day with him. For a man who was a prisoner and in bed at his house, he was very busy about the streets of Brooklyn on that day.

I am unwell, and a prisoner in the house, leaning back in leather-cushioned idleness, and writing on my chairboard before the fire. Perhaps you wonder that I have a fire, or anything but a hearthstone broken and crumbled, since the world has been told that my household is in ruins. And yet it is more like your last letter—brimful of love and wit and sparkling like a fountain in midwinter.

He was writing this for posterity. The letter "Brim full of wit," who wrote it? The friend at the West, whose name he has forgotten.

Nevertheless, you are right. I am in trouble, and I hardly see a path out of it. It is just two years ago today—this very day, the last of the year—that Bowen lifted his hammer, and with an unjust blow smote asunder my two contracts, one with *The Independent*, and the other with *The Brooklyn Union*. The public little suspects that this act of his turned on his fear to meet the consequences of horrible charges which he had made against Henry Ward Beecher. I have kept quiet on the subject for two years through an unwillingness to harm others even for the sake of righting myself before the public. But having trusted to time for my vindication, I find that time has only thickened my difficulties, until these now buffet me like a storm.

You know that Bowen long ago paid to me the assessed pecuniary damages which grew out of his breaking of the contracts, and gave me a written vindication of *my* course, and something like an apology for *his*. This statement, so far as I am concerned, is final.

But Bowen's assassinating dagger drawn against Beecher has proved as unable as Macbeth's, "to trammel up the consequence."

I see the letter is too long to read; and I will only advert to some of its topics. In that letter, not written as a lie for the public, but as a written confession in the secret archives of Moulton and Tilton, he denounces Bowen and Woodhull as the traducers of Beecher and the successive authors of the horrible charges against him. It is there that he declares, as if he were the first discoverer of the fact, that the tongue is a wild beast which no man can tame.

He denounces the Woodhull letter—I use his language—as an "unholy business," denies that he "had a conspirator's hand," and says, "I am as innocent of it as of the Nathan murder." He says, "It is hinted that the libelous article was actually written by me;" and then pleads an alibi on the day of the publication, and adds: "I did not know of its existence till a week after it had convulsed all my city and family." But he is not quite content to leave his defense on an alibi. He remembered, perhaps, that on the 4th of November, 1872, on leaving Concord, N. H., and in the presence of Edward J. Wright, he stated that he had seen the Woodhull & Claflin publication, and feared for its effect on his wife's health. He remembered, too, when he wrote this letter on the 31st of December, 1872, that not only did Mrs. Woodhull quote him and Moulton as among her informants, but that he himself had repeatedly urged her to publish the scandal that Summer and Fall. It did not then occur to him that he might get Stephen Pearl Andrews to come to his relief by swearing he put some finishing touches on it after he went to New-Hampshire. So, quoting this alibi, he proceeds in his letter to essay to pitch the story of the Pantarch overboard by saying that "in the Spring of 1871 Mrs. Woodhull poured into his ears"—I use the language of the letter—"almost the same identical tale which she printed a few weeks ago." That is just what our witnesses say, that she "poured it into Tilton's ears" and theirs. Tilton says in this letter, "I was toiling like Hercules to keep the scandal from the public." Well, gentlemen, has not the evidence shown where it was that Hercules Tilton toiled? It was in that salon of "Madame Roland," and in her bed-chamber where Lizzie Giles admired the proportion of the youthful Hercules in stockings, and put his shoes from off his feet because the weather was warm. That is all. Like Hercules, he accomplished the task he undertook to do. In due time the Woodhull scandal appeared, as he intended it should. It appeared, too, very properly, on the day when Tilton could prove an alibi in Concord, in the capital of one of the States of this Union, within 12 hours by rail, and within 10 minutes by telegraph of the City of New-York, a city of newspapers, a city of telegraph-poles; and Theodore Tilton would have you believe that after that Woodhull scandal was published, and was telegraphed all over this country and abhorred, Theodore Tilton, the subject of the scandal, remained in professed ignorance of it for an entire week. Do you believe it? When Mrs. Woodhull libeled his wife, the agreeable remedy Tilton found was to make love to Mrs. Woodhull. [Laughter.] But the course of true love never does run smooth.

THE "TRUE STORY."

This woman, so innocent, so pure—white angel of light—while she was pouring into his ears these beastly accusations against his wife, suddenly becomes an angel of darkness when she proposes to deal in like manner with other men's wives with whom Theodore had peculiar relations. When the "Tit for Tat" article is threatened, Theodore turns in disgust from the white angel of light, and he would have you believe that he nevermore even entered her presence. He proceeds to say in this letter:

Nor was it till after I had known her for a number of months, and when I discovered her purpose to libel a dozen representative women of the suffrage movement, that I suddenly opened my eyes to her real tendencies to mischief, and then it was that I indignantly repudiated her acquaintance, and have never seen her since.

Charges against his own wife brought him to Vickey's saloon, and in his stocking feet; but charges against his other female friends wounded his delicacy, and he left her with burning indignation and went to Concord, N. H., and then, to his utter consternation, she publishes, not the "Tit for Tat" article, which he did not want her to publish, but the libel upon his own wife, which he did. The same identical tale, to use his own language, which she had poured into his ears that Spring, and which he had been toiling like Hercules to prevent. Now, what was this unhappy man to do? He had been carefully considering this question from the 5th of November, when he came back from Concord, to the 31st of December, the date of this letter. He was in a very delicate condition. Mrs. Woodhull was a lady. Of course he could not contradict a lady, and especially a lady who, in the libel on his wife, cited him as authority for the accusation. That might endanger himself. That might endanger the other female friends who might be hurt if the "Tit for Tat" article should be published. He was at his wits' end, and he proceeds in this letter to explain the extreme delicacy of his position. His wife innocent. Mrs. Woodhull a libeler. Four tendencies to mischief that had led him scornfully to repudiate her, but could not contradict her. "What to do in this emergency (which is not clearing, but clouding itself daily) I have not yet decided. What I *could* do would be to take from my writing-desk and publish to-morrow morning the prepared narrative and vindication, which, with facts and documents, my legal advisers pronounce complete." That is what he could do. Why didn't he? That was the "True Story." But what had this man to do, then, with counselors and advisers? He had one attorney, Moulton. [Laughter.] But Moulton had got his money. Who was the other? He was on that stand, and dared not say that Mr. Tracy was the other. Benjamin F. Tracy never touched your palm as a client. He has sworn it, and he dare not deny it, and must not assert it now. No, if he had counsel, gentlemen, it was the counsel who thought it well to publish his wife's letters, but I don't believe that at that stage of the case even Judge Morris was brought into the case.

The counsel and advisers I have no doubt were Francis D. Moulton, and the man who writes statements for him. I do not know at what stage of the matter it was that Butler came in. Down to this period I don't find any counsel, any attorney, and adviser, except Francis D. Moulton, as between him and Theodore Tilton. This he says would explain and clarify everything. That is the "True Story," undoubtedly. "Both great and small, including the Woodhull episode, but which is a minor part of the whole case, but if I publish it"—now, observe. There is something which prevents him from publishing it. If he publishes it, it will vindicate the honor of his wife. If he publishes it, it will brand an atrocious and a foul conspiracy. If he publishes it, it will vindicate those children whom the fiery spirit within him was burning to defend. If he publishes it, it will vindicate the pastor of Plymouth Church. But there is something which prevents. What is it? "If I publish it I must not only violate a kind of honorable obligation to be silent which I had voluntarily imposed upon myself, but I must put my old friend Bowen to a great risk of being smitten dead by Beecher's hand." Theodore Tilton's wife is innocent, and his children are legitimate. But he permits her purity to be questioned, and their legitimacy to be questioned, because of his tenderness to Henry C. Bowen; and he says, "If the world knew the truth," not that it would blast Henry Ward Beecher, but that it would enable Henry Ward Beecher to blast Henry C. Bowen. Here we have it. His wife, pure, loyal, unstained with dishonor. Her vindication prepared complete within three feet of the chair where he was writing; the charge false, needing nothing but simple denial; he has made the denial; the truth is that she is innocent; it is true of Mrs. Woodhull that he has used her and needs her no more; he has no other wife to libel and destroy, but there are the two difficulties: one is that he has a private compact which he has made with himself—observe, not with his wife, but with himself—that though his wife was publicly accused on his authority by name, he would leave her undefended before the public, but he would put her vindication in his writing-desk. And why? Not because he loved her less, but because he loved Henry C. Bowen more. If the truth were known, it would acquit Mr. Beecher as well as his wife. Ah! there was the rub. Well, why should it not? Why, he tells us. If the truth was known it would kill my old friend Bowen. It would expose him to be smitten dead by Beecher's hand. Plymouth Church would hound him as a rat. So we have in Tilton's own hand, over his own signature, a deliberate statement, which he admits in the postscript he had read to his wife, pronouncing the charge of Mrs. Woodhull of adultery between Mr. Beecher and his wife a libel and a lie: declaring that he had prepared and deposited in his own writing-desk his own vindication of her purity and her honor; that his only reasons for not publishing were, first, that he would rather not on his own account, and, second, that if the truth were known, and Mr. Beecher exonerated, it would enable him to ruin Bowen.

THE "SHORT REPORT."

Gentlemen, I pass now to another of these recorded declarations of Tilton. I refer now to the short report, which appears at page 131 of the first volume of the evidence. After Mr. Beecher's return from Peekskill on the 13th of July, 1874, after Tilton's impudent message by Redpath sent on Sunday, the 12th of July, that the charge against Mr. Beecher was to be changed to one of adultery, a charge which Redpath swears he did not believe when Theodore Tilton made it, nor at any time since; after this, as Moulton and Tilton both admit, this pretended cuckold comes into court flourishing a pair of antlers that don't belong to him, and asking you to tip them with gold—this cuckold sends by the hand of Moulton to Henry Ward Beecher a short report, such as he wants the Committee of Plymouth Church to sign. This report, unlike the long report, has been introduced in evidence by him, and to you, written by him as a declaration of the truth, written by him shortly before the 13th of July, I think on the 8th or 9th of July, and submitted by him to Henry Ward Beecher on the Tuesday following that Sunday, and which, for the first time he sent the message, that charge which had hitherto been one of improper solicitations, was now to be changed to one of adultery:

"The Committee appointed to inquire into the offense and apology by Mr. Beecher alluded to in Mr. Tilton's letter to Dr. Bacon respectfully report: That after examination they find that an offense"—and what else?—"of a grave character was committed by Mr. Beecher against Mr. and Mrs. Theodore Tilton, for which he made a suitable apology to both parties, receiving in return their forgiveness and good will. The Committee further report that this seems to them a most eminently Christian way for the settlement of difficulties, and reflects honor on all the parties concerned."

There is the recorded judgment of Theodore Tilton as made upon the 13th of July, 1874, and which he asks you now to falsify. Observe, gentlemen, if you please, that there is no imputation in this report of adultery. On the contrary, the unnamed offense is stated to be one against Mrs. Tilton. Tilton certifies that the offense was one for which an apology was suitable reparation. He certifies that it was an offense against Mrs. Tilton which called for an apology to her. What! A paramour apologizing to a mistress for eighteen months of adulterous intercourse in mutual prostitution! But, more, the cuckold husband and debauched wife unite in accepting the apology, and the betrayed and dishonored husband certifies his good will to the clerical debauchee, and in his own handwriting, Theodore Tilton, knowing then every fact which he knows now, asks a committee

of the leading citizens of Brooklyn to certify that such a foul and infamous transaction reflected honor on all the parties concerned. These are the ideas of truth and honor entertained by Theodore Tilton and Francis D. Moulton. On the Sabbath before Tilton had sent his threat to Redpath to change the charge to adultery, Moulton had sent his own false and treacherous message that Tilton was enraged with him because he loved Beecher as much or more than he loved Tilton, and that he, the mutual friend, stood ready with his well ground battle-ax to smite either to the earth that should attempt to crucify the other. This is the precious document of which Theodore Tilton was the writer, and Francis D. Moulton the bearer to the interview between Beecher and Moulton on Thursday the 14th of July, after Mr. Beecher's return from Peekskill. Now, observe gentlemen, I have no idea that Theodore Tilton or Frank Moulton for one moment contemplated the final adoption of any such report. They had another object. But it does not lie in the mouth of either of them to say, "We forged a lie for the purpose of defrauding and misleading Mr. Beecher." They were both treacherous. They intended to deceive Mr. Beecher, and to entrap him, in the statement he was about to make to the Church Committee, into the use of language corresponding to that in this report—that is, that he had, it is true, committed an offense without defining it. They expected that they would entrap him into the use of language in that statement which they could construe into an admission of an undefined offense, and then turn and rend him, as turn and rend him they could, because if they could get him to admit an offense, and leave it to them to define it, they could define it to be adultery, and bring Mrs. Moulton to the stand to aid them in so defining it. Moulton, with his usual plausibility, succeeded in deceiving Beecher. Mr. Beecher was glad to accept the assurances of Moulton and of Tilton as sincere. Moulton testifies as follows, at page 130, Volume I.:

Q. Did Mr. Tilton present a proposed report for the Committee to make? A. Yes, Sir. Mr. Tilton did, and I submitted it on the first interview of the week of the 12th to Mr. Beecher.

That was the week commencing on Sunday; the date of the first interview was elsewhere fixed; it was on the Tuesday following.

I told him I thought I could induce, or I would try and induce Theodore to withhold the statement he was preparing from the Committee.

Q. And you showed him then, as I understand you, Mr. Tilton's proposed report for the Committee to make? A. Yes, Sir, I submitted to him a paper which Mr. Tilton had prepared, and had expressed his willingness to abide by it before the Committee.

Now, Tilton admits that he wrote this and the proposed long report, and sent them both by Moulton to Beecher, and (use his own language, said that "I would be satisfied with either." Mr. Beecher, with his usual confiding frankness, and relying on Moulton's good faith and Tilton's pledge, resolved that he would make a statement to the Committee which should take the whole blame on himself; make a clean breast of it so far as he was concerned, and exonerate Tilton from all censure. He stated that purpose to Redpath on the 14th, and carried it out on the 15th by that eloquent statement submitted to the Committee (which appears on page 892, in the second volume of evidence) in reply to the request of the Committee for a statement of his relations with Mrs. Tilton. That statement he read to Moulton. That statement he presented to the Committee. It dealt generously and magnanimously with Tilton. But, as usual, Tilton proved false and renewed his threat of the 12th, which he followed on the 20th, to change his accusation to one of adultery. Mr. Beecher had redeemed his promise to Moulton and to Redpath to exonerate Tilton; but they were foiled in their purpose to obtain from him an admission before the Committee of an undefined offense which they might afterward, in the light of the Bacon letter, construe into a confession of adultery. True, he admitted his offense, but he specifically defined what it was. That was not what they had counted on. But Tilton forgot, when he was writing this report, that he was making a report against himself admitting the falsehood of his meditated charge of adultery.

THE "LONG REPORT" FOR THE COMMITTEE.

Now, let us look for a few moments at the long report, which went at the same time. That is the one which Tilton says he and his wife had both agreed on; that he dictated it, and she wrote it off. It was thought that would certainly bring Mr. Beecher. In that report Mr. Tilton admits the falsehood of his accusation. With the shortsightedness and shallowness which so often betrays men who plume themselves on their cunning, he supposed that, inasmuch as he was writing a report for other people to sign, it had no operation until they did sign it. He did not know that in judgment of law, as well as of any man of ordinary intelligence, what a man writes for another to sign is evidence against himself of the truth of what he has recorded. His counsel understood it better than he did, and when they came to see this long report, although they had it marked for identification, we could not get them to introduce it in evidence, and we were compelled afterward to introduce it in evidence ourselves. They saw the effect of it. That report contains many matters of significance, and I really think, gentlemen, that I shall not be asking too much of you to allow me to read it, for it is not long. Here is the verdict rendered by Theodore Tilton before he called you to the box. False, I admit; for in the sense in which he uses the term "offense," meaning by it improper solicitations, it is not true that any such offense was committed

—it is not true that any such solicitations were ever made by Henry Ward Beecher; but this report shows that that was what Tilton had charged him with, and that that was the offense, and the only offense, that Tilton had imputed to him.

The undersigned, constituting the Committee of Plymouth Church, to whom were referred certain recent publications of Dr. Leonard Bacon and Mr. Theodore Tilton, hereby present their unanimous report.

Allow me to say, gentlemen, in passing, that the paper which has been called the "Letter of Apology" or the "Letter of Contrition" is embodied in the Bacon letter; not of course honestly; of course it is garbled; everything that comes from Tilton in the whole course of this matter bears that mark; but there is what purports to be the apology signed by Mr. Beecher, leaving out what Tilton thought did not help his purpose, but putting in all that could by possibility damage Mr. Beecher. I call your attention to that in this view. They say that apology means adultery. That apology was before this Committee. Now, we will see whether Theodore Tilton thought that apology meant adultery.

The Committee sought and obtained a personal interview with each of the three following-named persons, to wit: Mr. Tilton, Mrs. Tilton and the pastor, all of whom responded to the searching questions of the Committee with freedom and candor. Documents, letters and papers pertaining to the case were carefully considered. A multiplicity of details, needing to be duly weighed, occasioned a somewhat protracted investigation. The Committee hope that the apparent tardiness of their report will be compensated to the parties by rectifying an erroneous public sentiment under which they have all suffered misrepresentation. Theodore Tilton, Elizabeth R. Tilton and Henry Ward Beecher.

I. The Committee's first interview was with Mrs. Elizabeth R. Tilton, whose testimony was given with a modesty and touching sincerity that deeply moved those who listened to it. Her straightforward narrative was an unconscious vindication of her innocence and purity of character, and confirmed by evidences in the documents. She repelled with warm feeling the idea that her husband was the author of calumnious statements against her, or had ever treated her with other than chivalrous consideration and protection. She paid a high tribute to his character, and also to the fortitude with which he had borne prolonged injustice.

I should have felt that perhaps it was in bad taste for Theodore to write for somebody else to sign a glorification of himself, but perhaps he was right, for, after all, I believe that Gen. Butler, over the signature of Francis D. Moulton, took occasion to certify in respect to himself what really was a very welcome assurance to the public, that he had been all through this matter a peacemaker and desirous to hush up the scandal, and accordingly prepared these two published statements which appear in the name of Francis D. Moulton.

II. The committee further find that Mr. Tilton, in his relations with the pastor, had a just cause of offense, and had received a voluntary apology. Mr. Tilton declined to characterize the offense for the following reasons: First, because the necessary evidence which should accompany any statement would include the names of persons who had happily escaped thus far the tongue of public gossip.

Who were they?

Next, that the apology was designed to cover a complicated transaction, its details difficult of exact or just statements; and last, that no possible good could arise from satisfying the public curiosity on this point. Mr. Tilton, after concluding his testimony, respectfully called the attention of the Committee to the fact that the Clerk of the Church had spoken calumniously of Mr. Tilton during the late Council, and had since unqualifiedly contradicted and retracted his statements as untrue and unjust, and he (Mr. T.) requested the Committee to ratify and confirm that apology, making honorable record of the same in their report, which is hereby cheerfully done.

That was my Brother Shearman. The offense that he committed was that he really believed that this man was insane. I do not; and he does not now. The retraction, however, is before you, and its terms are very different from what this paper would indicate. He disclaimed having used the language that was imputed to him, and was willing for the sake of peace to make a concession to a degree that I think has strained his conscience ever since.

III. The Committee further find that the Rev. Henry Ward Beecher's evidence corroborated the statements of Mr. and Mrs. Tilton. He also said the church action of which Mr. Tilton had complained, had not been inspired by the pastor, but had been taken independently by the church; that the public impression that Mr. Tilton had been in the habit of speaking against him was unjust to Mr. T., and was owing mainly to the unwelcome introduction into the church of charges against Mr. T., by a mere handful of persons, who, in so doing, had received no countenance from the great mass of the congregation, or from the pastor. He said that the apology had been invested by the public press with an undue mystery; that, after having been led by his own precipitancy and folly into wrong, he saw no singularity of behavior in a Christian man (particularly a clergyman) acknowledging his offense. He had always preached this doctrine to others, and would not shrink from applying it to himself.

You will bear in mind, gentlemen, that before this paper was proposed by him, Mrs. Tilton had already testified before the Committee to her innocence and Mr. Beecher's, and that testimony was to be confirmed and corroborated by the evidence of Theodore Tilton and of Henry Ward Beecher, and the Committee were so to certify.

The Committee, after hearing the three witnesses already referred to, felt unanimously that any regrets previously entertained concerning the publication of Mr. Tilton's letter to Dr. Bacon should give way to grateful acknowledgments of the providential opportunity which this publication has unexpectedly afforded, to draw forth the testimony which the Committee have thus reported in brief, but in sufficient fullness, as they believe, to explain and put at rest forever a vexatious scandal. The Committee are likewise of opinion, based on the testimony submitted to them, that no unprejudiced court of inquiry could have reviewed this case, as thus presented in person by its principal figures, without being strikingly impressed with the moral integrity and elevation of character of the parties; and accordingly the Committee

cannot forbear to state that the Reverend Henry Ward Beecher, Mr. Theodore Tilton, and Mrs. Tilton (and in an especial manner the latter), must and should receive the increased sympathy and respect of Plymouth Church and congregation.

THE SIGNIFICANCE OF THE "LONG REPORT."

Here we have, gentlemen, the written falsification by Theodore Tilton, put forth by him on the 14th of July, three days after his wife had left his roof forever, two days after he sent his threatening message by Redpath of an accusation of adultery, which six days afterward he renewed before the Committee. Now, this paper, written by him the preceding week and submitted to Henry Ward Beecher on the 14th of July, brands Theodore Tilton as a double-tongued liar. Observe, he specifically refers in this paper to his letter to Dr. Bacon, in which he had published the so-called apology. If that apology ever meant adultery it meant adultery then. Yet he certifies here that it did not mean adultery. He says "the apology was designed to cover a complicated transaction, its details difficult of exact or just statement." Was the adultery of his wife with Mr. Beecher a complicated transaction? If that was the offense and it had been confessed by Mr. Beecher what need of detail? If he had debauched Tilton's wife, why was it unjust for Tilton to state it? If the "apology" meant adultery, what does Tilton mean by certifying that Mr. Beecher has suffered misrepresentation? He had. But the misrepresentation was in imputing to him improper proposals to Tilton's wife. What does Tilton mean by certifying to the modesty and touching sincerity of Mrs. Tilton, and to her unsullied innocence and purity? Tilton had already given public notice in the newspapers that within ten days he should put before the Committee his sworn statement. In this report he makes the Committee certify that he, Tilton, had been examined before them and had responded to the searching questions of the court with freedom and candor. Did he mean then to make that sworn statement a lie? Which is false, the written statement of the 14th, that Mr. Beecher and Mrs. Tilton are innocent, or the written statement of the 20th, that they were shameless, exposed, and confessed adulterers?

The hour of 4 o'clock having arrived, the Court adjourned until 11 a. m. Tuesday.

NINETIETH DAY'S PROCEEDINGS.

JUDGE PORTER'S ADDRESS UNEXPECTEDLY PROLONGED.

A LARGE AUDIENCE EXPECTANT OF JUDGE PORTER'S PERORATION AND MR. EVARTS'S OPENING—JUDGE PORTER'S INCREASED EARNESTNESS IN ARGUMENT—HE DESIRES AN EXTENSION OF THE COURT SESSION TO FINISH HIS SPEECH—AN ADJOURNMENT HAD AT THE REQUEST OF A JUROR WHO WAS UNWELL—JUDGE PORTER FURTHER REVIEWS MR. MOULTON'S CHARACTER AND HIS CONNECTION WITH THE CASE—GEN. BUTLER'S INTERPOSITION COMMENTED UPON—THE ALLEGED LETTER OF RESIGNATION ANALYZED.

TUESDAY, May 25, 1875.

Judge Porter opened to-day with a continuation of the analysis of the report for the Plymouth Committee, prepared by Mr. Tilton, and submitted to Mr. Beecher. This he declared to be a written recantation by Mr. Tilton of the charge of adultery. Mr. Moulton came in once more for a share of denunciation. Judge Porter reviewed his character and his history briefly, and referred to the termination of his connection with the house of Woodruff & Robinson, intimating that Mr. Moulton's friends had ceased to trust him. Some very cutting remarks were made about Gen. Butler's relations to the case. The orator declared that Gen. Butler, not having been accepted as counsel for Mr. Beecher, had become the adviser of Mr. Moulton, and had been the real author of the papers put forth in the name of Mr. Moulton with the intention of striking down Mr. Beecher. Judge Porter exclaimed, with all the force of gesture and passionate utterance that he possesses, "And when that blow fell, though no answer came, another paper appeared over the name of Francis D. Moulton, who took the credit and the honor of it, but devised by that dexterous and keen intellect which was equal to all the vicissitudes of the war, and which never failed, whether in the advocacy of a good or a bad cause, until now."

The letter of resignation was reviewed to-day very much in the way in which the letter of contrition had been gone over on Monday. This, the orator said ironically, was another specimen of Mr. Moulton's literary ability. The sentence, "I tender herewith my resignation of Plymouth Church" was ridiculed. "A pastor of a church," exclaimed the lawyer, "who did not know enough to write English for even four lines!"

The charge of blackmail formed the main topic of

the latter portion of Judge Porter's address. He declared that Mr. Tilton and Mr. Moulton were both blackmailers, and that the charge had never been abandoned by the defendant's counsel. The blackmailers, he said, had shifted their object. At first Mr. Tilton's desire was to be reinstated in his position on *The Independent*. The alleged improbability and inconsistency of any other explanation of the conduct of Messrs. Tilton and Moulton than that they were levying blackmail, formed the general thread of the argument on this subject.

THE PROCEEDINGS—VERBATIM.

MR. PORTER'S ARGUMENT CONTINUED.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Porter—If it please your Honor—Gentlemen of the Jury: It gives me more gratification even than it can you, to know that at some period in the day, at least, my learned friend is to follow me; but it has been deemed advisable that I should pursue, to a certain extent, a branch of the case to which I have given more particular attention than he has, for at least a portion of the time.

MR. TILTON'S RECANTATION.

You will remember that when we adjourned last evening we were considering the effect of that report drawn by Theodore Tilton in the week commencing on the 5th of July, 1874, and submitted by his direction and authority to Henry Ward Beecher, with the pledge that that report was one upon which they could agree in their testimony before the Committee, and in the findings to be rendered by that Committee. You probably retain freshly in recollection the terms of that report upon which I was proceeding to comment, and I resume at the point at which I left the analysis. Why is it that in that report, recorded by the hand of the man who claimed that he was the victim of a libertine, and speaking of the paper which has been put forth here as a confession of adultery, Theodore Tilton certifies that that "Apology" had been invested by the public press with an undue mystery? What mystery is there in adultery? The public press that had invested it with that mystery was the press that was as much set in motion by Theodore Tilton as if he had stood under the beck and mandate of Victoria C. Woodhull, and himself had set up the type on which appeared the charge of adultery against his wife and Henry Ward Beecher. If Mr. Beecher was an adulterer, why does Tilton certify in this paper that his own testimony before the Committee, and the concurring testimony of his wife and Mr. Beecher, as well as the documents, letters, and papers pertaining to the case, have put at rest forever a vexatious scandal? You will recognize, gentlemen, my purposed repetition of the points which I was considering yesterday, with a view that you may now retain the connection as I proceed to comment further upon the report; and once more, to borrow what I have already said to you, above all, if he believed, as he now pretends and swears, that Mr. Beecher had debauched his wife—that Mrs. Tilton had polluted their marriage bed—how could he ask a committee of Christian men, as he does in this paper, to certify to the moral integrity and elevation of character of the adulteress and her paramour?

This, gentlemen, is the written recantation by Theodore Tilton, in his own hand, on the 14th of July, 1874, of the accusation of adultery which he made to Redpath on Sunday, the 12th of July. Mrs. Tilton is not the only member of that household who has had occasion to retract false charges; and when he rebuked his wife for retracting a charge that was false, may I not ask you to rebuke him for retracting a charge which was equally false, and then having the effrontery to come into a court of justice and renew it. He cannot plead that the recantation was a lie. He is the plaintiff in this suit. He cannot ask you to declare the accusation to be true which 10 months ago, in writing, he confessed to be a lie. No man can ask a jury to sustain a charge the falsity of which is shown by his own voluntary, deliberate, written confession. I have said that he could not plead that this recantation was a lie designed to protect his wife, for although it was written before she left him, he sent it by the hand of Frank Moulton to Henry Ward Beecher three days after she had renounced his protection and bid him goodby forever. When this paper was sent to Mr. Beecher by the hand of his minion, Mrs. Tilton was living under the shelter of the roof of the friend of her early days, Mrs. Edward J. Ovington. He had followed her there. He had there made his base and infamous charge to those beneath whose roof she had found a new home. He cannot plead that he falsified his accusation from tenderness to Mr. Beecher. He swears before you that from the 26th of December, 1870, he cherished in his heart that feeling that made him even then intend to smite Henry Ward Beecher to the heart. No; the accusation of Sunday was false. On Tuesday he retracted it. He knew it to be false. He confessed the falsehood, and by that confession he is bound. Nay, more, gentlemen, by that confession you are bound.

MRS. MORSE DESCRIBED.

In passing from this branch of the case, permit me to allude, for a moment, to a lady whose name has been malignantly traduced, in your hearing, in writing and on oath; but I think no man will hold her in lower estimation in view of the fact that the man who traduced and vilified her is also the traducer of the wife of his bosom and of her honored pastor. Tilton had the same opportunity in respect to the mother of his wife

which he has used so unscrupulously in his evidence to blacken her, on oath and in writing, for the purpose of attaching taint, dishonor, and infamy to the name of a woman who had no protector, and was therefore the lawful prey of the chivalrous leader of free love. That Mrs. Morse has led an unhappy life, that she was cursed by the alliance of her only, her beloved and her idolized daughter, with one who had no more sympathy with her than he had with the swine upon the sides of the mountains, that the domestic difficulties in that household shattered her health and even affected her understanding, that they have thrown her into a nervous condition alternately of credulity and unbelief, which have led her to say things which have been injurious to others no less than to herself, and to her own child, is all due to Theodore Tilton, the man who had the effrontery to say in the "True Story" that a woman whom he admitted to be one of the purest in heart, one of the most fascinating in manners and address, and one of the most brilliant intellectual women whom he had ever met, was at heart a murderess. It was a calumny as vile as any of those which have ever been coined by the man; and you who know something of Brooklyn, something of the ladies of Brooklyn, something of the estimation in which character is held here, will not be surprised when I say what is known to you, but is not known to the public, that the woman whom he defames, commands in this community a degree of respect, even in her misfortunes, which Theodore Tilton will never command from this hour, either in this city or any city or refuge on earth. In one of those letters written by her in the excited, nervous condition, to which she was driven by his dastardly charges against her daughter, which she accepted from him without inquiry, and which she felt carried with them the dishonor of her own house, no less than the infamy of the man who claims to have been himself a participant in the offense—she does write in one of these letters to Mr. Beecher, which was submitted to him and his friend Frank Moulton in consultation, by Mr. Beecher, for an appropriate answer, and the answer to which was given by him in the terms they prescribed—in that letter she says, speaking of Tilton, admitting all he says to be the invention of his half drunken brain, still the effect upon her is the same; he is doing all he can to kill her by slow torture. And yet these eager fishermen, whose nets were ready for whatever could be found floating in the water, catch at this, preserve this letter, which has been submitted to them in order to enable them to judge best what was to do with this nervous and excited woman—this letter is preserved as one of the muniments of title to the $100,000 which Theodore Tilton claims to-day in a court held by the Chief-Justice, and in a court in which you sit as jurors. If there can be anything more dastardly than to deal with a woman, a mother, alone, unprotected, feeble in health, driven almost to madness by her love for her daughter and the cruelties of her husband—if anything more dastardly can be conceived than the calm and cool preservation for the day when money can be made out of it, of such a letter, and its introduction on the stand even by the man who, in his malignity to Mrs. Morse, was capable of swearing she was a murderous maniac, you may conceive of it; I cannot. It is in keeping with the character of the man, who in another of his moods, and in speaking of that unholy, wicked libel, penned by the hand of Stephen Pearl Andrews, but conceived in the brain of Theodore Tilton, and melted through the sieve of the Woodhull: "When I was doing my best to suppress one earthquake, that is, Bowen's slanders against Mr. Beecher, Mrs. Woodhull suddenly stood before me, portentous with another." This suppresser of earthquakes asked, "What was I to do? I resolved at all hazards to keep back the new avalanche until I could securely tie up the original storm." This suppresser of earthquakes and of avalanches, this tyer up of original storms, was holding back avalanches, suppressing earthquakes, and tying up storms, all of his own creation; toiling like Hercules to suppress a slander, and all he had to do was to keep closed those Apollo-like lips, which his wife, Elizabeth Tilton, even to this day worships. But the tongue is "a wild beast which no man can tame," and the first use he made of those lips was to send out that wild beast to rend where it would, to destroy everywhere. Gentlemen, it is against such men as Theodore Tilton that the world has a right to claim the interposition of courts of justice. If the spirit which he has exhibited in this case be permitted to run rampant, men, like wolves, will devour each other. With all the extraordinary power of condensation which characterizes my friend Mr. Shearman, the direct contradictions to this oath, each contradiction embraced within the measure of two lines, covers all those sheets [holding up to the jury several sheets of legal cap.] I shall not touch them; and in them is not included one word of the contradictions by his own writings; not one word of the contradictions by Henry Ward Beecher and Benjamin F. Tracy. They are the contradictions on vital and material points of the foremost men in Brooklyn and New-York, of women of undoubted purity and reputation. They stand, each and every of the thirty-five, front to front and oath to oath, looking Theodore Tilton in the eye, and appealing to that God whom they respect, but whom he doesn't respect, for the truth of their denials to the falsehood of his utterances upon the stand.

MR. MOULTON'S ATTITUDE TO THE CASE.

Gentlemen, I have incidentally alluded, in passing (although as yet I have failed to give much attention to him), to Mr. Francis D. Moulton. I am deeply

impressed with the feeling that I do injustice to you and to the cause in giving him more than a passing notice. The issue here joined is between Theodore Tilton and the man he accuses. If Tilton is a false accuser, you need go no further in this case. If he is untrustworthy and rotten, heart, brain, bone, and marrow, no witnesses whom he can call will reinstate him in the judgment of an honest man. And yet, because I regard Francis D. Moulton as a dangerous man, as the type of a class of dangerous men, I feel that I should be wanting in the discharge of my professional duty if I did not, at least briefly and cursorily, call your attention to some of the more marked features of his evidence, in order to enable you to apply your more unbiased judgment, your cooler understanding, to these facts, and determine whether, even if Francis D. Moulton were the plaintiff instead of the witness, he stands any better in your judgment than the man he served.

In the first place, I recall your attention to the fact that two years ago this man occupied a very different position in this community from the position which he occupies to-day, even before your judgment is pronounced. Two years ago he was a leading member in one of the first commercial houses in this beautiful and prosperous city. Two years ago he was at the head of a family honored by its alliances; high in social position; worthy of confidence, respect, and regard. To-day Francis D. Moulton, through some cause which he fails to explain, stands alone. That great house has met with the disaster which was threatened to Plymouth Church; its roof is gone. And although there is another roof which still shields a firm of the name, Francis D. Moulton doesn't find shelter under it, and the men who have passed judgment upon him, and have executed that judgment, are the men who know him better than you or than I do. Certainly he has not left that firm for lack of administrative genius and ability, if Theodore Tilton is to be believed. He has not left that firm for lack of kindly feeling on the part of those who are members of it, to some of whom he was allied by blood and to all by interest; for he has been able to summon them as witnesses in his behalf even now; for as Francis D. Moulton deals with no man without keeping him in his power, it would have been strange if the man who betrayed the trust even of a confiding clergyman retained no power now over those who are allied with him in interest. Why this change? Professions sometimes mean much; acts mean more. How does Francis D. Moulton stand to-day in your judgment, in the judgment of his own partners, in the judgment of the City of Brooklyn, in the judgment of the millions of men who read from day to day the records of this trial? It is not for me to pronounce; it is for you. Right at the threshold of this argument, in that branch of it which I devote to him, I confront him with his own words on that memorable 1st of June, written beneath his own roof, to be read by Henry Ward Beecher and to be produced on this trial. Who is this man? Is he one who believes that the minister of God commends himself to his parishioners by breach of trust and foul adultery? Is he a man who believes that hypocrisy at the altar will commend a gray-haired man to the confidence of the men, the women, and children to whom he speaks from Sabbath to Sabbath, whom he consigns to the baptismal font, whom he hands over at the altar, man to woman and woman to man, whom he commits to the grave—does he believe that? Did he on that first day of June believe that of all the eminent men in Christendom, Henry Ward Beecher stood infamously pre-eminent as a man who preached from Sabbath to Sabbath to 40 of his own mistresses, as a man who had grown from youth to age, growing rotten day by day, as a man who had been steeped in hypocrisy from the beginning, to whom no ties or obligations were sacred, who could go from the communion table to the adulterous bed, and administer the rites appropriate to each, to the same woman, who trusted him and who loved him. He swears to you now that he knew on the day when he penned this letter, and knowing that, he says to him in writing, produced before you, the same handwriting with the "Apology," but dictated by another man—"You can stand it if the whole case were published to-morrow." Gentlemen, this man spoke the truth, but if he did, what he uttered on this witness stand was a fabrication and a lie. "You know that I love you." Frank says he is a heathen. There was one who was not a heathen, who was addressed by one who spake as never man spake, "Simon Peter, lovest thou me?" "Lord thou knowest that I love Thee." Can you conceive an antagonism stronger, more terrible than the spirit in which Simon Peter, the true and faithful apostle, who once faltered from fear, but never from failure of love, and the same utterance when it came from the calm, cold blooded, treacherous man who was capable of going to the house of a woman to get a letter, and to a clergyman to get the fruits of the letter with a pistol in his pocket, both unarmed. "May God bless you." And in what form was the blessing of God to come? We have it here; it was when the same hand that penned that letter was laid upon that book in attestation of the truth of the charge that Henry Ward Beecher was an adulterer, and that he knew it on the day when he said, "You, the trust-betraying, hypocritical adulterer—you can stand it though you come before the whole world and say, 'I come from a debauch with one of my communicants;'" the same hand that wrote these words "You know that I love you;" the same hand that was lifted in the solemnity of a mockery to God, "May God bless you, the hypocrite and adulterer!"

GEN. BUTLER'S PART IN THE PLAY.

I am taxing your patience too long. I pass over much which I intended to say. The bare skeleton of what I had proposed, if filled out, would weary you and me and all. But here and there permit me to touch a single point which I think is worthy of your attention. I have alluded to one eminent for his services in the field, for his skill as a diplomatist, for his power as a politician, and for many qualities that command admiration, and some perhaps even, with near friends, that make a man affectionately beloved. And yet, by one of those singular fatalities which attend men of genius, it rarely happens that a conspicuous case is presented which involves a great man and which is likely to move communities, that the name of Benjamin F. Butler does not appear in it; and although this may be an exception, there seems to be an unfortunate peculiarity, which in the past has, through no fault of his own, made him the defender of those who did not command the confidence and respect of their fellow-citizens. Frank Moulton was early brought into relations with this distinguished man. Through difficulties between his own firm and the Government, as the evidence shows, that firm was involved in the defense of suits, the prosecutor in which—or, if not the prosecutor, the relator—was a name somewhat memorable, that of the informer Jayne; and Benjamin F. Butler was his counsel. His Honor, and I am inclined to think very properly, in reviewing it, although I thought otherwise at the time, excluded the evidence which would have enabled you to understand more about that case than you now do. But two or three things cropped out in Moulton's cross-examination which it is useful to remember. Vital interests were at stake. He was prosecuted by one of a class who are known to be merciless. The informer was represented by counsel who never spared, even in warfare—who was not likely to spare in peace. Oddly enough, it happened that the relation of these parties was changed, and the hostility which was indicated by that litigation resulted in a lasting friendship between the informer and the counsel of the informer and Francis D. Moulton. I do not know how this happened; I only know that the friendship was so devoted that the time came when Moulton was in trouble, and this friend, without fee or reward, and after consultation with Moulton, tendered his services—to Moulton? No; to Moulton's enemy and victim. The friend of Mr. Moulton was recommended to Mr. Beecher as his counsel, and with the assurance that he could carry him through without regard to the facts. Mr. Beecher did not know Butler, and was laboring under the false impression that though Butler was a man of great ability he was not the counsel whom the pastor of Plymouth Church should select to represent him. At any rate he failed to make that selection. But there were three other men, each of whom, whatever Frank Moulton and Theodore Tilton thought, he loved and honored—my friend Hill, the brother of one with whom I was long associated in life in another city, and the very name wakes up in me, as it does in the heart of my friend Mr. Beach, remembrances of honor, admiration and love—Gen. Tracy whom they struggled in vain to separate from Mr. Beecher by threat, by stratagem, by fraud and by perjury—Thomas G. Shearman, who, from the hour he came into this case, has held them all at bay. These were the men Henry Ward Beecher was disposed to trust, and to throw himself, when the time came, upon the protection of the bench, and upon the vindication of a jury. But Gen. Butler, not being accepted as the counsel of Mr. Beecher, becomes, on the same liberal terms and without fee or reward, the adviser of Francis D. Moulton. We have conclave after conclave, not only by day but by night, at the Fifth Avenue Hotel, at that house in Remsen-st. where this false accusation had its origin, and the end is that Francis D. Moulton, in due time, appears as the author of one of the most adroit and able papers which had ever been published in this country, which was intended to kill Henry Ward Beecher at a single blow. And when that blow fell, though no answer came, another paper appears over the name of Francis D. Moulton, who took the credit and the honor of it, but revised by that dexterous and keen intellect which was equal to all the vicissitudes of the war, and which never failed, whether in the advocacy of a good or of a bad cause, until now, and now it has failed, and through you. Then came that vindication, full of hate and malignity, full of cunningly devised falsehood, for which Gen. Butler is not to be held responsible, for Moulton furnished the materials, but which has left a record producing an impression upon the country that nothing but your vindication can wholly efface.

MR. MOULTON'S CONNECTION WITH WOODRUFF & ROBINSON.

I must hurry on. Gentlemen, it was said of the great naturalist, Agassiz, that if you would give him a single bone of any animal of which the race was antediluvian and extinct, by applying to it the powers which God has given to man and which science has developed, from that single bone he could reconstruct the entire animal. In men of the Moulton type there are so many bones that I cannot take time to deal with each, but I will take a single bone here and there to enable you to see whether you can reconstruct the animal of which that is a vital part. This man is either a true man or a liar. Which? Take a single illustration, which occurs to me at the moment without referring to my notes. On the brief cross-examination which I was permitted to make of him, and which I was compelled to abandon on account of the then condition of my health, I took occasion to ask him how long he had been a member of the firm of Woodruff & Robinson, and whether that was a permanent

connection. The question was asked at random, for information upon a fact as to which I was myself ignorant. With some hesitation he acknowledged that he was no longer a member of the original firm in all its branches of business, but there had been a subdivision of the business, and he was now, and had been from the 1st of January, a member of the mercantile department of that business, which was subordinate, as distinguished from the other, which was connected with the great commercial prosperity of your city. I asked him whether that was a permanent connection. It was—a connection of indefinite duration. "Is no time fixed for its dissolution?" "None." Now that was a matter of comparatively minor importance; but this man thought it important to conceal from you the fact that even his own partners had laid their hands upon him. He deliberately swore (and the examination was midway in January) that on the 1st of January there had been a separation of the two branches of the business, and that from that time he had been a member of the firm of Woodruff & Robinson, in a continuing partnership of indefinite duration, and there it stopped. That was true or false, and whether true or false he knew. It so happened that when Jeremiah P. Robinson was brought by them to the stand it occurred to that clear-headed and far-sighted lawyer, who seems by intuition to know even the truths which are unrevealed, to ask Mr. Robinson the question when Francis D. Moulton ceased to be a member of that firm. This witness, you will remember, is the uncle of Mrs. Moulton; this is the old partner of Franklin Woodruff; this is the man who comes to swear to all his conscience will permit, in aid of this controversy—which involves the honor and the reputation of his nephew, the husband of his niece. But he is an honest man. "Our partnership ceased on the 1st of January, in pursuance of an agreement made something like a year ago." The time has significance, gentlemen. If you remember, that was about the time when the last of the blackmailing attempts were being made. It ceased then; to take effect at a future day. The day came, and at the instance of Moulton, the day was postponed. Finally came the 1st of January, and with that Jeremiah P. Robinson and his partner would no longer consent to be linked with this man in their general business, but, at his solicitation (and you have no doubt it was in view of this trial, which it was then thought would be concluded within a month), there was an extension of the time of the final dissolution in respect even to the mercantile branch of the house until the 1st of February, and Jeremiah P. Robinson swears that they had entered on the 1st of January into a formal agreement that from and after the 1st of February that partnership, in all its branches, should be forever at an end. Which of these two men lies? No man who knows them both will doubt that it is Francis D. Moulton There is one bone of the animal.

HOW MR. TILTON BROUGHT MR. BOWEN TO TERMS.

Theodore Tilton and Francis D. Moulton have in almost every conceivable form taken the opportunity of their testimony on this stand to convey to you the impression that the claim of the $7,000 against Bowen was one which Bowen never denied. Why? Because they knew that right behind the admission of his denial lay the clew to the original conspiracy and the design of blackmail. What! Henry C. Bowen, who lives in a palace, who is not the editor, but the *owner* of one of the great religious papers of the country, a man of affluent fortune, whose good name will not permit him to refuse the payment of an honest debt, summarily turning a man out of his employment and then defying the contract to which he had affixed his signature, and which was in the hands of his adversary—Henry C. Bowen, waiting for a prosecution and resisting that prosecution and holding off year after year, refusing to pay the claim! It needs explanation; it finds it. When the time comes that *The Golden Age* can no longer float without $7,000 to float it, then comes that blackmail card, purporting to contain a charge against Henry Ward Beecher which would involve him in dishonorable propositions to one of his own communicants. Theodore Tilton makes his way down Broadway, and by a providence not of God, but of one of those spirits who are above God, by a happy conception, thinks he will go up stairs and see his old friend, Sam Wilkeson, and by the merest accident, when he got there, he drew out of his pocket a well-worn galley-slip containing a libelous letter from Theodore Tilton to Henry C. Bowen, which must ruin one, and might ruin both, and said, "This man owes me $7,000, and won't pay it. Justice must prevail though the heavens fall! I am sorry to say, Sam, I have got to publish that paper." He knew Wilkeson as well as I do—better than you do; and let me say to you, gentlemen, that among all the characters who have appeared in this drama there is none more worthy of note and remembrance than Samuel Wilkeson, one of the most brilliant and extraordinary men whom it has ever happened to be my fortune to meet, and the more brilliant and the more extraordinary, because the warmth of his heart is equal to the clearness of his intellect; a man who never was capable of a meanness, whose whole soul is intoned with honor and chivalry, who naturally abhors and despises men like Tilton, who naturally clings to and honors men, in the various walks of life, who command the respect and the admiration of their countrymen—men like Henry Ward Beecher, men like William M. Evarts, men like the honored Chief-Justice of this tribunal. My

old classmate and Judge Fullerton's old classmate in college, Samuel Wilkeson, looking at Theodore Tilton and reading him through as thoroughly as if he had created him, says: "Theodore, it is not possible you are going to publish a paper like that." "Justice! justice! Henry C. Bowen won't pay me the $7,000 that he owes me. He has no defense. I have sued him; but I have no confidence in the courts of law. That letter will bring him." Well, though it might not bring Bowen, he knew perfectly well that it would bring Sam Wilkeson, before whom at once rose a vision of those ideas that would arise in the mind of an honest man and an earnest friend. "What! are the tidings to go to the honored wife of the pastor of Plymouth Church that her husband has been guilty of adultery, and that he ravished Miss Proctor, or somebody else, so many years ago? Is the word to go off on the wings of the lightning and through Christendom that Henry Ward Beecher has, for the period of 10 or 15 years, been devoting himself to open libertinism, and that that Plymouth Church which has been thought among men to be worthy at least of some regard is merely an assignation house of debauchery? Theodore, Theodore, you are wrong. If Bowen owes you that money, he must pay it. Leave this matter in my hands. I will see the friends of Mr. Bowen and Mr. Beecher, and will bring that to a sudden termination. If he owes you that, it is yours and he must pay it."

He makes his way across the river to that clear-headed old merchant, Mr. Claflin; he goes to that strong-headed, bright-brained man, Mr. Sage; he passes over to Mr. Cleveland, and to Mr. Storrs; to the men who, he knows, would give, give, give of their substance to the extent of half their fortunes to save the man whom they honor, trust, and love. What was the result? Theodore says: "Why, Sam, I don't know what providence it was that brought me here, and brought this paper here. You take it. Do with it what you will." Wilkeson did; and within the compass of a single week there was an arbitration, at which the friends of Mr. Bowen and the friends of Mr. Beecher were together, at which all defense was waived, at which a tripartite agreement was signed, which would have bound any one but a barbarian. All three signed it; but two of the three have forgotten—Bowen, honestly, but simply from the infirmity of a treacherous memory; Tilton, *honestly*, but simply because there is no money to be gained now by admitting it. Of course, they have forgotten it! And yet they signed it, and Theodore Tilton went away carrying with him the $7,000 that could be got by no other process; and, in his exultation, in handing it over to Franklin Woodruff, who he knew would communicate it to Francis D. Moulton, he enters upon the back of that paper, in his own acknowledged handwriting, "Spoils from new friends for the benefit of old." They call Frank Woodruff to the stand to prove that he has forgotten it, and don't know what that meant Theodore comes to the stand; they don't ask him if he has forgotten it. Moulton comes to the stand; they don't ask him if he has forgotten it. Does any man doubt, in view of the revelations of this trial, that that $7,000 was money which never could have been recovered if Bowen had proved the facts which have been proved on this trial? If Theodore Tilton, professing to be engaged in the enterprise of conducting a religious paper, was at that time unworthy of the employment, unfit for the vocation, bringing disgrace upon his employer and upon the very journals with which he was connected, it was a breach of the implied warranty in law that every man makes when he undertakes, for a salary, to perform a service, the warranty that he is fit for the service. I call your attention to the fact that Moulton, as well as Tilton, on the direct examination, took great pains to show that there was no defense. Tilton professed even to have forgotten that he brought the suit. My friend, Mr. Abbott (who is a sort of bank upon whom any lawyer may ever draw), hands me a citation from the evidence (Vol. 2, page 673):

I told him that Mr. Bowen said that he never had received any such letter as that Jan. 1, 1871, and that he had not said the things that were stated in that letter, and that Mr. Bowen said he felt he did not owe him anything, and his lawyer had told him he didn't owe him anything.

He didn't; but he paid him $7,000, and Theodore Tilton gave *his* judgment, when he recorded, in that paper that he thought would never see the light, that that $7,000 was *spoils* obtained from the new friends of Plymouth Church, by the aid of Theodore Tilton, for Frank D. Moulton, and for the benefit of the old friends, Moulton and Tilton, who had played ball at school together.

WHY BESSIE TURNER WAS SENT WEST.

Again, another bone of the animal. It was important for them, if they could, in order to avoid the charge of blackmail, to make this jury believe that Bessie Turner was sent away out of pure benevolence on the part of Tilton and Moulton to save Henry Ward Beecher; and Moulton in his testimony tells us that Tilton thought Bessie Turner was a dangerous character to have about. "I told Beecher that Mr. T. could not afford to pay her expenses;" and he got Mr. Beecher, on that pretense, to pay them. Mr. Beecher was in no danger from Bessie Turner. You have seen her on the stand. Do you believe that Bessie Turner was the girl to prove disloyal to that mother whom she so idolatrously loved, that she would go and circulate the slanders of Theodore Tilton, which she had denounced even to his face as infamous fabrications and wicked lies? No; but Theodore Tilton remembered the scene in her bedchamber; Theodore Tilton remembered the occasion when she, in the sound sleep of young girlhood, was carried before she had awakened from her bed to his, and though no harm

was done beyond that, he knew that was not a good thing to put in the biography of Theodore Tilton when it should hereafter come to be published among men. And the mean contrivance of these two men first to get from her, through Mrs. Tilton, whom she loved, a seeming retraction of the charge against Theodore Tilton, and then to represent that she was sent away to conceal the adultery of Mrs. Tilton with Henry Ward Beecher.

THE "CLANDESTINE" CORRESPONDENCE.

Again, this man Moulton produces before you certain letters, which he calls "clandestine letters," from Mrs. Tilton to Henry Ward Beecher, and to those letters he, like his friend Butler, seeks to give a lascivious and base interpretation. Now, gentlemen, there is a little fact which you will remember—first, that Frank D. Moulton came into possession of the "clandestine" letters, which had arrived during his absence in Florida, by Henry Ward Beecher delivering them to him. What sort of clandestinity is that in which the adulterer delivers to the next friend of the husband of his paramour the letters which are to be the witness of the adultery? That is significant enough, and characterizes the baseness of these men. But there is more. One of these letters was in its envelope when it was offered on the witness-stand. The envelope—the letter was marked, the letter was read in evidence, when my friend Mr. Evarts fixed that eye which sees clearer than that of most of us upon the point significantly appearing on that envelope—that it was addressed to Mrs. Tilton, care of Theodore Tilton, 174 Livingston-st., Brooklyn, and sent by mail. Are clandestine letters sent by an adulterer to an adulteress to the care of the husband, and to his own dwelling, and through the public mail? And yet those men were capable of attempting to mislead you into the belief that these letters were clandestine, and as soon as Mr. Evarts had fixed his eye on that point, my friend Judge Fullerton, quicker than lightning, said: "This letter doesn't belong in that envelope; we will produce the envelope that belongs to this after dinner." We called for the envelopes. The envelopes never came—never came; are not here now, and you know why. Adulterers don't correspond with adulteresses through the public mail, and address their letters to the care of the husband of the woman they attempt to dishonor.

MR. BEECHER'S LETTER OF RESIGNATION.

Allow me to allude for a moment, because I forgot it yesterday or on Friday in touching on this point, to that Letter of Resignation, which is a specimen of Frank Moulton's literary ability. He represents Henry Ward Beecher, a master of the English language, as writing a letter filled with bad spelling and bad punctuation, addressed to his church, and which he knew the next morning would be in every newspaper that was in telegraphic communication on this continent, and Henry Ward Beecher, according to Frank Moulton, writes: "I resign Plymouth Church." A pastor of a church who didn't know enough to write correct English even for four lines. Of course you know that there is not a clergyman on this continent but would say unhesitatingly that was not his. "I tender herewith my resignation of Plymouth Church." Well, that is very much like "standing on the brink of a moral Niagara," or accomplishing a rape through a paroxysmal kiss. [Laughter.]

I tender herewith my resignation of Plymouth Church. I have stood among you in sorrow for two years in order to save from shame a certain household, but since a recent publication makes this no longer possible, I now resign my ministry and retire to private life.

That was the manner in which he proposed to strip for this fight. Let Plymouth Church be saved, then Henry Ward Beecher is ready to meet his enemy; then even the hounded stag is ready to turn at bay and bury his antlers in the bowels of the men who pursued him. But, you see here how this whole case is made up of a fabric of lies, interwoven with each other by ingenious artists, but it has been so appointed in the Providence of God that all the devices have failed, and none more signally than when, as in this case, they weave the devices, and then seek to transfer the parentage of them to another, because at the time he breaks loose from them all, he denounces and rebukes them and says, "My friend Moulton, all these devices have failed. Let us meet the truth manfully." He still trusted Moulton. Oh, how feeble was the reed on which he leaned.

MR. MOULTON MAKES A SLIP OF THE TONGUE.

Again, I only allude to this as one of those little things with which the whole testimony of Moulton bristles. Moulton professes to have been a gentleman of manners, culture, of education, and even of some literary reputation, a hospitable host, a man of the world, a member of a large commercial house, and yet this man gravely tells you that on the night of the 30th of December, the first time ever he or Beecher crossed each other's thresholds, he and Beecher had a confidential conversation about Mr. Beecher's sexual intercourse with the wife of Moulton's friend. Again on the 31st; again on the 1st of January; again on the 2d of January, when Mr. Beecher was receiving a multitude of New Year's calls, again on the 3d of January, on the 7th; and so running on day after day, week after week, month after month, year after year, to 1874, and all this time, in all their conversations, a clergyman apparently clean, not presumptively dirty, of good manners, of good culture, himself the son of a clergyman, the husband of a respectable woman, a father and a grandfather, walks down from his house on Columbia Heights to 174 Livingston-st., and the man who started a gentleman arrives a brute, and

immediately begins talking to Frank Moulton about his sexual intercourse with Mrs. Tilton, and by one of those odd fatalities by which Providence enables honest men to distinguish between the falsehoods and the truths uttered by rogues, almost in every instance in his first report of the conversation, he represents Mr. Beecher as saying, "My intercourse with Mrs. Tilton—my sexual intercourse with Mrs. Tilton." Now, you will bear in mind, gentlemen, that during all this period Mr. Beecher and Mr. Moulton were writing to each other, at least Mr. Beecher supposed Moulton was writing to him, when he was merely copying the letters Theodore Tilton wrote through Moulton; but they had not the effrontery even in one of those letters to utter one word of the crime of adultery, of sexual intercourse, and why? These were confidential notes, to be seen, as Mr. Beecher had a right to suppose, by nobody but the man to whom they were sent; yet in all of them there is the language of the poor, humble, but faithful, Christian clergyman, and he is writing to Frank Moulton in the language of a gentleman and a clergyman, but the moment he goes down to his house he begins to talk to him in language such as is never heard under a respectable roof even if there are no ladies there, and why? If on that night Henry Ward Beecher had confessed adultery, do you think he wouldn't suppose that Frank Moulton would believe it without his repeating it again, and again, and again, every time he went beneath that roof? Why, that is like Moulton's account of the conversation with him on the subject of Bowen. "Beecher, it is a bitter night; don't you think Bowen is a very treacherous man?" When he goes down to Mrs. Tilton's he says: "It is cold to-night. Is not Bowen very treacherous?" Just the same thing about sexual intercourse. Why, gentlemen, would two libertines talk together in that way? And yet this is the story, garnished by the art of Tilton, the treachery of Moulton, and the skill of Butler, until at one period half mankind believed that these lies had some truth beneath them. It shows that though there is a great power in falsehood, there is a mightier power in truth; it rises above it. "Let Truth and Falsehood grapple. Whoever knew Truth to come to the worst in a fair and open encounter," to quote once more the language of John Milton.

MRS. MOULTON'S INTIMACY WITH MR. BEECHER.

Again, I must overleap these barriers, and confine myself to only a few presenting themselves here. Here is one upon which my eye rests, to which I attach a word as a note, that you will pardon me for calling your attention to. This man, Francis D. Moulton, who professes to have believed Henry Ward Beecher was an adulterer, a hypocrite, a debauchee, a liar and a libertine, this man he takes into his own house as a bosom companion; he tells to his own wife the story of Beecher's infamy; he tells her that he thinks it will promote her social position if she can only be hail fellow well met with a clerical debauchee. He has Henry Ward Beecher's portrait taken from the walls of the pretended cuckold and carried down to Clinton-st. and hung in the parlor of a virtuous woman, in the sight of his only boy, to be seen there by Theodore Tilton, who looks at the man who dishonored him every time he enters the room. Nay, more; he commits this man to the charge of his wife when he must leave. He gives the adulterer access to her bedchamber. He permits the adulterer to kiss her lips every time he opens their door, and in his presence. She forgot it. She remembered the one kiss which she could give with a stab, being on the last occasion that she ever looked upon the face of Henry Ward Beecher until she looked upon it here, but the rest she forgot. Mr. Beecher swears to you that whenever he entered that house he saluted her, and she him, with a kiss, and in the presence of her husband. She is recalled to the stand, or, if not formally recalled, they tell us what they propose to prove by her, and we admit it, but there is no denial of that. Francis D. Moulton is recalled to the stand, and although Henry Ward Beecher had sworn that as often as he had visited her, whenever he crossed that threshold Mrs. Moulton saluted him with a kiss in the presence of her husband. Francis D. Moulton does not and dare not deny it. Of course not. A father dare not deny what his own mature boy would know to be perjury before God. Theodore Tilton, who was there at many and many meetings, and could have denied it if it were false, dare not deny that the wife of Frank Moulton saluted the adulterer of Plymouth Church with a kiss in the presence of her husband and without rebuke. Put these things together; what do they show as to the man—I am not speaking as to the lady now—what do they show as to the man, as to the truth that lies behind and beneath all of these developments?

THE CHANGING OF THE CHARGE.

I must hurry on. Let me call your attention, before I proceed to the particular question of blackmail, to a little thing illustrative of the treachery of Moulton. Of course that he doesn't deny. Although Tilton suppressed it in his garbled and false copy of the "Apology," yet when it came before the world they could not expunge the fact that it began with a declaration of trust and ended with a declaration of trust, although the trust was broken and betrayed. But, let us look a little at Frank Moulton (and I do not propose to take him in order now, but just casually, as things occur to us)—just take one single interview. It is a memorable one. It is on the 12th of July last. It is Sunday. Redpath is there. He is going up on other business to Mr. Beecher. He receives certain messages.

Now, gentlemen, if it were true that for three, nay for four years prior to that Sabbath day every time that he went to the house of Frank Moulton he talked to him about his sexual intercourse with Elizabeth R. Tilton, and when he did not find Mr. Moulton at home told Mrs. Moulton about his sexual intercourse or his crime with Elizabeth R. Tilton, and, not satisfied with that, thanked Frank Moulton for telling Woodruff; thanked Frank Moulton for telling Robinson; thanked Mrs. Tilton for telling another Robinson about his sexual intercourse, and he said he was glad of it, because it enabled him to talk with them easily and pleasantly. [Laughter.] If it were true that all through this period these foul epithets were thick in the air of Moulton's parlor, were snuffed by his wife, were inhaled by his boy, were overheard by his servant; if that was the atmosphere of that house, if they all knew it; if, besides that, they had Mr. Beecher's written confession that he had committed adultery in Frank Moulton's safe, Mr. Beecher's letter repenting of his sin in Frank Moulton's tin box, Theodore Tilton within telegraphic call to come and say that Henry Ward Beecher had been an adulterer for forty years, what need was there on that Sabbath day to send up to Henry Ward Beecher a special message to say to him that the charge was to be changed? "Redpath, tell him from me that I am going to charge him with adultery." "No, no," says Moulton, "don't tell him that. Tell him that yesterday Theodore Tilton was so angry with me because I love him that he was ready to smite me, and tell him that I stand between them, and that if either of them, Beecher or Tilton, shall dare to attempt to smite the other, I will crucify him." That is the story this man would have you believe came from him, with a knowledge at the time that he had only to ring the bell and call in the wife and ask her, "How many times has Henry Ward Beecher confessed to you that he was an adulterer?" who had only to unlock his safe and take out the "Apology," which he calls a confession of adultery; who had only to go to Theodore Tilton and call on him to unearth that paper, a copy of which he showed on that 30th of December to Henry Ward Beecher, and which he says is destroyed, but which he showed to Mr. Belcher nine months after its destruction, and said the original was then in the hands of Frank Moulton; that paper which, if produced, would blast and brand this prosecution—that paper which, according to his own version of it in the "True Story," was a charge merely of improper solicitations and not adultery, and which, being lost, they can now represent as a confession of adultery in order to smash the woman and crucify the man.

Well, now, on this Sunday, which was a busy one, Gen. Tracy was called. There was consultation. Benjamin F. Butler was in consultation. There was a war of strategy. Mr. Beecher was not altogether in his own hands. They told him: "Don't trust Shearman; we can't have anything to do with him. Don't trust Tracy. Communicate with him through us, and authorize us to tell him you are guilty. Authorize him to make admissions for you, but don't talk with him. If you talk, the public will know. The true policy is silence. Let me, Frank Moulton, manage it all." But that Sunday there had been a conversation with Gen. Tracy, in which he says: "Moulton, there is a difficulty about this matter. Frank, if you are going to change this charge and make it one of adultery, adultery is crime. Beecher has got to defend that charge. He has got to state the truth. If it was not adultery, there is of course no harm in money having passed, but if it is adultery the world will want to know why it was that you got $5,000 from Henry Ward Beecher and applied it to the use of Theodore Tilton." The indignation of Moulton! "Did Henry Ward Beecher tell you that? I will grind him to powder. I will deny that. He had no business to tell you that." "It was not he that told me." "Who did tell you?" "I don't like to say." "You must tell me who told you that; I insist upon knowing." After some hesitation Gen. Tracy thought that, perhaps, he ought to, because otherwise Moulton would be under a false conclusion. "Well, it was Frank Woodruff, and he told me the day you got the money. He told me that you had received $5,000; that you had not taken it in a check; that Beecher had to go the bank and draw it in bills, and that you received the money." "He had no business to tell you that. Now, let me say to you, Beecher must not state that. He must deny it. I shall deny it." H—m, h—m, is that all? Why, no; he goes to Frank Woodruff, and arraigns him for telling Gen. Tracy about the money. He says: "Frank, it was not the $5,000 I told him about; it was the $500 that you gave on one occasion for the support of Tilton's family." "Why, that is n't in the account." "Well, it was that $500; I didn't tell him about the $5,000; Tracy is mistaken." And so we have cropping out the fact, which Mr. Beecher himself had forgotten, that at an early day there was a $500 transaction irrespective of either of these that have been disclosed to you, under which certain scratchings and indefinite memorandums are found in Frank Moulton's books. There was another transaction of the same kind. But, you see, there was trouble. Frank Moulton was ready on Saturday to come out and accuse Mr. Beecher of adultery, but on Sunday he thought better of it. Things must be manipulated and arranged first. Tilton says: "Redpath, tell Beecher that I am going to change the charge to adultery." "No, no; you are not; I stand between you and Henry Ward Beecher," and then Redpath says after that interview they went off together to another room to prepare Frank Moulton's first statement. Now, observe, that is as early as the 12th of July. That first statement prepared by him and Tilton, he showed it to Tracy. It

charged adultery. That statement was so modified (and afterward at a much later period presented) as to hold back the charge of adultery, because what they wanted was to get Mr. Beecher on record first before he got the documents, and then come upon him with these papers which they thought he had in great part forgotten, and then they would be able to give a coloring to them all, which they could supplement with their own oral statements and condemn him hopelessly; but it was still the part of Moulton to play the mutual friend. "Tilton is angry with me because I tell him that I love Beecher at least as well, if not better, than him." Now, even that big boy almost opened his eyes when Redpath brought him that message. Redpath says he told him, "Beecher, Theodore Tilton is a scoundrel; he is rotten." "But, Redpath"—and he says Beecher put the question to him interrogatively—"Redpath, Frank Moulton is friendly to me really, is he not?" "Undoubtedly," says Redpath. Was there ever a case in which there was cooler blood and more slimy treachery than that of Frank Moulton? Why, he and Theodore Tilton were engaged in making out this very charge of adultery, in sending this word to Mr. Beecher, and in order to have him put in a statement which would be open to their conjoined assault and enable them to crush him.

Mr. Evarts—It is about 1 o'clock, if your Honor please.

Judge Neilson [to the jurors]—Please return at 2 o'clock, gentlemen.

The Court then took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Porter—Gentlemen, there is a single point in the multitude of those which I had noted in connection with the testimony of Mr. Moulton to which I wish to call your special attention, relying in the main upon your memory of his general testimony, unaided by any suggestion from me. I allude to it because it is one of those little significant ear-marks of falsehood or of truth, as the case may be, which enable you to judge of a great many other matters in regard to which the proof may be indistinct and obscure. You remember that I alluded this morning to the extraordinary fact that an American gentleman and merchant, a man of social position and literary pretensions, who, according to his own theory, knowingly, deliberately, designedly delivered over to the companionship of his wife an infamous, hypocritical debauchee; that he should have hung in his own parlor a portrait which did not belong to him, and that portrait the counterfeit similitude of such a debauchee. I say it to the credit of the manhood that is within him, that he himself saw even, in the evidence, and without the aid of the suggestion of adverse counsel, that it was a feature of the case which called for explanation, and when Frank Moulton wants an explanation, it is always forthcoming, if he can give it, and if all other explanation fails it will be found in a ready forged lie. And he tells us, in order to explain the fact that he had the picture of an adulterer hanging in his parlor, for every guest to look upon, as an ornament of the drawing-room at which a virtuous woman presided over the hospitalities of his house, that though it was there, it was only for a little while; that it was only after the adulterer repented; that it was not in 1871; that it was only after he and his wife had become accustomed to the idea of the companionship of a libertine; and he deliberately swore before high Heaven that that portrait never hung in his house until his removal to Remsen-st. in May, 1872. It is said that liars should have more than the faculty of invention; they should have good memories. He had forgotten that in his presence Theodore Tilton, for another purpose—May, 1871, I should have said—Theodore Tilton had, for another purpose, already sworn, in the bitterness of his animosity to Mrs. Morse, that that portrait was taken from his house in the Fall of 1870, to the house of Frank Moulton, for the purpose of preserving it from the threatened violence of this crazed woman, as he pleased to call her. He swore to that, believing that it had not been contradicted by Tilton, for that seems to have escaped his attention, and he swore undoubtedly in the belief that in a matter of such minor importance there would be no witness to contradict him; and yet this falsehood, uttered by him at the close of the trial, on his return to the witness-stand for the purpose of contradicting one of our witnesses—this falsehood was nailed to the counter by two witnesses, both speaking from absolute knowledge, and both fixing the fact that that portrait hung in his parlor in Clinton-st., in the Winter before his removal to Remsen-st. One was the owner of the house of which he was a tenant, who saw it when he went there to collect his rent; and the other was the usher of Plymouth Church, that church which he hates, and which he would unroof if it lay in his feeble power; but he then, as the friend of Henry Ward Beecher, sat through long hours by day and by night, watching over the sick-bed of Francis D. Moulton, while he lay hovering between life and death. The falsehood itself is comparatively unimportant, but oh, what a revelation it is of the character of the nest in which such vipers are bred! Foolish, little serviceable in the cause, invented by a cunning and plausible man as the circumstances that would give to the truth the false complexion of a lie.

MR. MOULTON TURNS UPON MR. BEECHER.

Gentlemen, I shall deal no more with this man, except in another relation. I had prepared notes for the purpose of analyzing his evidence; but it runs through days and days, and it would be, perhaps, to you a most weary recapitulation. You remember its general effect; but my observation of jurors has been that they

form their judgments of a man rather by the apparent sincerity of his utterance and the probable credibility of his narration than by this minute analysis, which taxes so wearily the time of a court and the patience of a jury. But I must advert to one aspect of the case in connection with him before I close my argument. What is the pretext of this man as an apology for his betrayal of trust, his falsehood to honor? On the 13th of August he said Henry Ward Beecher, in a public statement, alluded to the fact that he had received for Theodore Tilton money exacted by him in the interest of Tilton, and for the purposes of blackmail. Gentlemen, it is as false as any utterance that ever fell from those smooth and oily lips. If you will remember the first day of his examination, you will recall the fact, which was still further pressed upon him during my absence in the continuance of that cross-examination by my friend, Gen. Tracy, that even by his own concessions he had betrayed that trust, in the interval between the 13th of July and the 4th of August, deliberately, without motive, without provocation. On the 24th of July, Gen. Tracy, in behalf of Mr. Beecher, called upon him with a written note, in kind and courteous terms, from Mr. Beecher, saying that the Church Committee were waiting for his statement, and asking the privilege of looking at the documents which had been left in his hands for the purpose of keeping them safe if an occasion should arise for their use. When Gen. Tracy came to present that demand he refused to receive it. Why? When Gen. Tracy pressed the demand and insisted upon his reading the letter of Mr. Beecher, he said: "I haven't time to answer it." When the demand was still further pressed by Gen. Tracy, who read this man through and through, he says: "I cannot furnish to Mr. Beecher these papers; they must be secure." "Do you mean to say, Sir, that you suppose that Henry Ward Beecher and I are not safe custodians of these papers?" "No, but I am going to Narragansett, and besides, Gen. Tracy, it is not honorable on my part, to Theodore Tilton, to let Mr. Beecher see those papers." "Why not?" "They are original papers." "Why, Mr. Moulton, they are original papers of which the copies are circulating all through the continent. They are original papers of which Theodore Tilton has published the copies, so that they have run from State to State through the Union. What Mr. Beecher wants is to verify the copies by the inspection of the originals. He don't know what he has written; he has left them in your hands in trust; he asks to look at them." "I don't think it would be honorable to Theodore Tilton to let Henry Ward Beecher see what I have never let Theodore Tilton see." "What! You didn't publish them?" "No." "Who did?" "Theodore Tilton." "Where did he get his copies?" I don't know." "Did he get them from you?" "No." "Who else has had the papers?" "I don't know how he got them. I sternly refused to let him make a copy of a single paper, and honor calls upon me to refuse it equally sternly to Mr. Beecher." "Why, the originals will be safe if you will let me take copies." "I don't know." "Why, there is your own clerk; let him make copies, so that Mr. Beecher may see the whole of the papers of which you published what purport to be extracts." "Gen. Tracy, I am going to Narragansett. I haven't time." The General, lawyer-like, sits down and writes a note, asking if he will allow Mr. Beecher to have copies made at his expense, and by Tilton's clerk, to the end that he may be enabled to speak of these papers, of which garbled extracts had been given to the public by Tilton, but of which Mr. Beecher wished to give the whole. "I haven't time. I am going to Narragansett." Now, if Moulton could not trust his own clerk to make copies of papers that he had in his tin box and his safe, there was, perhaps, reason for the refusal. What was there in those papers that needed the shelter of darkness instead of the blaze of light? Gentlemen, the man who was just on his way to the cars for Narragansett had in his pocket, the pocket which contains a pistol when he goes to a woman for a letter, to a clergyman for a paper—he had in his pocket those papers, to exhibit them to Benjamin F. Butler—who was no "Mutual Friend," to whom Beecher had never authorized him to show them—to be woven by Gen. Butler into a spider's web which should entrap the fly of Plymouth Church. This man whose honor would not permit him to give to Mr. Beecher copies of his own papers, which had already been published by Theodore Tilton, had them here [placing his hand on the breast pocket], to deliver them to a man who, whatever may be his claims upon public consideration and regard, had no claims upon Henry Ward Beecher, except those of rejected addresses and unrequited love; and he says to Gen. Tracy, "I won't read your letter, and I ask you to take back the letter to Mr. Beecher," and he proceeded on his way. This man, then professing such friendship for Henry Ward Beecher, who had never wronged him, goes to Narragansett, hatches his plot, perfects his libel, goes home with his statement, arrives here on the morning of the 4th of August, finds another letter from Mr. Beecher, dated on the 28th, asking him if he won't give to him the letters he held in trust for him, at least to give them to the Committee, and writes to him—no, not writes to him, but copies what Benjamin F. Butler had written for him:

MR. MOULTON REFUSES MR. BEECHER ACCESS TO THE PAPERS.

Observe, the voice was the voice of Jacob, but the hand was the hand of Esau. The man who purports to write the letter is Francis D. Moulton—the man who dictated it was the Esau of Massachusetts.

No. 49 REMSEN-ST., Aug. 4, 1874.

MY DEAR MR. BEECHER: I received your note of July 24, informing me that you are making a statement and

need the letters and papers in my hands, and asking me to send them to you for the purpose of having extracts or copies made from them, as the case may be, that you may use them in your controversy with Mr. Tilton.

I should be very glad to do anything that I may do, consistent with my sense of what is due to justice and right, to aid you; but if you will reflect that I hold all the important papers intrusted to me at the desire and request and in the confidence of both parties to this unhappy affair, you will see that I cannot in honor give them, or any of them, to either party to aid him as against the other.

Gentlemen, suppose, in an undue confidence in me, you should appoint me your executor or trustee to look after the interests of your daughter and your son; and there coming up afterward a difference between that daughter and that son, when one of them comes to me to demand access to the papers in which their father's will had given to me the instructions which should be my law, I should coolly turn upon them and say, "I am nothing but a trustee; you cannot see your father's will; it would be a breach of honor on my part. I hold these papers in trust for the man whose bones are moldering in the ground, and not for the benefit of the living beneficiaries created in the trust." You come to me; two of you have entered into a contract; leave with me that contract in trust; you afterward come to me as the depositary of that contract and say, "I want to see this paper of which I kept no copy and which I left with you in trust." I say, "I hold it in trust for both parties, and you cannot see it unless your adversary shall consent that you may see it." "Why, my adversary has already seen it, and has put a copy of that contract in the hands of a lawyer who is to-day prosecuting me for its enforcement; and it is a false and a forged copy of the contract, and I want to look at the orignal." "I have taken advice of Benjamin F. Butler of Massachusetts, and, according to his ideas of honor, you have no business to ask me to see the copy. I don't know how the other side obtained their copy; I am a man of honor."

"I have not given," he proceeds, "or shown to Mr. Tilton any documents or papers relating to your affairs since the renewal of your controversy, which had been once adjusted."

He had not? But if he had not given them to him, some ministering angel who wrote a legible hand had. Who carried the key of that tin box? How did Theodore Tilton get those copies? What was this sense of honor that would permit one man to have what he pleased of them, and which would refuse it to the other?

I need not tell you how deeply I regret your position as foes each to the other after my long and as you, I have no doubt, fully believe honest and faithful effort to have you otherwise.

Oh, how that impressed Gen. Butler! The honor, the fidelity of this mutual friend! And he gives utterance to it in those eloquent and breathing words of his, that burn as they breathe.

I will sacredly hold all the papers and information I have until both parties—(which being interpreted means until Theodore Tilton)—shall request me to make them public, or to deliver them into the hands of either or both, or to lay them before the Committee, or I am compelled in a court of justice to produce them——

No blackmail, gentlemen; of course he did n't contemplate a suit at that time against the man at whose feet he was fawning, whom he was flattering to his face, from whom he was taking, day after day, certificates that he could use thereafter against him to show that he was a God-sent messenger of love.

——to produce them, if I can be so compelled.

"My regret"—I wonder whether that means Moulton's regret or Butler's regret—Butler, the discarded lawyer, or Moulton, the mutual friend!

My regret that I am compelled to this course is softened by my belief that you will not be substantially injured by it in this regard, for all the facts are, of course, known to you, and I am bound to believe and assume that in the statement you are preparing you will only set forth the exact facts; and if so, the documents, when produced, will only confirm, and cannot contradict, what you may state, so that you will suffer no loss.

When I examined Mr. Moulton about the entries of the blackmail in his books, he said, "I ought to have the privilege of looking at my books," and I gave him till the next day. If I had consulted Benjamin F. Butler—if Mr. Beecher had accepted his services, and he had sat by my side, he would have said, "Tell him, 'Mr. Moulton, you are at no disadvantage without your books. I regret very much that you cannot use them, but my regret is softened by the fact that if you state truly what is there recorded, it won't hurt you, but if, which I cannot believe, you lie, it is very proper that the books should be left behind in order to convict you of the lie.'" That was the method of reasoning adopted by the mutual friend and the rejected counsel, as commending itself to the sense of honor of conscientious men, even at the very time they were contemplating bringing this proceeding into a court of justice.

If, on the contrary—which I cannot presume—you desire the possession of the documents in order that you may prove your statement in a manner not to be contravened by the facts set forth in them to the disadvantage of Mr. Tilton, I should be then aiding you in doing that which I cannot believe the strictest and firmest friendship for you calls upon me to do. With grateful recollections of your kind confidence and trust in me, I am very truly, yours, F. D. MOULTON.

MR. BEECHER'S ANSWER TO THE REFUSAL

Down to that moment Henry Ward Beecher trusted him as I trust your Honor, as I trust each of you twelve whom I have known over five months, and in each of whom I recognize that integrity of person which convinces me that you are upright and honest men. But when that letter came, this man whom Judge Morris called a coward, this man who had been threatened with charge that should destroy him, this man no longer a

peals to him for sympathy or regard, but in tones of earnest manliness he replies, and I may be permitted to read you his reply.

F. D. MOULTON, *esq.—Sir*: Your letter bearing date August 4, 1874, is this moment received. Allow me to express my regret and astonishment that you refuse me permission even to see certain letters and papers in your possession, relating to the charges made against me by Theodore Tilton, and at the reasons given for the refusal.

On your solemn and repeated assurances of personal friendship, and in the unquestioning confidence with which you inspired me of your honor and fidelity, I placed in your hands for safe-keeping various letters addressed to me from my brother, my sister, and various other parties; also memoranda of affairs not immediately connected with Mr. Tilton's affairs. I also from time to time addressed you confidential notes relating to my own self, as one friend would write to another. These papers were never placed in your hands to be held for two parties; they were to be held for me. I did not wish to subject them to risk of loss or scattering, from my careless habits in the manner of preserving documents. They were to be held for me. In so far as these papers were concerned, you were only a friendly trustee holding papers subject to my wishes.

And as my friend Mr. Abbott suggests he don't go to Narragansett to take counsel of Benjamin F. Butler, but the moment he receives the letter which shows to him that he is in the coils of a serpent he answers it upon the instant; he preserved no copy; we were compelled, from them, under the exaction of a subpena and the power of an oath, to compel the production of this letter in order to ascertain even what Mr. Beecher had written. And they could not refuse it, for they had admitted its receipt. Do you suppose that Henry Ward Beecher then thought that instead of answering his trusted friend, Francis D. Moulton, he was writing to the man who had already recorded his name in history, that he was writing to one of the ablest publicists of the age, that he was engaged in correspondence with a man who never spared an enemy, however faithfully he may have served a friend; that he was engaged in a controversy with Gen. Benjamin F. Butler of Massachusetts, who stood behind this man and dictated what he had written. But how does he deal with it? Is he a guilty adulterer, stricken down by the charge? Frank Moulton, who tells you that he had over him the power of life and death; Frank Moulton, whose wife could consign Henry Ward Beecher to infamy; Frank Moulton, backed by Theodore Tilton, who hated him as he hated his God; Frank Moulton, who loved nothing that belonged to him, who hated even the very wife of his bosom, who hated even the very boy whom he had once for false pretenses professed to serve—but I cannot talk with patience of such things. Do you believe that he was a guilty man; that the moment he found that this man was false indignantly took his stand: "Sir, I trusted you as a friend. I recognize you now as an enemy. I placed a confidence in you which you did not deserve. I look upon you now as you are. I state my rights; I appeal to any sense of honor that may remain within you. I know my appeal will be in vain, but it shall be made, made fearlessly."

Was that the language of innocence or of guilt? If it were true that he was an adulterer; if it were true that this very man was at that moment the custodian of a paper in which Mr. Beecher acknowledged adultery; if it were true that again and again, through those long months and years, he had occupied himself under Frank Moulton's roof in declaring that he had sexual intercourse with Elizabeth Tilton, if he knew that Mrs. Moulton, a respectable communicant in his own church, had heard his confession, would that have been the tone of Henry Ward Beecher's answer? Butler was not there. He had been left either at Narragansett or New-York. Here was a letter that needed an answer. It needed an answer, too, that could be used afterward in a court of justice. Frank Moulton was not the man capable of writing it. Theodore Tilton is sent for, and he is at hand.

MR. MOULTON'S ANSWER TO MR. BEECHER.

Through the long watches of the night of the the 4th of August these men concocted the answer which they thought afterward might impose on a Court and a jury, and here it is. The hand is the hand of Tilton, but the voice is the voice of Moulton. I read to you only a part of Mr. Beecher's letter; with a view of saving your time I will read to you only a part of Theodore Tilton's reply:

You are incorrect in saying that Mr. Tilton has had access to my "depository of materials;" on the contrary, I have refused Mr. Tilton such access. During the preparation of his sworn statement he came to me and said his case would be incomplete unless I permitted him the use of all the documents, but I refused; and all he could rely upon were such notes as he had made from time to time from writings of yours which you had written to me to be read to him, and passages of which he caught from my lips in shorthand.

You may remember that among the questions I put to him when he was upon the stand, was whether he had read those to him, and whether Theodore Tilton had taken notes in shorthand, and he swore he had not. He has an excuse for this; it was Tilton that wrote this, not he; Tilton confessed what Moulton denied.

Mr. Tilton has seen only a part of the papers in my possession, and would be more surprised to learn the entire facts of the case than you can possibly be.

And the man who wrote that sentence is Theodore Tilton. I won't dwell on it any longer.

THE CHARGE OF BLACKMAIL REAVOWED.

Gentlemen, these were two blackmailers. I have noticed with what formality it has been announced that the charge of blackmail has been in this case withdrawn, that Mr. Beecher disavowed it. Why, gentlemen, no man who understood the facts of this case has ever

doubted that this was a case of blackmail. Men hesitated to say it, as we always shrink from severe accusations of that kind until the proof is too clear to resist the light. When my friend William O. Bartlett of New-York, one of the clearest and ablest men at the New-York bar, whose reputation as a lawyer is less than it would be except for his reputation as a literary man, which rises even above it—when this case was stated to him he at once pronounced it a case of blackmail. And he was right. I regret that his other engagements have prevented me from having the benefit of his services, as well as those of my valued and honored associates of this case, because he would speak with a directness and power in characterizing it that I cannot command. But can you doubt that it was blackmail, and from the beginning? Not from the beginning as against Mr. Beecher—in the beginning, Bowen; in its prosecution, Beecher; in the end, Plymouth Church and the friends of Mr. Beecher. As long as the money came the charge was held back. When the money failed then came the charge. But do you believe that the gun is not loaded before it is fired? Do you believe that the cartridge and the ball find their way into the weapon before it is discharged by accident? These were men who meant business from the beginning. It is entirely true that their purposes shifted as their devices shifted, from time to time, according to the exigencies of the occasion, but all through ran the dark thread of conspiracy, which you can trace back from this very hour to the hour when, on the secular Christmas of 1870, Theodore Tilton stood before Henry C. Bowen, arraigned for immorality, and threatened with discharge. Men are often misled by the ambiguity of terms. What is blackmail? In a strict and technical sense this is not a case of blackmail. Fortunately, such cancerous conspiracies as this have been so rare that our language does not furnish terms to characterize with definite precision the peculiar infamy of the actors or the vile instrumentalities they employ. It is only by proximate terms that such men and such means can be portrayed. The word blackmail in its primary sense imports contributions made by honest men to the confederates of rogues, to avoid threatened pillage and depredation. In another sense it imports the extortion of money whether from the guilty or the innocent, by threats of injurious accusation. Webster defines the term thus:

1. A certain rate of money, coin, cattle, or other thing anciently paid in the North of England and South of Scotland to certain men, who were allied to robbers, to be by them protected from pillage. 2. Extortion of money from a person by threats of accusation or exposure, or of opposition, in the public prints.

THE REASONS FOR CHARGING BLACKMAIL.

Technically, the moneys obtained by Moulton from Mr. Beecher do not fall within either definition. They were frankly and freely given, and not to an avowed confederate, but to a professed mutual friend. They were obtained not by open menace, but by the cunning and treachery of a smooth-tongued confidence man. Mr. Beecher was made to believe a lie. Moulton persuaded him that Mrs. Tilton had made him the object of an undue and idolatrous passion; that Tilton really believed that Mr. Beecher had estranged her love; that the stories Mr. Beecher had repeated to Bowen were the unfounded calumnies of gossiping and half-crazed women, and that he had been by these means and by his too ready credulity, the instrument of stripping Tilton of $15,000 a year and destroying the peace of his family and blasting his personal reputation and his prospects of editorial success in after life. If he was made to believe these things, had he done no wrong? Was there nothing of which he ought to repent? Is it nothing to have slandered a man who he is assured is innocent? Is it nothing to have alienated the affections of a true-hearted and loving wife? Is it nothing to have blasted the prospects of father and mother and children, and brought the one to shame and dishonor and the other to poverty and destitution? *You* know that he had done neither of these things, but he was made to believe that he had done them all. It is only this investigation that has unearthed these facts which will blast the memory of Theodore Tilton now and in all future time.

Mr. Beecher was made by that plausible Frank Moulton, who deceived even you by his plausibility, through many days of his examination, who deceives every man that comes in contact with him until he has the means of seeing what lies beneath that smooth and glossy surface—Mr. Beecher was deceived by him into the belief that he had been guilty of these great wrongs. And they took great care that he should not be undeceived. They said to him: "Slander of a clergyman is like slander of a woman. A clergyman who is not above suspicion is lost; the woman who is not above suspicion has gone already to the grave. It is due to yourself, it is due to Elizabeth, that no human being shall know these matters except us. She charges you with this." Oh, you can see how the oily tongue of Moulton moved—"she charges you with this, Mr. Beecher; she charges you with it; she loves you in her heart—in her heart. You think not. I know it; I know it. She loves your little finger more than she loves the body of Theodore Tilton. Don't go near her. It will only kindle the flame to a brighter heat. Don't talk to others. If you trust your dearest friend, you involuntarily trust his wife, who trusts her friend, who trusts her neighbor, and all trust the community. Don't you go with that story to Benjamin F. Tracy. Tracy will know it, and so will Tracy's wife. Don't you go with it to John L. Hill. If John L. Hill knows it, he is faithful to you, but Plymouth Church will know it. Trust this whole matter to me, Mr. Beecher. I beli[illegible]

you to be innocent, but you have done Theodore Tilton great wrong. Trust it to me. I know the man. He has infirmities; he is jealous; when he is aroused his passions are ungovernable; but leave it to me, and I will control them. If all else fails, I will grind him to powder. But what you have to do is to deal with him in his own spirit. He is a magnanimous man; he is a generous man; take the whole blame on yourself, and he will forgive you, and be a warmer friend than ever he was before." Under just such influences as these Mr. Beecher was led first to feel the deepest anguish and remorse at the wrong of which he had been the unconscious instrument, and then to express, in the warm and burning language of a large and generous heart, the regret he felt at the wrong, even to Theodore Tilton.

But, to proceed. Moulton held Beecher in this position, and he knew it. The inquiry is, how he used his power over him and how he intended to use it. Now, if we regard the term *blackmail* in its moral sense, there is no room for dispute that Francis D. Moulton was a blackmailer. If he believed Henry Ward Beecher to be an adulterer, as he now falsely pretends he did, all men will agree that he was a blackmailer. What! Adultery, and money paid for it, and no blackmail! He admits that he told Beecher of Theodore Tilton's threats. Is the extortion of money by threats not blackmail? He admits that he obtained the money; he admits that he gave it to Mr. Tilton; he admits that he concealed the fact that he received it; he refused to take the $5,000 in the form of a check to his order, because that would expose his agency in the transaction. He exacted it in bills, and concealed, even on the books of his firm, as he himself admits, the fact that the money came from Mr. Beecher. He broke into a violent rage when Gen. Tracy incautiously alluded to his knowledge of the fact that Tilton had received the money. He denounced Mr. Beecher for disclosing it to Mr. Tracy, on the false assumption that Mr. Beecher was Gen. Tracy's informant. When he found that his partner Franklin Woodruff was the man who had disclosed it, he denounced Woodruff to his face for betraying him to Tracy. Mr. Woodruff afterward came to Gen. Tracy to reproach him for telling Moulton of this harmless and innocent fact. Why all this wasted rage if there was no blackmail? He went further; indeed you yourselves saw Francis D. Moulton, in your presence, in communication with the then examining counsel when he questioned Gen. Tracy as to this interview with Woodruff, and as to what he called Gen. Tracy's apology for betraying the secret of blackmail. If Moulton was not conscious that he had obtained this money from Mr. Beecher by treacherous cunning and contrivance, why did he object to receiving it in the form of a check to his own order? Why, after the Investigating Committee was called, did he warn Mr. Beecher, through Gen. Tracy, that if he ever said anything about that $5,000, he should deny that he ever received it? Why did he tell Gen. Tracy, on learning that he knew it, that Mr Beecher must deny it, and that he himself should deny it? Why, after he found that Gen. Tracy would not advise Mr. Beecher either to deny or to suppress the fact in his statement, and after he found that Franklin Woodruff had disclosed the fact imprudently to Gen. Tracy, did he attempt to soften Mr. Beecher's statement of the fact? What did he do? All the appeals of Gen. Tracy to his manhood and his honor to suppress the infamous statement which had been prepared at Narragansett fail; but in view of the fact of blackmail, he came to the conclusion that after all it was better to suppress that statement which had been the labor of two weeks' parturition, and to publish a short statement which Mr. Beecher should think under all the circumstances was satisfactory, that Mr. Beecher had committed an offense, but it had received a suitable apology; that the offense was not of such a character as to involve his honor or his purity as a man, and that the church should dismiss the inquiry. But, mark you, the man who put in that statement to mislead and entrap Mr. Beecher had in his pocket the other statement, prepared by himself and by Gen. Butler, charging Mr. Beecher with adultery, and containing the documents to which he had refused Mr. Beecher access! Again, when he finally publishes his own statement, he pretends in it that he has made no change in it, even to the extent of a single word, since it was originally written, before he introduced the other statement; but you can judge of the probability of the pretense from the fact that in its published form there was a reluctant and enforced admission of the payment of the money, with a lame and impotent attempt to explain it as a little private roguery of his own—for the benefit of Tilton, it is true, but without a thought on the part of Tilton that the money came from Beecher. And yet, that Theodore Tilton—who never suspected that the money came from Mr. Beecher—finds his way, on the next Lord's Day, just before the services of Plymouth Church, to the corner of Columbia Hights, near to the house of Mr. Beecher, puts his arm within Mr. Beecher's, and proceeds to say to him, how he, Theodore, loves him; and within a few weeks after, even by his own concession, he has laid on the stand of Plymouth platform, where Mr. Beecher is to meet it at the opening of the service, the message, "Grace, mercy, and peace. T. T." But, of course, he didn't know where this $5,000 came from; and it was a mere speculation of Frank Moulton to reimburse himself for his benefactions to Tilton, and he and Beecher had agreed that Tilton never should know anything about it. Doubtless Tilton thought that this $5,000 in greenbacks coming down upon a parched and thirsty land, came down from Heaven, that it was brought down upon that ladder de-

scribed in his Biography of Mrs. Woodhull, by one of the descending angels of free love, and who very naturally had committed the precious charge to the hands of Frank Moulton as messenger. Or perhaps he thought it a gift brought by the hand of that child mentioned in the Woodhull Biography, of whom Theodore Tilton, over his own signature, certified that the woman in the free love mansion had raised a child from the dead; though he did not believe that Lazarus was raised by the Redeemer of mankind! Wherever the $5,000 came from, Theodore would not give a note for a dollar of the amount. He could not trust even the chivalrous Moulton with his note for the first thousand dollars of the money; he sends back Moulton's check scornfully, with the message, "I cannot borrow what I cannot repay."

Moulton, deferring to the sensibilities of his friend, sends him back the check, and the man who refuses to give a note for the money pockets the check, and appropriates it to his private use. Of course Tilton did not know where the money came from. It would not have been respectable to know. Certainly not, if he believed it to be bed-money for the use and occupation of his own wife; and even then he contemplated, I have no doubt, in his own heart, the future charge of adultery which has culminated in this prosecution. It would have been still less respectable if he knew it had been obtained by cunning and treacherous contrivance from an innocent, warm-hearted, and generous man, who believed that he was repairing a wrong he had unconsciously committed in the wreck and desolation of a family bound to him by ties so sacred as the connection with his own cherished church. If Moulton and Tilton did not regard this money as blackmail, why did they both cower and shrink in dismay when the fact came to be known that they received it? If it was not blackmail, why were no entries made by either of them of the sources from which it was received? If it was not blackmail, why do they retain the money to this very hour? Theodore Tilton and Frank Moulton can find the means to carry on this expensive and burdensome prosecution, but never to this hour has it occurred to either of them that they should return the money which was obtained by false pretenses and fraud.

On the 2d of May, '74, Tilton had the effrontery to write a letter to Mr. Beecher from *The Golden Age* office, which I will ask your permission to read. You see there are always two Tiltons. The one chivalrous and magnanimous, who scorns all that is mean, who stands in the presence of this age and of all the future generations of history and of the world here and of the world above, expecting all men and all beings to unite in admiring him. The other Tilton is the man who receives $5,000, puts it in his pocket, and does not know where it comes from. The other Tilton is the man who when Bessie Turner has the boldness to rebuke his insolence to his poor wife dashes her against the wall, and then turns and says, "Bessie, my dear, did you slip and hurt yourself?" [Laughter.]

Now, here we have the other Tilton, and I want to preface it with a single remark. That account which Frank Moulton produced, and over which he was so triumphant on the stand, and which was commented on in the newspapers as so triumphantly vindicating him against the charge of blackmail, shows that on the day of the date of this letter from Theodore Tilton to Henry Ward Beecher, Theodore Tilton drew $250 of that $5,000; but it unluckily happened that it was the last draft but one made upon the dying fund. It happened to be at the very time when he was engaged in his attempt to get up this new journal in New-York, of which Henry Ward Beecher was to be the editor, of which Frank Carpenter was to be the manager, of which Moulton was to be the business man, and of which Theodore Tilton was to be the correspondent at a salary of $10,000 a year, until he could take the chief editorship. That was it. It was the time when Claflin, and Southwick, and Cleveland, and Sage, and the other friends of Beecher were called upon to unite in this grand, new enterprise, which was to give to Henry Ward Beecher a higher reputation in the world at large even than all the services which he had rendered in obedience to his Master's command. But he must keep his record all right; and we find produced this letter written. Observe, he is ready to receive money from Jackson S. Schultz; he is ready to receive it from Southwick; he is ready to receive it from Claflin, and wanting to receive it from Cleveland; wanting Plymouth Church to pay it, saying that unless Plymouth Church comes to his terms he will blow off its roof. But this honorable man, who has an alternative behind, to wit, an action against Henry Ward Beecher for *crim con.* with his wife, writes to him this letter, which can be kept in readiness, and which was read by my rhetorical friend, Judge Fullerton, in such a manner as almost to draw tears from the eyes of every man who heard it. "*The Golden Age.* May 2, 1874. Henry Ward Beecher"—men of true dignity, you know, reject titles. True, the world would have said "the *Reverend* Henry Ward Beecher;" but that would be a concession which the blackmailer could not brook.

HENRY WARD BEECHER.

SIR: I have just this morning learned to my surprise and sorrow that F. B. Carpenter, whose good-will toward both you and me is unquestionable, has consulted you concerning the use of your money, influence and good offices for the enlargement of the capital of *The Golden Age.* Mr. Carpenter mentions to me also your saying to him that under certain conditions, involving certain disavowals by me—referring, of course, to the Woodhull matter, for he must disavow Free Love and all that kind of thing—involving certain disavowals, a sum of money would or could be raised to send me, with my family to Europe for a term of years.

Now, mark you, not only had no such proposition been

made by the friends of Mr. Beecher, but all Frank Carpenter had attempted to that end had utterly failed. Theodore Tilton himself had been arraigned at the Union Club by men of character, who had been his former friends, as a blackmailer, and the question was submitted to arbitration as to whether he was or not. Of course it is time for him to put matters right.

Of course you need no assurance that such an application or suggestion is wholly unauthorized by me, and is inexpressibly repugnant to my feelings. The occasion compels me to state explicitly that, so long as life and self-respect continue to exist together in my breast, I shall be debarred from receiving, either directly or indirectly, any pecuniary or other favor at your hands.

Oh, at your hands! It must come through Claflin, it must come through Southwick, it must come through Schultz or Cleveland, some of these other gentlemen. "I cannot receive money from Henry Ward Beecher; not I."

The reason for this feeling, on my part, you know so well that I spare you the statement of it.

If it had been Moulton, he would have said, "Why, Beecher, you know it is because you and Theodore Tilton's wife had sexual intercourse together. Beecher, do you remember you told me on Monday, and you told me on Tuesday, and you told me on Wednesday; you told me in January and in July; you told me every month of the year for four years; every time you came down, fearing I had forgotten it—you told me you had sexual intercourse with Elizabeth R. Tilton." Tilton is more delicate; he believed in generosity. "I need not state what is the reason why I cannot receive money from you, and you must send it through Claflin or Southwick, and it has got to be done soon, too, for the fund is nearly out." This is May 2, 1874; and the next month comes the Bacon letter.

PROMISES MADE IN THE PLAINTIFF'S OPENING NOT FULFILLED.

My friend Shearman calls my attention, as illustrative of the point I am on, to page 677, second volume. This is the testimony of Charles Storrs:

I asked Mr. Tilton—says I, "What is the matter with Claflin?" Says he, "Why?" Says I, "He didn't seem favorably disposed to the project, and rather talked against it than for it." Mr. Tilton says, "Claflin had better look out; perhaps something can be said about him."

Well, when Theodore Tilton comes to say it, he had better find other witnesses than Frank Moulton and his wife to carry through the charge; and, let me tell him, after the developments of this trial, even though his friend Butler should tender his services to his friend Claflin as his adviser, he will have a decided preference for Benjamin F. Tracy and William M. Evarts. The scheming and shallow brain of this man advised what doubtless seemed to him and Moulton a cunning expedient in writing this letter to Mr. Beecher. It would serve to repudiate the act of his agent, Carpenter, if his negotiations fail. It would quicken Mr. Beecher to aid these negotiations by inducing his friends to accede, unconditionally, to Mr. Carpenter's demands, and to enable Tilton, if they failed, to put himself upon the lofty ground that he never could accept anything at the hands of Henry Ward Beecher. The effrontery of the blackmailer, gentlemen, is curiously illustrated by the fact, admitted by Moulton in his cross-examination, and without appreciating its damning effect upon himself, that on this same 2d of May the draft was made upon that very fund to which I have already referred, and which was succeeded by a draft exhausting the fund. And, in regard to Mr. Carpenter, gentlemen, I desire to call your attention to the fact that in the opening of this case, my friend Judge Morris distinctly announced to you that he should prove by Frank Carpenter that Henry Ward Beecher confessed to him his adultery with Elizabeth R. Tilton. The plaintiffs closed their evidence, but the busy agent of Tilton was not called. We closed ours, and they went through their evidence, still Carpenter was not called. Moulton came back; Tilton came back; Stephen Pearl Andrews was brought; everybody was brought that could be reached. You saw Frank Carpenter in court hovering on the confines of the ground. This man, the only impartial man who ever pretended that Henry Ward Beecher made such a confession dare not appear. Why not? If this is not a manufactured case, how does it happen that the only disinterested witness by whom the assertion was to be proved is not willing to confront a jury with his oath? And the same counsel indicated to you in his opening that although Mrs. Bradshaw might not be able to prove the confession of Henry Ward Beecher, she would at least prove the confession of Elizabeth R. Tilton. Of course it would have been illegal, but, strangely enough, in the course of their evidence they called her to the stand and introduced in evidence a letter written by her to Henry Ward Beecher, in which she says, with all the woman's fervor of her soul:

I do n't believe the infamous charges of Theodore Tilton against you, and Elizabeth, his wife, has never confessed to me that you offered her an indignity.

Moulton don't fail; Tilton don't fail; Mrs. Moulton is here. How does it happen that the witnesses whom the public were led to expect are not here? If it were true, if a respectable and leading artist in the City of Brooklyn had from Henry Ward Beecher such a confession, do you suppose he would not have been on that stand, the man who was willing to run as an errand boy in behalf of Theodore Tilton; and to circulate calumnies against Mr. Beecher in the clubs, who has been even here,—why is he not there? The accusation is false. He did not swear to it, because it was not true, not, however, because the other side did not mean to prove by him that it was true. Again,

I submit that the blackmail purpose of these proceedings is still further illustrated by the fact that appears in Moulton's testimony at page 256 of the first volume, that on the 26th of the same month of May, and just before the appearance of the Bacon letter, Moulton and Tilton put their names on the back of the last draft for the balance of Beecher's $5,000, and the further fact that on that date Tilton's account with the firm of Woodruff & Robinson was largely overdrawn.

THE ATTEMPT TO BLACKMAIL PERSISTENT.

Have you ever doubted where that Bacon letter was written? Now, here, too, we have an illustration of Moulton. Here is the fact that *The Golden Age* was then practically bankrupt; that it was on the eve of being turned over to Clark as a sinking concern; that Tilton was then concocting the Bacon letter; that Moulton, as usual, was professing to oppose, but he and Tilton were engaged in concocting, in the hope of still bringing the friends of Beecher to contribute further sums to them under the name of charity. Moulton did not even then abandon the purpose in which for the time he seemed to be baffled. Even after the publication of the Bacon letter, with his usual smooth and oily duplicity, he pretended to Mr. Beecher to have been opposed to its publication, and he had the cool effrontery and indiscretion to tell Mr. Beecher that he, Frank Moulton, had offered $5,000 in gold to Theodore Tilton to suppress the publication of that letter. Do you believe he ever intended to pay $5,000 in gold to Theodore Tilton for the purpose of serving Henry Ward Beecher? Is that the man? This is the same man who obtained the whole heart of Mr. Beecher by saying to him on one occasion: "Why, rather than have a suit about this matter of Bowen's, which might by possibility bring in your scandal, I told Tilton I would pay him $7,000 out of my own pocket," and here he again tells him: "I offered Theodore Tilton $5,000 in gold not to publish this Bacon letter, this libel upon you." Did he think him a blackmailer? Is it to any but blackmailers that such offers are made? Of course he made no such offer, and you understand why the suggestion was made to Mr. Beecher. The difference was in the price. It was an intimation to Mr. Beecher that some other friend had better offer him $10,000, and the letter would then be suppressed. My friend Shearman calls my attention to a fact, which escaped my memory, that he followed it up immediately by telling Mr. Beecher: "Why, you had better give him your whole fortune than have such a slander as this published."

No blackmailer! Theodore didn't know this; he didn't hear it, and if the occasion came he would be ready to write to Mr. Beecher a letter saying, "I have learned with great regret and sorrow that my friend Moulton has coolly proposed, in my interest, to ask you to turn over to me your whole fortune. I wish you to distinctly understand that Mr. Moulton had no authority for any such proposition from me." The same game. It is the "panel" game which runs through this case. I borrow the expression from my friend Mr. Evarts, as applied to an earlier stage of this matter, of which I shall not speak, because I want you to hear him. Why should Frank Moulton pay down $5,000 in gold from his own funds to save a clerical debauchee from the charge of playing the libertine with Theodore Tilton's wife? It was a bid for blackmail. It was cunningly concocted under the guise of the mutual friend, who would sacrifice all he had for the benign purpose of reconciling an adulterer with the husband of his paramour, and that husband his closest and most intimate friend. If Moulton was capable of an act of such black and contemptible infamy, then I submit to you whether his fitting home is not in the lowest haunts of vice, and whether he should not recede from view, and from your honored Chief-Justice, with a brand upon his forehead which hereafter will protect honest men and honest women from contact with one so vile and dastardly. Do you doubt that the purpose of this man was blackmail from the beginning? Whoever else might doubt, Tilton perfectly knew. On his dismissal from *The Independent* he had no claim against Bowen which he could enforce if the actual facts were known, as they were then known to him, and as they are now known to you. Even Moulton acknowledged the fact to Beecher, that Bowen charged Tilton with personal immoralities, which would bar him from a recovery under the contracts.

Both Tilton and Moulton deny the truth of these accusations, but in the light of the evidence given on this trial there is no doubt of the truth of those charges, no doubt that Bowen, in fact, had a perfect defense. Neither Moulton nor Tilton dared to press the matter to an issue in the courts of law until they could secure alliance with Mr. Beecher's friends, which would enable them to bring to bear a pressure which would make a resort to arbitration safe, the thing which Mr. Bowen had proposed from the beginning. The first thing to be done was to convince Mr. Beecher that Bowen was his persistent slanderer, and his bitter and malignant enemy. In this they succeeded, but it took time. But when this was thoroughly accomplished, when Moulton had been enabled, by the aid of Beecher, to give the lie to his calumnies against the defendant, and to shake in the teeth of Bowen, as he says he did, the statement in his own handwriting of every issue which he ever had with Henry Ward Beecher, Moulton still objected to arbitrate, objected even to bringing suit at that stage of the matter, on the ground that Bowen ought to reinstate Tilton in *The Independent*. That was the original aim, as I have stated. But the scenes shifted, their objects changed, and their devices changed with the purposes they were intended to subserve, and the error of the

brood throughout the conspiracy is in assuming that men who conspire in the beginning never change the purposes, the objects, and the modes to gain the ultimate end. Frank Moulton and Theodore Tilton would to-day be very far from the enemies or accusers of Mr. Beecher if fortune had favored them both, if Moulton had grown rich as fast as he wanted to, and if Tilton had been permitted to enjoy an income of $15,000 to $20,000 a year; but there are men who live not for others, as Henry Ward Beecher does, but for themselves. They had their common purposes to gain. Both of them were mean shams, who wanted to be thought real men. Moulton, who wanted the reputation of wealth and literary ability; Tilton, who wanted the reputation of being the most magnanimous man on the face of the earth, and the most indifferent to money, but with his pockets full. Mr. Beecher said, as you will remember, "Why not arbitrate? If you don't arbitrate, why not sue?" Moulton knew what Beecher did not know, and that is, that Bowen had a perfect defense; but to Beecher he pretended the time had not yet come. [To the jurors]: May I go on a little while longer?

Judge Neilson—One of the jurymen has been complaining. I will hear you in the morning.

[To Mr. Jeffreys, one of the jurors]—Do you wish to adjourn?

Mr. Jeffreys—I would rather adjourn.

Judge Neilson—Then we will adjourn. Return to-morrow morning at 11 o'clock.

The court thereupon adjourned until Wednesday at 11 o'clock.

NINETY-FIRST DAY'S PROCEEDINGS.

JUDGE PORTER'S SUMMING UP FINISHED.

A JUROR'S SICKNESS DELAYS THE BEGINNING OF MR. EVARTS'S ADDRESS—THE COURT ADJOURNED WITHOUT AN AFTERNOON SESSION—THE CHARGES OF BLACKMAIL CONSIDERED BY JUDGE PORTER—IMPROBABILITY OF MRS. MOULTON'S TESTIMONY CONCERNING A CONFESSION BY MR. BEECHER ASSERTED—WELL-KNOWN PHRASES ASCRIBED TO MR. TILTON INSTEAD OF MR. BEECHER—CHARACTER OF THE VERDICT EXPECTED BY THE DEFENSE.

WEDNESDAY, May 26, 1875.

The crowded assembly of persons who had again come together expecting to hear Judge Porter close and Mr. Evarts begin his argument for Mr. Beecher, was kept impatiently waiting for 20 minutes yesterday after the regular hour for opening arrived. Mr. Evarts first, and afterward Mr. Beach and Judge Porter, went around to the left of the jury box and talked with one of the jurors, Mr. Jeffreys, who was suffering from some disorder of the stomach, which, it will be remembered, at an earlier period in the trial caused him a fit of sickness. The other jurors watched these proceedings with anxious faces. Judge Neilson was also consulted, and the words "Another adjournment" began to be whispered about the room, while many faces wore looks of disappointment. It finally came to be understood that Mr. Jeffreys really felt unable to sit in the jury-box, but that he had consented to remain until recess in order to give Judge Porter an opportunity to complete his argument.

When the hour for recess arrived, Judge Porter's address having been completed, Mr. Carpenter, the foreman of the jury, addressing Judge Neilson, said that Mr. Jeffreys felt unable to remain in the jury-box during the afternoon. Judge Neilson asked the sick juror if an adjournment until to-morrow would answer his purpose, and he replied that it would. The court was then adjourned.

Judge Porter began the closing portion of his argument by a further consideration of the charge of blackmail. Mrs. Moulton's evidence about her alleged conversation with Mr. Beecher was also a principal topic for review. This evidence, the orator asserted, was improbable. The phrase "a section of the day of judgment," which Mrs. Moulton testified that Mr. Beecher used to describe her in her relations to him, was referred to with keen sarcasm by Judge Porter. "I am afraid," he said, smiling, and glancing toward Mr. Tilton, "that the author of that phrase was the author of 'paroxysmal kiss,' and 'standing on the brink of a moral Niagara.'" Mrs. Moulton's testimony on this point was reviewed, and analyzed, sentence by sentence. The tendency of witnesses to make honest mistakes, and to be deceived when they think they are sure of what they assert, was dwelt upon at some length, and considerations to be taken into account in weighing the testimony of Mrs. Moulton were pointed out. When a few minutes before 1 o'clock Judge Porter in a low, earnest voice said, "Gentlemen I must close," there was a stir in the audience followed by dead silence. The orator then began the closing words of his address. He summed up, in brief, much of his preceding argument. "Moulton," he said, "the main prop of this prosecution, stands before you confronting oath to oath men like Claflin, Storrs, Freeland, his own partner," &c. "In regard to Theodore Tilton," he added, "he has the misfor-

tune not only to have opposed his oath to that of Henry Ward Beecher, but on vital and material points, about which there can be no mistake, he stands contradicted by 34 witnesses who have no interest in this case except the interest which belongs to us all."

The orator praised Gen. Tracy, thanked Judge Neilson for his kindness, and acknowledged the justness of his rulings, and declared his own reluctance to part with the case. Finally, addressing the jury, he spoke of their verdict. "The verdict," he exclaimed, "is to be one which will gladden many, many hearts, a verdict which will illuminate Brooklyn Hights, a verdict which will send an electric thrill of joy through Christendom."

THE PROCEEDINGS—VERBATIM.

MR. PORTER CLOSES HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Porter—If it please your Honor—Gentlemen of the Jury: I am grateful to you all, but especially to that member of your body who has kindly consented to sit until recess to enable me to close my argument, although perhaps it may be at the peril of his own health.

THE DEVELOPMENT OF THE BLACKMAIL PLOT.

As I have said, the first object of Moulton and Tilton was to reinstate the latter in *The Independent*. That failed. *The Golden Age* was started. By their adroit contrivances and appeals to the generosity of the friends of Mr. Beecher, they were led to contribute $6,000 of the $12,000 which was to be the capital of the concern. Messrs. Schultz, Southwick, and others, set that enterprise on foot. Mr. Tilton, after his connection with the Woodhulls, scuttled the ship which had been favorably launched. The debts of the concern came to be large; its receipts were small. There was nothing before it, nothing before him, but disaster and bankruptcy. Tilton had sunk so hopelessly by his intermediate alliance with spiritualism and free love that it endangered even that portion of the fortunes of Moulton and Woodruff which they had embarked in the sinking craft. Of course they cared for no one but themselves, but caring for themselves they were from the necessity of their position compelled to protect all the subscribers who stood in a corresponding relation. To the end that they might be relieved from half their subscriptions, money must be had, and money was obtained. The idea of reinstatement in *The Independent* had been abandoned, and now the time had come to strike. Bowen must be reached. He was not a man of a conciliatory temper, and more especially when it came to paying money that he did not owe. Other influences must be brought to bear. These printed slips appear, containing the letter of the 1st of January from Theodore Tilton to Henry C. Bowen, which if published to the world would leave upon him the impress of a foul and deliberate libeler. But it was needful that a pressure should be brought to bear upon Mr. Bowen beyond that, because the mere name of libeler was not enough to draw money from his purse when its strings were tight drawn. It needed the pressure of the men of strength in Brooklyn. It needed the pressure of men like Storrs, men like Claflin, men like Cleveland, men like Sage. And how was that pressure to be brought to bear? Ah! from the beginning that had all been provided for; for the same letter which would blast Bowen as a libeler would also bring under a cloud of suspicion the honored name of the pastor of Plymouth Church. Then he finds his way to Wilkeson. Meantime these slips, printed apparently for publication, were not published; carried about; shown in privacy from man to man; well worn, even when presented to Wilkeson. The type were distributed. They were slips for blackmail, and so intended from the beginning. And that pistol did not miss fire—it brought the money; it brought not merely the money, but, in the language of Theodore Tilton, it brought the "spoils." Meantime $2,000 had been got from Mr. Beecher, under the pretense of Tilton's inability to pay the expenses of Bessie Turner. Five hundred dollars in bills, as Woodruff discloses, had been obtained for the purpose of contributing to the expenses of Theodore Tilton's family. Five thousand dollars had been obtained from Henry Ward Beecher by trick, by contrivance, by appeals to his generosity and his sense of having wronged this family. Five thousand dollars was obtained, and in bills, by putting a paper roof over the house in which Henry Ward Beecher, his wife, his children, and his grandchildren had their home. Then come the demands on Mr. Beecher's friends for more; then comes the remonstrance that this is blackmail; then comes the suggestion of Frank Moulton to Mr. Beecher, "I offered him $5,000 in gold, and it was not enough;" then came the suggestion to which I referred yesterday, "Your whole fortune had better be sacrificed than have the Bacon letter appear."

Now, gentlemen, I shall say nothing more on blackmail, except to recall in this connection a circumstance to which I before directed your attention, that even after that, Theodore Tilton, denying the charge that he was a blackmailer, said to Jackson S. Schultz, "I will blow the roof from Plymouth Church, unless Plymouth Church comes to my terms." Plymouth Church didn't, and its roof still stands. Then came, even after the Bacon letter, for that too was a blackmail letter, although the type were not distributed; it was a letter so shaped as to be consistent with innocence or guilt on the part of Mr.

Beecher, to admit of either construction, and the favorable construction was for sale.

THE CARPENTER CARD.

After that letter, when Tilton and Moulton were concocting this suit, when they were conferring with Mrs. Moulton about testifying in this suit, the Carpenter card is prepared. It was pressed upon Mr. Beecher again and again. Gentlemen, this paper has fatal force when you come to consider the surroundings which point to the motives of those who originated it. Remember the situation. The "Tripartite Agreement" has been published; the "Bacon Letter" has been published; the "Bacon Letter" embodies a garbled copy of the "Apology;" it is before the world; it means adultery, or it doesn't mean adultery; and the question is to be determined which it means. Upon the instant when that letter appeared, Henry Ward Beecher challenged the issue, called for an investigation. Moulton remonstrated against his call for a Committee, because it was a breach of faith. What, a breach of faith? Yes, for Henry Ward Beecher had pledged himself to the policy of silence. You see there where the policy of silence originated. That pledge was exacted by Tilton and Moulton for their own purposes, and the moment that Mr. Beecher came out and demanded an investigation he was charged with breach of faith and honor. And yet these men who thus construe pledges were the very men who had concocted that "Bacon Letter." Was that in accordance with the policy of silence? Who had published the "Apology," the first words of which were, "In trust with Francis D. Moulton," and which was published without the consent of the *cestui qui trust?* It was a policy of silence to be observed by Beecher and to be trampled by them. He said the time had come when there must be investigation; yet still deceived in Moulton, believing that it was Tilton who had overruled him, that Moulton could not control him, he proceeds to call his Investigating Committee. Now comes the next device. Moulton swears that he and Theodore Tilton held a conference together; that in pursuance of that conference he, in Tilton's presence, dictated—of course you know what that means; it means that Theodore Tilton dictated—to Frank Moulton this card. Observe, gentlemen, Henry Ward Beecher was guilty or innocent. Whether guilty or innocent he knew it. They tender to him this card; he refuses to sign it. They tender it to Gen. Tracy; he advises him to refuse to sign it. It is again and again presented to them and urged by Moulton. Mr. Beecher answered: "I can't sign it." "But Tilton has pledged himself that if you either sign that card or read it at Plymouth Church, so that it may end this investigation, it shall end this whole matter forever." "I cannot trust Theodore Tilton." "Oh! but you can trust me. If Theodore Tilton doesn't keep faith with you I will grind him to powder; I will stand by you from that time forever. I will burn that 'Apology,' and every paper I hold to which Tilton could resort for the purpose of impeaching your honor." What was it they asked him to sign? This paper dictated at Delmonico's saloon in New-York, at a conference between these two blackmailers, dictated in the presence of that Frank Carpenter who was to have been brought forward to prove confessions, that Frank Carpenter of whom Judge Morris said, in his opening speech, at page 55 of the first volume:

But, gentlemen, we do not rest our case upon the testimony furnished by Mr. Beecher himself alone. We go further than that; we will put upon the stand Mr. Carpenter, whose veracity, I apprehend, will not be questioned in this court, and to him, we may say, Mr. Beecher made his confession. But, gentlemen, we shall not stop there.

And he proceeds to state what else they will prove: that Frank Carpenter was the amanuensis of Theodore Tilton and Francis D. Moulton at that conference at Delmonico's; and this is the card which they had cooked up for the purpose of entrapping Mr. Beecher once more into the admission of an undefined offense, so that they might afterwards come in and define it for him as adultery. If Beecher was guilty; if he had lived a year and a half in adultery with one of his own communicants; if he had polluted his own house and hers with debauchery; if he had confessed it to Theodore Tilton face to face; if he had confessed it to Frank Moulton month after month and year after year; if he had confessed it to Mrs. Moulton again and again; if Mrs. Tilton had charged it upon him and confessed that he and she had been guilty, and had made that confession in writing; if he had authorized Frank Moulton to communicate the fact that he was an adulterer to two respectable members of his own firm; if, more than that, he had authorized him, in a conference, to communicate that fact to Benjamin F. Tracy and to Benjamin F. Butler, or to Samuel D. Morris; if everybody knew it; nay, more, if he had acknowledged and intended to acknowledge it in that "Apology," when he sees Frank Moulton ready to come out on his side, to bring his wife to his rescue and turn these papers to ashes, why is it that he refuses to sign this simple card? Let me read it to you. He was merely to stand up in his own lecture-room and utter these words:

This church and community are unquestionably and justly interested through the recent publication by Theodore Tilton in answer to Dr. Leonard Bacon of New-Haven. It is true that I have committed an offense against Theodore Tilton, and giving to that offense the force of his construction, I make an apology and reparation, such as both he and I declared full and necessary. I am convinced that Mr. Tilton has been goaded to his defense by misrepresentations or misunderstandings of my position toward him. I shall never be a party to the reopening of this question, which has been honorably settled as be-

tween Theodore Tilton and myself. I have committed no crime, and if this Society believes that it is due to it that I should reopen this already too painful subject, or resign, I will resign. I know, as God gives me power to judge of myself, that I am better fitted to-day through trials and chastening to do good than I have ever been.

The utterance of these simple words, dictated by Theodore, and by which Frank Moulton had pledged himself to abide, would have ended this investigation and would have prevented this action, as Mr. Beecher then believed, for he still trusted and believed in the treacherous Moulton. But he had lost faith, not in him, but in Theodore Tilton, and he meant to meet this issue. There were three who knew he was innocent—Elizabeth R. Tilton, who might or might not be made to be one of his accusers; himself, and that God whom he served; and his faith in truth, in innocence, and in right led this coward, as my friend Judge Morris calls him, to stand firm and erect and say, "Never! never! that card is a falsehood. It is entirely true that I committed an offense against Theodore Tilton, an offense against him in slandering him, in making against him false charges which I believed to be true and repeated to his employer. It is true that I was the unconscious means of alienating the affection of his wife. But this implies more, and read in the light of the Bacon Letter, while it of course exonerates me from the charge of adultery made by the Woodhulls, it will lead all mankind to believe that I did make improper proposals to that woman. I never did, and I will not say it." Is that the language of guilt or of innocence?

MRS. MOULTON'S POSITION.

Gentlemen, in speaking of the testimony of Mrs. Moulton I should be wanting in the noblest elements of manhood if I failed to make every allowance, consistent with the innocence of my client, which the instincts of gentlemanly feeling or the broadest Christian charity can suggest. This is her due in right of her womanhood, even though her oath were a poisoned dagger—poisoned, not by her, not by her, but by her husband, to drive home to the heart of the pastor from whom she has often received the bread and the wine which typify the body and the blood of the Savior, through whose forgiving love you and I, unworthy as we may be, still hope for final salvation. This is her due, even if she really believed that the unreturned kiss which she says she gave to Henry Ward Beecher in the privacy of a lady's chamber, and in the absence of her husband, was given to a confessed adulterer, to a perjured hypocrite, with whom her conscience would not permit her to commune, and who frankly avowed his purpose in her presence that day or the next to commit self murder, a crime so odious to God that it was made the punishment of the betrayer of the Redeemer; a crime so odious to men that it was punished by the Common Law of England by burial of the culprit at the cross-roads beneath the horses' hoofs, and with a stake driven through his body. Hers is the testimony of a woman against a woman, one whom she admits she never loved, one whom her husband hated, as he admits on oath, at least from the time of his return from Florida, in the Spring of 1871. Hers is the testimony of a woman against a clergyman to whom she continued to profess the warmest friendship, even after, as she admits, it had been arranged between her and her husband, and without the knowledge of Mr. Beecher, in July, 1874, that her testimony was not to be given before the Church Committee, but to be kept in reserve for a contemplated suit at law then meditated by her husband and Theodore Tilton against a man they were still endeavoring to deceive and ensnare. I shall exercise toward her the forbearance due to her sex, a forbearance which she has not exercised to one whom she received under her own roof as an honored guest, and to whom she accorded favors which virtuous women never accord to known and confessed adulterers. It has been suggested by the enemies of my client that I have dealt discourteously with the perjured blackmailers who sought to destroy him. I appeal to your consciences and the conviction of your understandings based upon the evidence. If Mr. Beecher be a perjured adulterer, as they would have you believe, and as perhaps they themselves believe, I fully justify the bitter denunciations you have already heard from my friend Judge Morris, and those more polished but more deadly which you have already heard and will hear hereafter from my eloquent friend, the senior counsel for the prosecution. If he is innocent these men are false accusers. If this is a case of conspiracy and perjury it would be monstrous that a sworn advocate of the New-York Bar should hesitate in a tribunal of justice, and in defense of a non-combatant, to denounce guilt and to protect innocence. But you will bear in mind that nothing I have uttered in your presence even approaches in severity and bitterness the language which this cultivated lady swears she uttered beneath her own roof, to her own guest, to her reverend and gray-haired pastor! Listen while I read, and tell me whether in your own minds you do not know that she is mistaken as to the conversation she reports; whether you don't know that it is impossible that a lady 30 years of age, and bred in good society, could stand in the presence of a gentleman whose hairs were gray, who already began to tremble and sway from the influence of age; above all, whether she could thus talk to such a man when she believed he stood within twelve hours of the judgment seat; when she believed he was capable of self-murder; when she believed he was equal to perjury, to baseness, to breach of trust, to all that was foul and false and dishonorable.

MRS. MOULTON'S TESTIMONY ANALYZED.

Let me read her account of what transpired in that interview and see whether it is language such as you would expect your daughter, your wife, your sister,

or any respectable woman whom you know, to address to her own guest, and that guest on the edge of death:

I stood behind him and put my hand on his shoulder, and I said, "Mr. Beecher, if you will only go down to the church, Frank will go with you; he will stand by you through everything; it does not matter what comes to you he will always be your friend, and, no matter what comes, I will always be your friend if you will only go down to the church and confess, because that is the only way out for you; I am convinced of that; you can never cover such a crime as this and continue in the pulpit, except through a confession on your own part; you have been guilty of crime and you must take the responsibility upon yourself, and suffer the penalty." And he said: "Well, I never gather much comfort from you; you are always to me like a section of the day of judgment."

I am afraid the author of that phrase was the author of the "paroxysmal kiss" and the author of "standing on the brink of a moral Niagara." Henry Ward Beecher is not the man who believes in splitting the Day of Judgment into sections. [Laughter.] That is one of the ideas of free love.

And I said, "Well, I feel great sympathy for you, but I don't see how you can continue in this sort of life; living a lie;"—[mark you, that is to dissuade him from committing suicide]—"going into your pulpit and preaching Sunday after Sunday." I said, "I have never heard you preach, since I knew the truth, that I haven't felt that I was standing by an open grave; I cannot express to you the anguish and the sorrow that it has caused me to know what I have of your life. I believed in you since I was a girl—believed you were the only good man on earth."

What, not Frank? Not Theodore? No good man but Mr. Beecher? "Now, it has destroyed my faith in human nature"—an interesting psychological fact; but it seems to me that she might have selected some other auditor for it than Henry Ward Beecher. "I don't believe anybody," and yet she asks you to believe in her. "I don't go to church; all my interest in the Church and in you is gone." This was the lady who told him how deep a sympathy she felt for him a short time ago, while she was convincing him that he had lived too long, and that it was time for him to die. "And I am sure I cannot respect you unless you manifest to me that you are sincerely repentant by going down to the church and confessing your crime. It is very hard for Mr. Tilton to be abused by your friends, and to be charged with treating his family ill—his unkindness to his wife, while he feels that you are principally the cause of all his trouble. It is very hard for him; it is very hard for all concerned. If you are only a mind to take this case into your own hands, you can settle it by confession. Your people will stand by you; they believe in you; they will forgive this one crime that you say"—and by the way, we have a reporter here, a reporter, and a reporter to whom? To Henry Ward Beecher. And of what? Why of what Henry Ward Beecher had said to her, and which presumptively he had forgotten, and she therefore had to repeat for him.

They will forgive this one crime that you say you have committed, and which you have—which you say you have—sincerely repented of, and you believe you have been forgiven, and you feel that you are better able now, than ever before, to do great good in the world, if you can only be allowed to go on to the end of your life without all the particulars of this case being made known; that is all that you ask, and if the facts are to come out, you want to go out of life; that you cannot live; that you cannot endure it any longer; physically and mentally you are worn out, and it is only with the greatest care that you have been able to preach Sunday after Sunday.

And that is the report a lady gives of a conversation which occurred, according to her account of it, 18 months, two years, I know not how long ago, and of which she took no memorandum, and which she in this wise repeats and commends to you for belief. I grant that she may believe it; the question is whether you may not believe that she is mistaken. Don't you really think that she makes about as poor a fist as a reporter of Henry Ward Beecher as her husband does? We have seen what sort of a reporter he is in the "Apology," and in the resignation. You see what sort of a reporter she is in this portion of her examination. Again:

He said he had n't any fear of death; he rather longed for it as a release from all trouble and all the anxiety and all the anguish of mind and remorse that he had suffered and was suffering daily; expressed to me his great gratitude for my sympathy.

A sympathy which has been illustrated by the passage I have read to-day, which was illustrated by the passage I read to you yesterday, in which she says to this reverend man:

You have lived four years an adulterer, a liar, and a perjurer.

I do not use her language, but you will remember the general tenor of the expressions.

Mr. Shearman—Do you want the passage? [Handing book to Mr. Porter.]

Mr. Porter—My friend calls my attention to the precise language [reading]:

Now, you have seen, Mr. Beecher, how much better it would have been if you had taken my advice in the beginning, and made the confession to your church, and then you would have only the original sin to answer for, and now you have four years of lying and perjury to answer for. He said, "I will never confess it."

And she says he had been doing nothing else but confessing it for four years. A lady to whom I stand in a very near relation called my attention to a passage which she casually opened in Shakespeare last night, in "Love's Labor Lost." I promised to use it this morning, not because I think it appropriate to Mrs. Moulton, for I have charity for her, but for the purpose of showing you how the great master of human nature looked upon a thing of this kind even when there was falsehood, and intended falsehood, where the wife swore for the husband:

"It is religion to be thus foresworn,
For charity itself fulfills the law:
And who can sever love and charity?"

Oh! I wish Theodore Tilton had the excuse to offer for his falsehoods here that they were falsehoods due not to cupidity, not to revenge, but to love, faithful, honest, loyal, conjugal love. I wish Moulton could say that he could set up that shield between him and condemnation, that he swore to destroy Henry Ward Beecher not from malice and hatred, and baffled cupidity, but from honest and loyal love.

THE CHARITABLE VIEW OF MRS. MOULTON'S TESTIMONY.

But, gentlemen, in regard to Mrs. Moulton, I feel very differently. It is a subject on which I have reflected somewhat, and I desire to call your attention to what I believe to be true and just on questions like this. There is a thread of truth through the whole of her narration. There were conversations between her and Mr. Beecher. The virus of those conversations consists in transposing them from one period to another, in introducing into one conversation what belonged to another, in the substitution for harmless and innocent words, of words like "crime," like "guilt." This, you will remember, is on her part a mere question of memory. We have a maxim in the law that one eye witness is better than a dozen ear witnesses, but even eye witnesses differ in the narration of what they have seen. No one sees all exactly as another sees it. No one remembers it even though he saw it, and accurately. The most expert artist cannot paint the face of his nearest friend from unaided memory. No two persons will give the same account of an accident of which both were witnesses. No two who happen to have been spectators will concur in their account of a street fight. No two commanders ever agreed to the same description of a battle in which both were engaged. It has been said that if a blind man were to ask a day laborer to describe a scene, he would get a very different description from what a poet or an artist would have given him of the same scene. The one observes what does not arrest the attention or impress the imagination of the other. *A fortiori* do these discrepancies occur in the description of scenes in the past recalled by fading memory. How the discrepancies widen in the memory of words after the lapse of years! How widely would two men differ who should attempt, unaided by notes, to relate the language of a witness heard by both within ten days on the present trial! How would the bias of each for or against the witness, or the party for whom he was called, give unconsciously a coloring to his memory of the language! Few men can report a conversation, even of an hour, accurately in the language of the parties, even the very day after it occurs. How different would be the words of the narrative from those actually used! how impossible to give the exact order of the conversation! But this difficulty is immeasurably increased when the conversation is one which occurred a year, or two or three years ago. When it is one of many conversations with different parties relating to the same subject, how difficult to discriminate between the words spoken by one and those spoken by another! How much is this difficulty increased when the narrator at the time had no thought of ever being called upon to repeat the language! How difficult for an unbiased witness to reproduce the language after the lapse of years! How much more difficult when the narration is by one who has been since brought into relations of hostility, and when the memory is prompted and warped by those who are present at the time and interested to color or pervert the import of one conversation! How easy it is to mislead a fading memory, by applying to one charge words used in reference to another! How easy to mislead by connecting the words of one conversation with antecedent or subsequent utterances! How dangerous to rely on the memory of a few words in an hour's conversation dissevered from the context, which would have explained them; all the rest having faded from recollection! We all know how much depends on accurate observation at the time, how much upon the intermediate events which have occupied the memory with matters of immediate and personal concern. How difficult it is to discriminate between impressions derived from one party and those derived from another! How easily do our own memories deceive us as to remote transactions! How uniformly do we find, if we refer to notes made at the time, that we have been misled as to important circumstances we have ourselves detailed! There is no faculty of the mind so imperfect, so liable to honest error; there is none so easily affected by kindly feeling and friendly bias. Weak and fallible at the best, memory is easily warped by family feeling, by interest, or by prejudice. We know how easily the memory of honest men oftentimes misleads them into exaggeration. We see how often, by habitual narration, good and worthy men come to believe stories originally invented in pastime, and come to believe themselves even the heroes of incidents which were related to them of others, in the days of early boyhood, by the fireside. How often are we misled into stating as facts what by reasoning we are led to believe, mistaking conviction for memory! How often do we find that witnesses perfectly honest testify to what proves to be untrue, from a failure to discriminate between knowledge and belief, between memory and conviction! All men are led by the daily experience of life to admit the infirmity of their memories, and yet in every specific instance the man who makes the admission relies upon his memory with the same absolute certainty as if it had never deceived him!

The best human memory rests on shifting sands, and all our observation teaches us that in nothing is it more likely to deceive than in the reproduction of conversa-

tions after an interval of a year and *after a change of relations*. For instance, suppose that Mr. Beecher had accepted the proposition of Francis D. Moulton to read that card at Plymouth Church, and they had burned all these papers, it would not have ended this scandal. Tilton would still have been behind; Frank Moulton would still have been the witness; and the same men who have published to the world that they held Henry Ward Beecher's written confession of adultery would then have sworn, the originals being destroyed, that the word "adultery" appeared in the apology; that the word "crime" appeared in such a letter; that the words "sexual intercourse" appeared in another.

I mention this to illustrate how dangerous it is to rely upon the mere unaided memory even of a lady who means to tell the truth, the whole truth, and nothing but the truth, where the fate of a human being in the estimation of his countrymen, in the estimation of Christendom, for all time, depends on the shading of a word. Suppose Mrs. Moulton has, to the best of her ability, given you what occurred between her and Henry Ward Beecher, her mistake, honest mistake, destroys an innocent man, and enables a scoundrel to crush him. If I were driven to such a question (and I am not), and if we were to look to the antecedents of Elizabeth R. Tilton, as she is described by the ladies who have been before you, by women of the rare accomplishments and intelligence of Mrs. Ovington, Mrs. Putnam, Miss Oakley, Miss Moore, and a series of others whom I have named—nay, looking at her as she is described by her own husband, looking at them as you see them in the correspondence which was published so shamelessly to the world, is there aught in the antecedents of Elizabeth R. Tilton that would lead you to think that she would be more likely, after she had turned the middle age of life, to become suddenly an adulteress, than there is in the antecedents of Mrs. Emma R. Moulton to lead you to suppose that in a controversy between her husband and his enemy, which she thought involved the ruin of the husband unless it destroyed that enemy, she should strain a point in a narration for the purpose of saving that husband, the father of her child, the fortune of both, their future prospects, their personal honor? There are several noteworthy features in her testimony. One is the fact that, according to her own account, she was the zealous friend and partisan of the defendant, to whom she now imputes adultery, until Sunday, July, 13, 1874, the day after Tilton and Moulton sent their contradictory messages by Redpath to Mr. Beecher. Another is the fact that on or before that day she was in consultation with Judge Morris and Gen. Butler, and that on that day, just one month before Mr. Beecher made the statement of which Moulton complains, it was arranged in her own house between her and her husband that she should not appear before the Church Committee, but that a suit for *crim. con.* should be brought by Tilton against Mr. Beecher, and in that suit she should swear to his confessions to her, in order to convict him and Mrs. Tilton of adultery. You will remember that Moulton's first and only statement to the Church Committee was made on the evening of the 13th of July, 1874, and that that statement did not charge adultery.

He comes from the house where he and she and their counsel had arranged that Henry Ward Beecher was to be prosecuted for *crim. con.*, and goes before the Committee to make a statement, in which he does not charge adultery! That statement was concocted at Moulton's house that day. Mrs. Moulton lets us into an inside view of the consultation between the confederates who have put a five months' mortgage on the lives of all of you twelve jurors. Messrs. Butler and Morris were, of course, mere legal advisers; Tilton and Moulton were the responsible confederates. For the purpose of entrapping Mr. Beecher they concluded to keep back Moulton's accusation of adultery, to make a short statement alleging only an indefinite offense, to draw out from Mr. Beecher an admission of an undefined offense, and then in Moulton's answer to define it as adultery, and follow it up with a suit for *crim. con.*, Mrs. Moulton being fully advised of their purpose and pledging herself to become their witness. Here is her account of it, given on the examination of her friend and daily guest, Judge Fullerton, at pages 752 and 753 of the evidence. In the course of that examination a phrase is elicited so characteristic that I cannot pass it by. It speaks character. It explains the fact, which you probably have observed, that, although all men, in the chivalry of manhood, are disposed to believe Mrs. Moulton if they could, no woman seems to believe her. Women know women better than we do. But this scoffing sneer of the hostess to her guests—"Give the old man another chance"—is that the language of delicate sensibility, uttered by a lady, and of an old and honored clergyman?

THE CONSPIRACY TO BRING A CRIM. CON. SUIT.

There are other scenes which I must pass over, because I must finish soon. We see, at least, by her testimony that the conspiracy to bring this suit had been perfected on the 13th of July, a month before Mr. Beecher's statement. On her direct examination by Mr. Tilton's counsel, she confesses that on that day she told Mr. Beecher that if Tilton failed before the Committee he would take his case into the court. Again, on her cross-examination, she confesses that she said to Mr. Beecher on the 13th of July, 1874, "If Mr. Tilton fails in this, he is going to take his case into the court:" and that Mr. Beecher replied, "He has no case to take into court." Again, at page 744, she confesses, in her examination in relation to the conspiracy to prosecute Mr. Beecher, a fact which shows that it had its origin even at an earlier period, and that she was personally informed of it by

Tilton about the time of the Bacon letter, which was published on the 21st of June, 1874. [Reading]:

Q. Can you give us any information as to how long before this you had heard from Mr. Tilton that he was going to have a suit at law with Mr. Beecher? A. It was not very long before.

Q. Well, was it six weeks before? A. I think the first that I heard was about the time of the Bacon Letter.

So that we have the fact fixed by her evidence that as early as June these two slippery rogues had concocted their scheme for the present prosecution; and while Moulton was urging Mr. Beecher to sign the Carpenter card admitting an indefinite offense, and pledging himself to burn the documents which he and Tilton, in black and infamous confederacy, had already published broadcast through the land—at this very time they meditated this very action, and had conferred together as to the witnesses by whom they might maintain the claim, if they failed in their purposes of blackmail in the mean time. My friend calls my attention to the fact that at a later period in her evidence Mrs. Moulton testifies explicitly to something more—that Moulton is the man who, she thinks, also asked her to do it—"he said that with my knowledge of the case and of the facts from Mr. Beecher himself, I should have to go before the court, of course, and would be called as a witness." And this man, Moulton, then and long afterward, was writing those slimy professions of friendship to Mr. Beecher which have been introduced in connection with the replies of Mr. Beecher to show how he was deceived, and was expressing such fervent gratitude to the man who all the time was betraying him! I must, however, be permitted to say, gentlemen, though my opinion may or may not be in harmony with that of my honored senior associate, and though it may jar on the sensibility of my client, who believes Mrs. Moulton to be mere clay in the hands of the potter and innocent of intentional wrong, though that is his view, I cannot in justice to my own conviction admit that a witness who has sworn to what I firmly believe to be untrue is to be wholly relieved from censure, even though her memory was so warped by the force of conjugal love and the dominion of an ascendant husband as to bring her even to believe it to be true. For her, however, I have no word of reproach. Hers was a case of divided allegiance. Her fortunes and those of her only son were interlocked with those of the man who was capable of sending her again and again to the mansion of free love. Yes, again and again, Tilton and Moulton sent this respected and cultivated lady, sometimes with her husband's mother, sometimes with her own son, to bring the apostle of free love to the consultations of these midnight conspirators. The messenger who did not revolt from an errand like this you will form your own judgment of, which should be both charitable and just. It is a strikingly significant fact, however, that though she remembers three or four occasions on which she visited the Woodhull mansion, once with Theodore Tilton, once with Frank Moulton's mother, once with her own boy, she cannot remember whether the three hours' ride back and forth was in either instance by night or by day, nor whether she did or did not, after either of those long rides, take the apostle of free love home at the close of those memorable conferences to which she herself was not even admitted as a party. Again, it is worthy of special observation in weighing the testimony of Mrs. Moulton that she frankly confesses that Mr. Beecher was not her original informant in respect to his relations with Mrs. Tilton, whatever they were: that it was from the false and treacherous Moulton that she received her first information, and that the only conversation she had with Mr. Beecher rested upon the assumption that her husband had stated the facts truthfully, though she did not tell Mr. Beecher how her husband had stated them. She represented him as admitting what they, in his absence, had stated to her, and this without informing him of the specific and calumnious information they had communicated to her. It is barely possible that she was innocently misled by them into the belief that Mr. Beecher had been guilty of adultery. I can hardly believe it; but, if you can, she is entitled to the benefit of every possible doubt. One thing is, however, certain, whether her testimony be the invention of Moulton, whether it be the result of fading, slippery, and trained memory, whether it be the result of honest misconception, or whatever it may be, it is met fairly and squarely by the oath of a man who is prepared to stand by it, not only now but at the judgment seat.

MRS. MOULTON DECEIVED BY HER HUSBAND.

Another significant fact is that in her conversation with Mr. Beecher she never, except on the occasion to which I have already adverted, personally imputed to him the infamous crime of adultery, and that when she did so it is inserted in a report of things said to have been told to her either by others or by him on some former occasion, and the former occasion upon cross-examination disappears. Let me again remind you that her statement is the information received, not from Beecher, but from others. Her language, at page 739, is:

He had been walking up and down the floor and seemed very much excited, and after a few moments' conversation he took my hand and asked me if I knew anything of this sorrow of his life. Q. Of this sorrow of his life? A. Yes, Sir. Q. Well, what did you reply? A. I said I did. Q. What then did he say? A. He said, "Then Frank has told you the facts, has he, in the case?" I said, "He has." Q. And then you parted? A. I don't remember of anything more.

"Frank has told you the facts!" He trusted Frank as a man of truth, and so did she. Frank lied to her as he had lied to Mr. Beecher.

Passing over much of what I intended to say from time to time, I cannot pass over it all. I desire to advert for a moment to that portion of her testimony in which, on her cross-examination, she interweaves a new version of what occurred on that memorable 2d of June, and in doing so interweaves the thread of absolute suicide;

Q. What did he say at this stage of the matter? A. He said he had made up his mind, if Tilton published his Letter of Apology, to take his life; that he had a powder in his library table which he should take, and that he would pass quietly away without a struggle.

Gentlemen, if this story was true, why have you been for nearly half a year prisoners of the law? What was there to prevent Mr. Beecher from committing suicide? If he had meditated death and had provided the means, and those means painless, why is not Henry Ward Beecher dead? Why is that powder still on his library table, ready for the use of his children and his grandchildren? The occasion for taking it was the threatened publication of the letter of "apology." The letter of "apology" was published. The same woman who had sworn but a few pages before that in the whole conversation there was not even an allusion to the letter of "apology" seems to have overlooked the fact; the letter of "apology" was published; the powder remains untaken; that specific, the price of which will be almost beyond measure, a powder which should produce painless and instant death, still lies there waiting for either of us to go and procure it. And yet this talk of suicide has rung through the land, and it never seems to have occurred to anybody that while Mr. Beecher has gone through darker days than those he still lives, a strong, healthy, fearless, living man!

I have said enough, it seems to me, to be able to safely leave the issue for you to determine whether the testimony of Francis D. Moulton's wife, as you have heard it, and as you shall weigh it, should, in your judgment, outweigh the benign presumptions of the law and Henry Ward Beecher's oath of innocence. Gentlemen, I must close, and to do so I must discard the notes from which I intended to speak, for the time is already at hand, and I feel that I have trespassed too severely upon the condition of health of one of your number. There is so much that I have left unsaid that I ought to say it now. I had intended and hoped that I should have been able to present to you the contradictions of Francis D. Moulton. I have not the time even to go through the names. If Moulton is an honest man, he is the most unfortunate of his class. If he has on this trial been weighed in the balances against his fellow-citizens, whom you know and respect, I must believe that in your judgment, as in mine, he has been found wanting. Moulton, the main prop of this prosecution, stands before you confronting oath to oath men like Cleveland and Storrs, and Freeland, and his own partner, Robinson; Samuel D. Partridge, his bookkeeper; H. O. Armour, the landlord of the very house in which he lives—these and others—17, I think, in all—all supposed to be honest men, all false if Moulton is true, but, if they are true, Moulton is false. In regard to Theodore Tilton, I need only say that he has the misfortune not merely to oppose his oath to that of Henry Ward Beecher, but on vital and material points, on which there can be no mistake, he stands contradicted by 34 witnesses, witnesses who have no interest in this case except the interest which belongs to us all, such men as Jackson S. Schultz, John C. Southwick, Charles Storrs, James Freeland, Rev. John A. Gay, Edward J. Ovington, Mrs. Ovington, Miss Putnam, Samuel E. Belcher, St. Clair McKelway, Oliver Johnson, Charles Cowley, Sam. Wilkeson, and the others to whom I have referred, without even enumerating them, for it would take too much of your time. I need go no further. To walk over and reach Mr. Beecher's body these men must be walked over. Theodore Tilton cannot strike him until he has struck through all these warm hearts. Theodore Tilton is the plaintiff—false, treacherous, perjured.

WORDS IN VINDICATION OF GEN. TRACY.

I must be pardoned before I close for saying a word, and only a word, in regard to my honored friend, Benjamin F. Tracy. Knowing him well by reputation before my connection with this trial, I knew little of the sterling worth and strength of him and his character. All know his intellectual capacity, but this has been one of those occasions on which a man is brought to the test; it does not often happen to us to become ourselves the subject of vile and virulent assault. When fraud and perjury, in order to promote their own plans, seek to bring into their toils an honorable man for the sole purpose of depriving their victim of his friends, they will ordinarily succeed. In this case they have failed, but they have failed not because their device was not plausible, but because we would not permit it to succeed. Knowing that Benjamin F. Tracy was an important witness in this case—he determined in no case to become a witness, because Mr. Beecher and my learned associates thought we needed his assistance before you, and we commanded it. The question which has been suggested in regard to the fraud attempted to be practiced upon him by Tilton and Moulton had been disposed of, not by his judgment, but by ours. We may have been wrong. Right or wrong it was our judgment and not his that controlled. I think he acted justly and honorably. I would like to review the evidence upon this point, but have not time. It is sufficient for me to say we held that it was not only his right but duty to accept a retainer as one of the defenders of Mr. Beecher. Afterward, when, to his surprise and to ours, these men undertook to swear Benjamin F. Tracy into the attorney of Mr. Beecher for the purpose of making

admissions for him, and then to represent him as admitting the guilt of the client with whom he had never even conversed, then we felt that the time had come when another question arose. Then Gen. Tracy very properly said: "I am met in court by three witnesses, and they say there is the fourth, who propose to swear that they told me what they never did, and that I admitted that Henry Ward Beecher was guilty. I must withdraw from this case, and be a witness." Gen. Tracy, you are not called upon to be a witness in this case. It is a fearful thing to place a man in the position of standing up to confront three men who have him alone in a private room; can put into his mouth what words they will; can swear him down; have friends around them to confirm them; have no scruples—no man should be called up to take such a position as that. In justice to himself, or in justice to another, be that as it may, he says: "I must be a witness if that charge is persisted in. Be the consequences what they may, as I know them to be false, I must speak," and he did. The question, however, whether he should finally be a witness was postponed until the other was decided, and if there was an error on that subject it is the error of William M. Evarts and of each of my honored associates; it is an error for which I and they take the sole responsibility. It was committed to our judgment, and if my friend really believes that our experience at the bar, our notions of professional and personal honor, have been prostituted for the purpose of gaining for our client the benefit of a witness who was not called upon to testify, let him believe it. He don't, and he never will. He was placed in a different position. In that position he stood like a man. When my friend Beach challenged him to be a witness at the time he was making his opening, he settled the question that we must call him, and we did.

A TRIBUTE TO JUDGE NEILSON.

Well, gentlemen, I can say no more; and yet I am reluctant to part with this case; I am reluctant to part with it, for there are, and there always will be, to all of us, pleasant memories connected with it. Painful, some; pleasant, many. It has happened to each one of us, by one of those accidents which occasionally throw men together, to meet as strangers, and I trust to part as life-long friends. You are here in the discharge of an ungracious but a most responsible duty; and it has been discharged with a fidelity which has arrested the public attention, and should command the public respect. It certainly commands our appreciation, our earnest gratitude. I think I can say it for all, on both sides of this case, counsel and parties, and all indeed who have been the witnesses of your fidelity, your patience, your kindness. I know not, your Honor, what to say in acknowledgment of that kindness with which we have all been treated by you. Ordinarily it would be merely the expression of that sincere feeling of gratitude which is naturally inspired by long-continued kindness and consideration; but, as it happened at the earlier stages of this case, that oftentimes in the view of his Honor decisions were made from which we felt that we suffered injustice, I desire now to say, at the close, that I feel that he judged wisely and well; and that on a great issue like this it was equally due to the plaintiff and to the defendant, to all the public interests involved, that the broad door should be opened for the admission of any evidence in respect to the admissibility of which there was even a doubt. His Honor felt, and showed that he felt, that it was due to justice that everything that could be submitted to you that would aid you in your deliberations should be before you, and, feeling thus, it is matter of sincere gratification to me that I have the opportunity now, that all may share with me the same feeling of expressing our sense of respect for the eminent ability, the impartiality, the known integrity, the purity of character of that eminent Judge—most worthy, if not quite, of the honored position among jurists of that great and eminent kinsman of his who now sleeps by the waters of Otsego Lake—a name which will be honored through all time; and yet I am not sure that the name of the jurist who presides on this memorable trial will not endure quite as long, for it is his misfortune, and yours, that through circumstances which you could not have foreseen his name and yours are to go down to posterity together, always associated with a trial which shall be memorable through all future time, and which is to determine the question whether innocence can find a shield in a court and a jury against all the devices of perjured and banded guilt. It has been said, gentlemen, that there was fear that there might be in this jury a disagreement. It is said by those who have not heard the evidence, and do not know the truth. I think I have lived long enough with each of you to know that there is not one man on that jury who won't do what he knows and feels to be right. Not one man on that jury who is capable of giving a verdict such as was demanded by my friend, Judge Morris, and which he properly characterized as a malediction. A verdict which should condemn this man, and at the instance of these men, would indeed be a malediction. But this will be a benediction. If there be one man who, in the spirit of the old Roman centurion, was capable of thrusting his spear into the side of one who was innocent and likely to perish, I know that, though I may not be able to say Amen, though good men everywhere may shrink from it as a great wrong, even in respect to such a man there will be one at least who, in humble emulation of the Redeemer whom he serves, will be able, even in that hour of agony, to lift his hands in prayer and say, "Father, forgive him, for he knows not what he does." But no such verdict is to come from this jury. The verdict is to

be one, as I firmly believe, which will gladden many, many hearts; a verdict which will illuminate Brooklyn Hights; a verdict which will send an electric thrill of joy through Christendom. [Applause.]

A JUROR SICK.

Mr. Beach [to one of the jurors]—Well, Sir, what is your condition?

The Foreman—We would like to adjourn. The Judge is going to adjourn the Court.

Mr. Beach—Until when?

The Foreman—I don't know until when. We would like to adjourn the Court, as Mr. Jeffreys is not able to continue here this afternoon.

Judge Neilson [to counsel]—You hear the suggestion of the foreman, gentlemen.

Mr. Porter—We did not hear it.

The Foreman—The juror, Mr. Jeffreys, is not able to be in session here this afternoon.

Mr. Porter—Under those circumstances, we submit, your Honor, it would be proper to adjourn until to-morrow.

Judge Neilson [to Mr. Jeffreys]—Mr. Jeffreys, do you think to-morrow will answer your purpose?

Mr. Jeffreys—Yes, Sir.

Judge Neilson—Gentlemen, we adjourn now until to-morrow morning at 11 o'clock.

The Court thereupon adjourned until Thursday morning at 11.

NINETY-SECOND DAY'S PROCEEDINGS.

ARGUMENT OF MR. EVARTS BEGUN.

MANNER AND DELIVERY OF MR. EVARTS—HIS WORDS TO-DAY MAINLY GENERAL AND INTRODUCTORY—THE LEGAL NATURE OF THE CASE AND THE EVIDENCE REQUIRED EXPLAINED—ANALYSIS OF TESTIMONY BEGUN—EVIDENCE OF MR. BRASHER AND OF JOSEPH RICHARDS TAKEN UP—MR. TILTON'S CONDUCT STIGMATIZED.

THURSDAY, May 27, 1875.

The long-delayed argument of the senior counsel for Mr. Beecher, William M. Evarts, was begun to-day. Mr. Evarts rose to begin his argument at almost precisely 11 o'clock. His first words were clearly audible in every part of the court-room, and the noisy conversation in the audience was instantly hushed, and every one bent forward to look at the orator. The orator's voice during most of the time was pitched in a clear, ringing tenor, only occasionally dropping into a deep bass. Mr. Evarts speaks very deliberately, with quiet but telling gestures and inclinations of the head. His slender figure bears some resemblance to full-length portraits of Henry Clay. His face is thin and pale and his features clear cut and classic. His bright blue-gray eyes twinkle with merriment when he is telling a humorous story, but look hard and earnest when he is in the midst of a serious argument. The orator's address was sprinkled with witty sayings, and he frequently illustrated his arguments by anecdotes, which set the audience laughing and gave the court officers trouble to maintain quiet. Sometimes Mr. Evarts laughed with the audience. Once when an unusually humorous story had excited a noisy outbreak of merriment, Judge Neilson caused everybody to smile, by rapping with his gavel and saying very gravely, "We must have silence. I have my eye on several very respectable people who are not conducting themselves properly. We must have silence."

The sentences of Mr. Evarts to-day were rounded out with rhetorical precision and polish, and he made frequent classical and historical references and quotations. The larger portion of his address to-day was of a general and introductory character. He referred to the main features of the case, the nature of the offense charged, the effect of the scandal on public morals and belief, and the character of the accusers and the accused. He pictured seduction and adultery in the blackest colors, and dwelt upon the heinousness of the offense with which Mr. Beecher was charged, insisting that by law and justice it should be proved with the utmost clearness in order to be established. Mr. Tilton's conduct in continuing to live with his wife for several years after the time of the alleged adultery was strongly condemned. The nature and history of the legal process for criminal conversation were explained at length, and the kind of proof required to establish it was explained. The difference between the basis of this action in England and in the United States was also set forth.

Finally near the close of the afternoon session Mr. Evarts began to take up the testimony of some of the witnesses in detail. The evidence of Mr. Brasher, one of the plaintiff's witnesses, who swore that he had seen Mr. Beecher on Mr. Tilton's steps at an early hour in the forenoon, was first subjected to analysis. The idea that because Mr. Beecher was seen standing at Mr. Tilton's door at 8 o'clock a. m., waiting for the door to be opened, there was presumptive proof of adultery, was ridiculed with a great deal of humor. The evidence of Mr. Richards, the brother of Mrs. Tilton, that he had seen Mr. Beecher and

Mrs. Tilton in Mr. Tilton's parlor, sitting close together, and that Mrs. Tilton had started confusedly away from Mr. Beecher when her brother entered the room, was also considered. Mr. Evarts pointed out the alleged inconsistency between Mr. Richards's cordial greeting to Mr. Beecher and Mrs. Tilton, with the idea that what he had seen had led him to suspect his sister of adultery.

In another part of the address Mr. Richards was made the subject of a cuttingly sarcastic reference. Speaking of Mr. Shearman's relations to the case, the orator exclaimed: "He is one who sticketh closer than a brother—if we can measure the closeness with which a brother sticks by Joseph Richards's adherence to his sister."

Mr. Tilton did not escape without some severe cuts. The orator declared that the self-worship of the plaintiff had been the source of all his woes. "I did not," he said, "by cross-examination seek to disturb one word of his own narrative, which fills two columns of the newspapers; for I knew that the devil of lies had played the same trick with him that he always plays with all his devotees." The orator declared that he could find no epithet to describe Mr. Tilton's conduct even among Brooklyn epithets, and then he said, with a smile, that it might be suggested that "the best test of our bridge when it is finished is to send a preliminary train over it loaded with Brooklyn epithets. If it can stand that it can stand anything."

THE PROCEEDINGS—VERBATIM.

MR. EVARTS OPENS HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—It is very desirable that we should have perfect quiet, not only to the end that we may hear the speaker, but that the jury may. Will counsel proceed?

Mr. Evarts then began his argument in behalf of Mr. Beecher.

RESPONSIBILITIES OF AN ADVOCATE.

MAY IT PLEASE YOUR HONOR, AND GENTLEMEN OF THE JURY: Whatever diversities may present themselves in the trial of a cause, as its texture and its colors are woven to the completion of the picture, the solicitudes of the advocate know no ebb, and they come to the flood when he is to present the last plea for the defendant, and is to surrender his representative capacity. These solicitudes are not personal. No considerations of vanity or fame have anything to do with his anxieties. All exhibitory or ostentatious speech has always been foreign to forensic art. We deal with realities. We have to do with living men and women, and with real, personal deeds. It is this that disquiets the advocate when he comes to feel that the representation is to cease, and all his faults and his failures are to come as penalties upon the client, and he no longer can stand to interpose any shield against his own influences. It was this that made Cicero say—Cicero, easily at the head of all ancient, and easily transcending all modern, reputations in our profession—Cicero, after he had gained the credit of being the greatest lawyer among orators and the greatest orator among lawyers—Cicero, who had built up that credit which is now represented by his works on the shelves of every scholar, though he be not a lawyer, of every lawyer, though he be not a scholar—that led him to say, when he could not but confess good grounds for confidence in himself: "I, notwithstanding all this, declare, so may the gods be merciful to me, that I never think of the time when I shall have to rise and speak in defense of a client that I am not only disturbed in mind, but tremble in every limb of my body." Ah! then it is that the fate of the client, as affected by the faults, the defects, the omissions of the advocate, rest indeed upon the mind of the latter. Certainly, gentlemen, there is everything in this cause, as through the long period of the trial it has been drawn out before you, that should make every one feel, not in this personal sense, but in this solicitude for the client, what he would desire, and what he misses in himself. One would wish some of those fabulous powers by which poetic invention has sought to eke out the infirmities of our feeble nature. One would wish for a hundred eyes, to pry into every fold and crevice of this testimony, and draw forth aptly and in season every fact, when it was needed, and as it would be effectual. He would wish for a hundred hands, that now he could hold up the whole mass of it for its collective power upon your minds; and then that he might divide, distribute, discriminate it, so that at some finger's end there should always be each topic, each passage, that could shed light or carry conviction. He would wish more than these aids of instruments, that perceptive force which could discern the merit and the efficacy of the vastly diffused elements of the proof, and by unerring magnetism draw forth from all, missing no single needle from any haystack with which the field of the trial is strewn, when it was needed to scratch the face of any ugly falsehood or prick the pompous bubble of hypocrisy. He would wish that he had that power of reason that could crush the obdurate mass of evidence, separate the ore, and then, by an intellectual alchemy, purge it of all the dross, and lose not one pennyweight of the pure gold of truth, but seize that, and that alone, as sterling coin for your circulation. And most of all would he wish that moral power of distillation that could deal with the juices of this long fermentation, strip them of all discordant elements, reject

all poisonous oils, all corrosive acids, all heavy heat of passion and of prejudice, and present to you the pure, invigorating wine of honest sympathy for human nature, of honest warmth for human justice. And then he would wish for that greatest gift, eloquence—eloquence which, overleaping even the short circuit between the voice and ear, speaks out from heart to heart as face answereth to face, and, what a great thinker among mankind, Lord Bacon, has said is more than eloquence, discretion of speech, that no excitements, no perversions, no enlistments, no animosities should carry him beyond the duty to his client, to justice, to truth, to his opponents, and to you.

THE DISTURBING INFLUENCE OF THE CASE.

If in a private cause, however momentous the interests, these sentiments and feelings may justly agitate the mind of the advocate, how much more oppressive are they when the matter in hand has to do with great public interests and strong popular passions, when the client has become involved in all the eddies and currents of controversy between men's opinions, prejudices, feelings, and in all the forms that make up the connections and the sympathies of society and of life. Why, it has been true in this case from the time that the scandal first burst upon public attention—it has been true in this case that so far from the individual case upon its real facts, so far as the individual accused on his real character, so far from the connected culprit, the lady, being judged of by that measure that we wish to meet, that we may be so judged ourselves, they have been made the personalities and the names upon which all sorts of public controversy, of public contumely, of public discords, have turned. Questions of taste, of social ethics, of manners, of morals, of religious forms and of religious faith, as affecting communities, cities, forms of communion, particular churches, particular circles of society, all have been tossed about in endless controversy, in which these parties and the actual facts of their case have really formed but little part. Everybody has been trying everybody. Europe has been trying America. New-York has been trying Brooklyn. The other cities and the rest of the country have been trying Brooklyn and New-York, coupling them like Herculaneum and Pompeii and Sodom and Gomorrah. All the scoffers and the infidels have been trying all the Christians. The ancient Church, mother of all dissenting denominations—the Romish Church—has been trying Protestantism. The church of dignity, and coming nearest to an establishment among Protestant churches, has been trying all the forms of dissenters that have not a ritual. And then the Presbyterians, they have been trying all the more modern forms of dissenting sects; and then the Methodists and the Baptists, each in turn, have been trying the Congregationalists: and then, at last, the Congregationalists have been trying Plymouth Church. [Laughter.]

Well, we have n't any chance to be heard in this storm. If they had formulas and propositions that, on the part of Europe, were to condemn our vulgar, uncivilized institutions and society; and then if these different cities were to try it on the question of whether it happened in Brooklyn, and if it did, why that was enough; and then in the churches—if men of absolute and fixed traditional faith said, "Well, the moment people undertook to be independent and care more for practical morality, and practical charity, than for orthodoxy of doctrine, and vain human aspiration, this is the end of it all;" if these were to be the methods of accusation, or imputation, of discussion and of conclusion, why, Mr. Beecher and Mrs. Tilton, and the actual form and pressure of the charge, are all enveloped in the dust of these whirlwinds, and those forces determine the conclusions of men, and not the actual weight and character of any particular conduct or evidence. Then, too, when you came to consider the defendant as placed in the common attitude of the civil justice of the country, at once there was an immense expansion of the public expectation as to what could be done, or should be done by such a man; how he could not safely rest upon the proposition that guilt must be proved, and he against whom it was not proved was discharged acquit and innocent, from human justice; the proposition was taken that unless he made affirmatively his innocence as clear as it would appear, if he were innocent, at the judgment day, the trial had failed of his purgation, and had left people a right to doubt about him.

Ah! if your Honor please, to make these exactions of inquisition, as if it were the last judgment, and to furnish us with none of the compelling processes, and none of the penetrating omniscience, and none of the all-loving charity which belongs to God, is indeed a burden that cannot be borne. All limitations of authority in regard to witnesses; all rules of law regulating testimony; of power to twist the consciences of the wicked till they spoke the truth; to inform the intelligence of the honest so that they should speak the truth with appropriateness, and with vigor, and with power; all these limitations of human institutions, limitations upon men, were all discarded in these irresponsible discussions, and these rash exactions and conclusions which the public and their organs felt themselves at liberty to exercise.

THE ARGUMENT OF NATURAL PROPENSITY MET.

Now, take the point where the scandal, as a scandal, as a matter of imputation, as a matter of curious inspection, as a matter of wise deliberation, as a matter of unimpassioned but yet one-sided conclusion, and see how, by a reference to some of the general and yet well-recognized points of this controversy, our loving client, Mr. Beecher, has been exposed to judgments that have

nothing to do with him or the facts of the case. Well, when a scandal is promulgated, then at once there is a vast class of the community that give it a ready and a free acceptance. *Et otiosa credit Neapolis, et omne vicinum oppidum.* The idle profligates of New-York believed it, and of all this neighboring town. And so, in every quarter where the wicked classes make their meetings, and hold their gossips with a sneer and a smile, the scandal was accepted. Why, that a man should err with a woman, that the weakness of the flesh should yield to a temptation of the flesh, these classes said they had known always and everywhere, and they were glad that their doctrines and opinions were being accepted among the more serious classes. Others put it upon what they understood to be robustness of Mr. Beecher's frame. Well, now, that is a ground to put it upon that is very difficult to deal with; for we cannot deny that he is a man, as he presents himself before you, as you have studied his face and seen his figure. And yet over and over again you have seen what professed to be rational examinations of this inquiry that are really made to depend, when put to the true analysis of what the argument means, on this question of physical strength and temperament. Why, to be sure, that overthrows human virtue, human civilization, education, religion, morality, faith in men and love for men, faith in God and love to God; it overthrows them all. Why not? Man is an animal. Man is an animal; and, when you come to deal with the questions of natural propensities, you must treat him as an animal. In other words, gentlemen, this scandalous and wicked, and when stated, ridiculous and monstrous proposition is made, that against an accusation of incontinence there is no defense in our state of society except the proof of impotency. How horrible! How wicked! And when pressed home to such careless disputants, how shocking to their own sense of the growth of society, of the beauty, the purity, the dignity of human nature! "Thou hast made man a little lower than the angels," is the doctrine of Christianity and of religion. "Thou hast made man undistinguishable from the brutes," is the proposition of these profligate accusers and condemners, not of a particular man, not of a particular woman, but of all the pretensions to virtue and all that makes us pride ourselves upon living at an age which has inherited the great civilizations of all time, that has received the great gift of an Incarnate God and the permanent possession of the institutions of the Gospel.

THE MOST PARTISAN DEFENDER OF MR. BEECHER.

Well, then, all sorts of volunteer disputants appear, attacking and defending; and for the defenses or excuses, if not for the attacks, all over the country, there was a sort of responsibility carelessly thrown upon the case and the person of Mr. Beecher. The most extravagant of the apologies for Mr. Beecher's conduct was in a very well considered and very well expressed letter published in one of the Western papers, said to have been from a lady, and doubtless it was so. Without inquiring particularly, or even caring to inquire, whether there was any truth in the charge, this apologist seemed to think that for a man who had done so much good, and who was still doing so much good, and was capable of doing more good than all the other preachers in the country, as she expressed it, that a little aberration of this kind, in the nature of a solace and a support for the immense drain on his moral nature—it was not to be considered improbable, and instead of being excused should be justified. Well, now, I have never heard anything quite as strong in the way of partisanship as that, except in a curious anecdote of English political history. John Wilkes—Jack Wilkes, as you have all heard of him—the great liberty agitator of the time of George III., with his great wit, his great audacity, gave much trouble to the court and the ministry, and gained equal favor with the radicals and the opponents of the ministry. He was a man of profligate life, and, unluckily, he was a man of a very ugly countenance, and, among other things, of a very undisputable obliquity of vision. Well, parties ran high; all were for him or against him; and all imputations upon his conduct, his patriotism, his morality, or what not, were met by his friends boldly and confidently, and two ladies in high life, one of the Court party and one of the Liberty party, after discussing with the heat and candor which belong to women's love of justice the respective merits and demerits of Wilkes, and when the champion of Wilkes had pressed her adversary to the wall on every question of politics, of taste, of morals, of patriotism, and of public danger, the opponent of Wilkes turns upon her and says: "Well, you must admit that he squints." [Laughter.] "Yes," says the disputant, "but no more than a man should." [Laughter.]

Now, all these follies and frivolities through several years of twilight, of darkness, of suspicions, and of doubts, have been clustered around this controversy, and it was only when we came into your presence, and with the authority of the law, and with your candor and attention and patience and sense of duty, that we ever began to get at what this real matter was, and to judge of its probability or its improbability, its proof or its refutation, according to live persons with real characters, and a crime defined and measured, that we ever had any real dealing with it, in any sense that a rational man could consider dealing with it. But then see how men have reasoned about the conduct of this defendant while this imputation in the civil courts was pending. How many men have been shocked that Mr. Beecher should continue to preach and worship God

when Mr. Tilton had called him an adulterer, when Mr. Moulton had spoken of him as a perjurer. They actually undertook to shorten the divine commission under which he acted, which was to preach the Gospel to every creature, they adding "until men shall revile you and persecute you and evil entreat you." Is that found in the apostolic commission? Is that the character of even an humble clergyman like honest Mr. Gay from Indiana, who, rather than sit quiet under the lewd teachings of this moral lecturer [turning to Mr. Tilton], resisted him to his face, and has fulfilled his duty at $400 a year as an humble preacher ever since, losing his salary of $1,600 because he believed in the religion that he professed, and in the duty of men of his profession, at least, to meet and grapple with spiritual wickedness in high places. And then others say, "What a shocking thing it is that Mrs. Beecher should attend this scandalous trial, where she will be exposed to hearing so much evil said of one whom she loves, even though he does not deserve her love!" And actually so vulgar and vile are pharisaical judgments that they undertake to shorten the marriage vows as well as the apostolic commission, and when a woman had sworn at the altar to "love, cherish, honor, and obey, through sickness and through health, for better, for worse, for richer, for poorer, till death doth us part," these people said an alternative limitation was interposed—"or process shall be served upon you to come into the City Court of Brooklyn."

Now, I believe that all these follies and scurrilities have wholly faded out of the public mind, of the public criticism, of the public conscience, if conscience had anything to do with them. I believe that when this great preacher comes to give his account at the last judgment of the many talents that have been confided to him, the hard Judge named in the parable will find no fault in him—that he did not bury his talents in a napkin, even during the six months of the Beecher trial. I know that the young hearts and consciences, and old, obdurate sinful natures that in those six months have been searched for and found, give more joy in heaven than over all these good men that criticise, who have needed never to experience repentance.

THE COMMITTEE'S VINDICATION OF MR. BEECHER.

Now, gentlemen, the first important period of publicity grew out of the publication that was made by the Woodhull threat and the Woodhull newspaper. But, as by a law of nature tolerably true even in morals, if we know enough to watch and wait—as by a law of nature the flood never can rise higher than the fountain—that scandal did not very much disturb the judgments or the opinions of what constitute society, what constitute the manly and the womanly character of our communities. And the next promulgation that gave rise to anything like a popular or a considerable acceptance of responsibility in its source was the promulgation in the form of the Bacon Letter, as it is called, made by Mr. Tilton himself. From that time to this, there being a responsible accuser, in indefinite form to be sure, but yet in a manner that would justify one standing in so responsible a position as Mr. Beecher to desire and require investigation and ascertainment, led promptly to an immediate inquiry, in the only manner which an honest submission to the principles of religious faith and of maintenance of the solemn tie of church connections made possible. It was that an accusation connecting the pastor of the church with one of his members in improper relations should be examined by intelligent, well-balanced minds, strong, definite, honest character, and well-accredited and indisputable public faith. And a Committee was appointed, having, I will venture to say, in your judgment, in all men's judgment, as much of those valuable traits of mind, character, and of public repute as the City of Brooklyn, and the City of New-York could furnish. An inquiry was held, and those who knew most of the matter were examined and cross-examined, and their respective stories were compared, weighed, and a result arrived at. Mr. Tilton maintained his accusation without stint in respect to his own imputation, had it explored, had it reduced or conformed by his own cross-examination. Mrs. Tilton, obeying a duty, accommodated, as well as truth would permit, to the divided sentiments and the divided obligations of a wife and a woman, owing duties to herself, her children, and to others that had to do with matters concerning which she was to speak, her children, her pastor, gave an account exonerating absolutely Mr. Beecher from all share in improper sexual relations of any degree, vindicating herself, saving the fame of her children, and of her husband even, against this reproach, and at the same time declining or avoiding, passing over, omitting any hostile exposures of her husband's conduct, or any hostile exposures of his arts and schemes and plans in the matter of this accusation. Mr. Beecher was examined and cross-examined, and all these papers have been before the community, before the counsel for this plaintiff, before the court, so far as their applicability under the rules of evidence made them important; and the unanimous judgment of these six men after this examination was a disposition of the matter that should have satisfied all honest imputations, all candid, all sincere doubts. But before that was ended the suit, discussed and prearranged really before it began, was set at work, and from that time onward we might have expected that the public judgment and the public appeal to the forms of judicial investigation and its guarantees of completeness and accuracy should have been submitted to. Instead of that the plaintiff published a great argument, thrown out without an adversary, and his defender and [illegible] can

champion two others—all aimed at the wide public, full of threatenings and slaughter, full of argument hoped to be considered unanswerable, because there was no issue, and no tribunal before which they could be answered—these brave opponents of a world in arms, like Wouter Van Twiller's ordnance in his old Dutch fort, frowning defiance on an absent foe.

THE COUNSEL IN THE CASE.

Now, gentlemen, at last we come to a direct submission of the cause to the ordinary tribunals of justice. The plaintiff selects his form of action, makes his choice as to the court where he will bring it, provides himself with counsel; and then the defendant is thus authoritatively brought under the protection, as it has been throughout, to him, of judicial methods, judicial impartiality, and all the guarantees that our institutions furnish for the accused in a form of responsibility, have been made the limit and the scene of the controversy that both these parties now must submit to the result of. No doubt the plaintiff enjoys a very considerable advantage in the preliminary arrangement for the maintenance of a legal contestation upon his part, and no doubt this plaintiff has shown great wisdom and has enjoyed great good fortune in the professional aid that he has called around him. An experienced, indefatigable, able, and intrepid attorney and managing counsel, Mr. Morris, familiar with all the surroundings of this judicial scene; an accomplished and eloquent advocate whom we are glad to welcome to his share of honor and of fortune in the competitions of our bar—I mean Gen. Pryor; and then these eminent lawyers who lead for him, Mr. Beach and Mr. Fullerton, easily at the head of the criminal practice of the State, foremost in all the employments and honors of the profession, accustomed to act together, lacking no resource of vigorous and bold, open attack, no resort to the lawful strategies of arrangement and surprise, lacking nothing that can make "the vigor and success of the war come up to the sounding phrase of the manifesto," if it be possible. Mr. Beecher, taking his choice as it was left to him from what was not secured to his opponent, was obliged to content himself with the faithful, the earnest, the loving espousal of his cause coming from our brother Shearman, a friend who sticketh closer than a brother, if we can measure the closeness with which brothers stick by Joseph Richards's adherence to his sister [laughter]; your foremost perhaps, certainly one of the foremost, lawyers of Brooklyn, Gen. Tracy, known in public office, in private life, in political and in social relations, and, in professional conduct, experience, and repute, quite the peer of any lawyer in Brooklyn—and the lawyers in Brooklyn are the peers of lawyers anywhere; and my learned brother Porter and myself, coming with the disfavor that belongs to foreigners, crossing the Behring's there was that separate these two continents [laughter], but sharing that misfortune with our learned brothers Beach and Fullerton.

THE TWO SAMSONS OF THE CASE.

And here we are now as we have been for five months. We began when the weather was as cold and snowy as in the stormy night which introduces the friendship of Moulton and Beecher [laughter], and this trial has lasted until the sweltering heats almost come up to those of that June morning when Mrs. Moulton smothered the defendant's grief and despair in an afghan. [Renewed laughter.] Samson Afghanistes, after that incident, Mr. Beecher must be known as, to distinguish him from Samson Agonistes the plaintiff [laughter], who after laying his locks in the lap of the Delilah Woodhull, and having his eyes put out by the indignant frown of his countrymen and his countrywomen, found there was no role for him but that of the blind Samson that should pull down the temple of his household, the temple of his society, the temple of his religion, upon his head, and those of his wife and children.

THE ACCUSED.

Now, who are the accused? The defendant, Henry Ward Beecher, and the partner of his guilt, if he be guilty, Mrs. Elizabeth R. Tilton. For there is this, unluckily for Mr. Tilton, about the crime of adultery, that it takes two to commit it. As the lady said in the ball-room, when the light French phrases that please the ear of society not over-virtuous, yet that frowns at prayer-meetings and considers them dangerous—as the lady said to the beau who had learned more phrases than facts about human life, and who asked her what was meant by *faux pas*, a false step. She said she didn't know exactly, but was quite sure it was not a *pas seul*, a step that could be taken alone. [Laughter.] Now, that is the misfortune of Tilton. There was nothing else Mr. Beecher could be accused of very well, and some woman must be found to be made the partner in the guilt, in the accusation, in the blasting prosecution, in the infamy, in the wretchedness, of his prosecution; and if it was a matter of indifference what woman was to be taken, why should not a man always give his own wife the preference? [Laughter.] True, there were these drawbacks about his wife: he knew her, and she knew him. He knew that she was pure as gold, that she was as chaste as snow, that she was as pious as a saint, as loving to her husband as if she worshiped the ground on which he trod, even when that ground was the filthy mire in which she was fain to eat of the husks on which the swine did feed. He knew that she adored her children; that she loved every friend of his, because he or she was his friend; that she loved all who needed aid and charity, and sympathy, and were poor, and came from the highways and the hedges, because they were human and she was Christian. All that he knew. He knows it

now; he has sworn it here—that she was, has been, and is as lovely a woman as human nature and Divine grace can produce, and shall be hereafter before the throne of God forever and forever. That he knew; that he swore. But he had also sworn that he would strike Mr. Beecher to the heart, for interfering with his business interests, and taking part in his domestic discords when brought to his notice—that he would pursue him to the grave; and there was no means but this; and I suppose he found his justification in poor Hamlet's bitter speech to poor Ophelia:

And if thou marry I will give thee this plague for thy dowry: be thou as chaste as ice, as pure as snow, thou shalt not escape calumny.

But Hamlet did not outrage human nature by saying that she should not escape malicious calumny from her own husband that knew her goodness. Now, Mr. Beecher, stripping off all impertinent traits for this inquiry, observing those proprieties which decline unnecessarily to offer estimates, however just, of great abilities, great moral qualities, great conduct, great life, great fame—let us look at him, as the other inculpated party, as he stood before the accusation, as his character, his conduct, his repute, were known by his neighbors, his fellow-citizens, the men, the women, the children of Brooklyn.

THE REAL OBJECT OF THE TILTON ATTACK.

In the first place, gentlemen, I shall receive your universal and ready accord to the proposition that Mr. Beecher in this community stood as a city set on a hill that cannot be hid, and for 25 years had not removed the bounds of his habitation, and had no opportunity of false and sudden imposition upon strange communities who took rumor or public report only for their estimates of him. Whatever he was to the Christian world, whatever he was to Europe and the United States, whatever he was to the Christian faith, whatever he was to the moral schemes of our European and American society, whatever he was to social and political interests, all know and all understood that he was to the people of Brooklyn, a man about whom they had as many, as good, as sure, as prolonged tests of what he was as it is possible in human affairs, unless one has the penetration of the Divine inspection. All these tests Mr. Beecher had been exposed to for the long period of his residence here. Ah, gentlemen, you will find as we go on in this cause, and as you take it up upon its facts and compare it with known principles of human nature and human conduct, you will find at every stage of this business that the attack is not personal but against our society, against our civility, against our morality, against our religion. The attack is not that there are wolves in sheep's clothing; that vicious men dissemble, and that they hide themselves under the cloak of sanctity to prowl on the society that they thus impose upon; that is not the proposition; that is not the issue that the Pantarch and the priestess and the prophet of the new faith make. It is that the favored, approved, tried, best results of this social scheme of ours, which includes marriage, and of this religious faith of ours which adopts Christianity, is false to the core; that the saintly man and the apostolic woman are delivered over to the lower indulgences; and that that being proved, the scheme itself is discredited and ready to be dissolved. It is that the good women, who remain good afterwards, are good while they are committing these faults; that the men that have every flower and fruit of Christian love and Christian duty and Christian faith, that are only greatest in our society because they are its faithful, denying, unflinching servants of it in all things, that they are wicked (if this be wicked), and that the only escape from that conclusion is that the institutions of marriage and religion as now constituted are themselves the responsible, guilty causes of these alleged criminalities. But, if Mr. Beecher was thus universally and absolutely known in these his relations to your community, he was also known in his person as a familiar and recognized object of common knowledge—more I will not say, than any man in this city; but more than any man almost, by possibility, in any community comes to be, among those who surround him. Mr. Beecher never could take a secret walk, or a secret drive, or go in privacy to any photographic saloon or picture gallery, to any place of assemblage, in any thoroughfare, where, whether he knew anybody or not, there were not eyes enough to see or ears enough to hear whatever he or she could notice in his demeanor or his speech. Now, it is of this man that this culpability with this woman, such as I have described here, is alleged to occur here in the very scene of their residence, and of this public observation to which I have called your attention. I shall hereafter compare the circumstances, the duration of the siege to this fortress and of its possession, to say whether that comports any more with these circumstances and situation of these parties than the wicked character of the criminality does with their moral and religious repute and conduct.

THE CHARGE ANALYZED.

Now, who are the pursuers? These are the hunted parties. Who are the pursuers? Mr. Tilton, Mr. Moulton and Mrs. Moulton. The law gives the action only to the husband, and Mr. Tilton is the plaintiff; but the combination, the consultation, the plot, the scheme, the purpose, is but a final stage of what has been the common ground of action of Moulton and Tilton through the years of this transaction; and Mrs. Moulton, in some sort cognizant of the operations as they were going on, comes finally to choose the party, whether she shall be counted with the pursued, or shall take her stand with the pursuers, and she chooses the latter. A great thing, a thing that no man can

look at without pity, that no man can estimate without charity; that no man can find it in his heart to carry to the account of personal fault or even weakness more than is necessary when the common law and the common experience of society has carried the blame to the husband, and union with the husband, as covering misfortune and the responsibility of the action. A misfortune, a fate, which injunction of the Christian religion attempted to secure women from when they were instructed not to be yoked with unbelievers. "For what part hath he that believeth with him that hath no belief." But their sides are drawn; there the issue is made; and now we are brought to consider what is the form and dimension of the guilt imputed. It is seduction, the seduction of a married woman during the stage of life when she gives children to her husband. Is there any greater crime than that? Leave out the circumstance, if you please, of the relation of the clergyman to his communicants; leave out the difference of age; leave out all the circumstances that give heinousness to the crime from the paramour's relation to his own family and his own wife, and take it as the act of loose calculators upon the virtue of women, and put it even against such a man as the crime that he has committed, is there a greater crime? Is there a crime that is visited with greater severity in the judgments of all moral, of all thoughtful, of all kind men, whether they make pretensions to piety or religion or not. Ah! gentlemen, this is the first clear discrimination that you are to make between taking a general imputation of sexual indulgence on sexual temptation which has this or that degree of heinousness under its circumstances, and receive this or that degree of condemnation according to the purity and the clearsightedness of the critics. But this, the seduction of a virtuous, wise, discreet, child-bearing mother in a happy and virtuous society, is a crime that at least needs to be proved before people will admit that it is probable. Ah! if your Honor please, *dolus latet in generalibus*, it is when you have the abstract reasoning about imaginary, undefined, unmeasured crime that you can judge at random whether a man would commit it or not. But that is not what you are to do. You are to judge of this crime, and are to solve in your minds when you come to test the proofs, its compatibility with any pretenses of character, of generosity, of charity, of pity, of love in the breast that can compass the ruin of womankind.

REASONS FOR MAKING THE CHARGE.

Now, the plaintiff leaves no obscurity here; he has made his charge. I will show you his reasons for making it as he did. He thought he could commend it to probability by the shape in which he worded it, for words are to him everything. He has what is called an exchequer of words; he banks upon it, and never redeems any of them, and his stock as a banker is inexhaustible. Or, to take another phrase from the same great master of language and of human nature, he is always able to deliver a fine volley of words; but they are words, and I don't know, according to the proverb, how many words it takes to fill a bushel basket. Words which, if he can make them dovetail together in sentences and syntax, and hover long enough for him to close his lips and leave the stand, he thinks will carry conviction; but when I come to take up the narrative of his accusation, if I don't show you that it never came out of woman's mouth to him, nor out of man's mouth to Mr. Beecher, I will lose the case. I didn't, by a cross-examination, seek to disturb one word of his own narrative, which fills two columns of a newspaper. I knew when I heard it all that the devil of lies had played the same trick with him that he always plays with his devotees. Their falsehoods bring them into the accusation of the Divine intelligence, and the means it by its mercy has provided for the moral government of the world, and then deliver over the victim of the great temptation, and the author of that temptation, for the punishment which Divine justice provides for such cases. Well, then, not only is this a seduction, but it is a seduction of many years meditation, prosecution, defeat, and final triumph over a reluctant, weeping, unsympathizing, unresponding partner of guilt. Well, is that a probable occupation of the time and mind and thoughts of the busiest man in Brooklyn; the man whose energies are ever taxed in the open day and before the eyes of all men to the uttermost, so that the wonder is how one short life and one single energy can pour out these fountains of spiritual life and gladness that adorn this city with their freshness and flow over the whole land. What becomes of all the maxims of human nature by which we credit evil by occupying with good? What becomes of Dr. Watts's familiar proposition that "Satan finds some mischief still for idle hands to do?" What becomes of the universal experience of society that these offenses which do come and must come, however great the woe denounced upon him by whom they come, that these offenses are bred out of idleness and luxury and opportunity, and allure men. Here again you have a feature of the accusation that flies right in the face of all the propositions by which the idle and dissolute are always classed together, by which the parent saves his son and protects his daughter by keeping them out of the company of the idle, lest they, too, may become dissolute. Why, if your Honor please, gentlemen of the jury, the intellectual traits that have framed this charge are as contemptible as the moral, odious traits that have prompted it. Well, seduction, in its duration of four years, at last produces adultery, and that continues for 16 months. Well, how great a crime that is! Within the 16 months a child is born. The maternal instinct of grief at the death of the infant, and the maternal instinct of joy

at a man-child begotten during the period of adultery, begin and end this domestic transaction. And what greater criminality is there that can be framed for those, even if the odious features of premeditated and prolonged seduction were excluded; even if you found the parties involved by sudden temptation and by mutual attraction, and by overpowering propensities of evil; it is wicked, wicked as it can be, wicked in heart, wicked in soul, wicked in hate to God, to society, to human nature, wicked in everything; and that trait—that makes out the first substantive and principal crime. But all along there attend heavy shadows, deep stains of guilt, that give even new horror to this terrible accusation, even if kept within the sexual limits of fault. Impiety on both sides, blasphemy, sacrilege, false witness, perjury—the whole decalogue is rent asunder by a woman that is most lovely and most pure throughout it all; and the man who is through it all is now the greatest preacher of the Gospel of Love, the greatest defender of the foundations of society, the greatest cheerer and confirmer of the charities and beauties of the family relation, the readiest advocate of everything that is good, that is pure and of good report; a man that, when you ransack his life by a cross-examination that entitled them to prove against him corruptions of any kind from Indianapolis down, goes from the stand unquestioned by audacious cross-examiners that didn't hesitate to ask old Oliver Johnson whether he didn't pick out a strumpet in Canal-st. and take her to a bawdy-house in Mercer-st. Now, you begin to see how, when a man begins by self-worship, as Tilton did—and which I shall show you is the source of all his woes—when he finds no greater than himself, nothing that he can bow to with reverence and devotion—when he finds that, he comes to the conclusion, almost necessarily, and it overmasters his conduct and his speech that he can impose his law of human action, his law of human responsibility, his law of human duty, his tests of intellectual fitness upon the rest of the world. And he then illustrates that short and pithy characterization of the quality of folly and of its extreme duration: "The fool saith in his heart there is no God." There is no moral government in this world that looks out for men. There is nothing that keeps society together but constables and jails and handcuffs. There is nothing that keeps virtue in women except imprisonment in harems, and eunuchs for the matron's care and duennas for the maiden's. This is the government of the world that the doctrines and the propositions of this man's case must reduce you to, or else you must find that while faith in human nature, and while humble dependence upon Divine protection remain, as they now are, the basis and the glory of our refined, free, yet virtuous and strict society—so long as that relation of man to man, and man to God, continues, the features of this case, moral, intellectual, and, as I shall show you hereafter, even circumstantial, charge an impossible crime against impossible commission.

The Court here took a recess until 2 o'clock.

THE CHARGE INCREDIBLE UNDER THE CIRCUMSTANCES.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—The incredibility of so flagrant and heinous an imputation upon two excellent people, as I am justified in pronouncing both these parties, irrespective of the imputation under consideration, was sought to be parried by this plaintiff, by certain qualifying elements in their crime which approved the act to the consciences of each. Well, there is another blow, not at these individuals but at the schemes of morality, of religion, of the theory of conscience and of duty. Make it out once that good people can commit crimes and be good in doing it, and in their consciences approving it, and in the retrospect seeing no fault in it, and you have proved the first darling proposition of the wicked, that the distinction between evil and good is mere matter of pretension and authority. Ah! gentlemen, that is the final stage of dissolute immorality in a man, in a city, in a community. When you have reached that stage you have exposed yourself to that final woe denounced in the Scripture, "Woe to him that calls evil good, and good evil." Why woe to him? Why, he insults the very majesty of heaven, he strikes at the very authority of the moral governor of the world. Good men may do wicked things; bad men may do good things; but woe to him that draws out of those instances and experiences of human nature the final insult to the Deity, that there is no distinction between good and evil. How can you renovate society that adopts that proposition? How can you redeem an individual soul that accepts that proposition? Now, they say that this lady never did anything wrong that she thought wrong at the time; never did anything—Elizabeth never did—that her conscience did not approve. She was always pure-minded; she hadn't a carnal inclination in her frame; she didn't think she had violated her marriage vows, and never discovered that she had committed an injury to her husband until she read a novel, in which there was no violation of marriage vows, and no adultery, and no carnal sin of any kind, but an undue entanglement of the affections for a priest, and an interference with the supreme devotion to her husband in the management of the wife and the household. Now, that is her notion of guilt, laid down for her by her husband; her character now, after the act, as well as during the act, and before the act; and she is a woman of strong intellect, an admirable, and a truthful critic, accustomed to the best intellectual society; not frivolous and weak, not valuing men for their earthly distinctions, but for their high moral and intellectual characters; condescend-

ing to those of low estate; saving women at the bethel by the hundred from debauchery and vice; bringing her sheaves full of them to the Judgment Seat, that she has saved. Her husband did her the honor to think that she was still engaged in that Christian service at the moment he was giving his evidence. And then Mr. Beecher, he felt that if he had fallen—if he had fallen at all, as Mr. Moulton puts in a single passage I shall call your attention to critically—he thanked God, at least, that he had not sinned through lust; it was nothing but love—beautiful, chaste, elevating, purifying, solacing love; and if there had been any sexual intercourse between them, it was merely circumstantial, as it were—a mere emphasized touch of the hand and kiss of the lips—making their benevolence and good still more penetrating to the soul, more grateful to God. And then it was such a solace and a food to his mind, as Mr. Tilton reports it, and such a strength to him in his labors for the conversion of sinners! Well, he was an intellectual man. Tilton had at one time thought he was a man of great intellect, greater even than his own, but he had outlived that; but still his strength was in his great moral qualities. There he was unsurpassed and unsurpassable; there was his hold upon his worshipers; that is what led them from the true admiration of the greater intellect of Mr. Tilton. These great and warm sympathies with mankind, this magnanimity, this generosity, this boyish candor, and warmth and recklessness, this was what made Mr. Beecher greater than Greeley, and Sumner, and Tilton. Well, now you see you add one thing more to make this adultery that was without lust on either side, and that was this union between a saintly woman and an apostolic man, without the least earthy sentiment, which has sometimes been supposed to infect marriage a little. All you needed was to give the sanction of religion and prayer to it, make it, so to speak, a sacramental adultery, in the presence of God and the holy angels, introduced by prayer and terminated by prayer.

Ah! gentlemen, look at the folly of the weaving of this brain, that could expect his charge of adultery to be believed, expect his charge of adultery to cease to be incredible, only by the adultery being made immaculate, cease to be a violation of conscience only by its being a glorious exhibition of the power of human love; and I shall show you hereafter that they only could make the connection and intercourse possible by being allowed to dispense with all proof that it ever occurred, or legally demonstrable by throwing down all the rules of evidence that deny hospitality to charges of this nature, that come from the breath of the nostrils of men, of witnesses. Adultery, gentlemen, is a thing that touches the institution of marriage, and no consenting testimony of confessions ever can break the bond. Children, and children's children are interested, that their fortunes and their future shall not be contaminated and despoiled by the vice in respect of truthfulness of any of their ancestors. There must be a proof as against them, binding on them, by people who saw the conduct, the action, the communion, the opportunity, the security, the subsequent evidence of the occurrence; and then a court, and then a jury find that a fact has occurred to which the law imputes the consequences of the dissolution of the marriage bond; and though it sheds a tear over the innocent that are to suffer, it is a part of that moral government of the world intended to secure obedience, to compel regard for children, for those we love, the law that if the father eats sour grapes the children's teeth shall be set on edge. And didn't this woman know that? and didn't this preacher know that? Now, what is an occurrence that is against all human experience, and all natural laws, whether physical, or mental, or moral? Why, it is a miracle; that is what it is. That is the definition of a miracle. So this is a miraculous adultery, the like of which is described in none of the histories, or the symptoms of it given in any of the philosophies. Nobody can guard against this kind of adultery coming into their families, because it comes with the purest and best, who remain pure and best all the while it is happening and after it is over. Well, miracles need a good deal of testimony. That is agreed, I think, from the beginning. Some writers thought that no amount of testimony could prove a miracle, because it accorded with human experience that man would lie, and did not accord with human experience that miracles would happen. Still that is dangerous ground. All agree though, that for belief in a miracle, you must have good testimony, enough of it, from pure lips, honest hearts, intelligent observation; and when men have laid down their lives on that testimony, been torn by wild beasts, been roasted at the fires of martyrdom, pierced with arrows, slain in defense of their testimony and the truth, it is a miracle that men should go through the act, unless they testified to truth, and we believe their evidence. Now, *ridentum discere verum quid vetat.* We may sometimes illustrate truth with amusement. Not very long ago *Punch* had a very pleasant colloquy and cartoon, showing a conversation between a ritualistic curate of the English Church and a Sunday-school boy, on the subject of miracles. "My boy," says the clergyman, "what is a miracle?" and the boy answered correctly, the first time, that he didn't know. "Well, my lad, if you should wake up in the middle of the night and see the sun shining, what should you say that was?" Says the boy, "I should say it was the moon." [Laughter.] "Well, but supposing a man should tell you that it was the sun, what should you say then?" Says the boy, "I should say he lied." [Laughter.] Well, with dignity and emotion the curate proceeds: "Suppose I, that never tell a lie, should say to you that it was the sun, what should you say then?" "I should say that

you were drunk." [Laughter.] Well, now, that shows how hard it is to prove a miracle.

Well, now, here we have a blazing sun of adultery in the serene religious light of the most saintly characters, testified to by witnesses; and if you were asked, under these moral conditions of miracles, what criticism would be made upon the statement that this blazing sun of adultery was flaming out of the very heavens of religious purity, what would you say? Why, you would say that it was the moon [laughter]; that nothing inconsistent with chastity and purity could display itself out of those heavens. Ah! but if Mr. Tilton comes along and says: "But if *I*, Sir Marmaduke [laughter], the husband of this pious wife, the friend of this apostolic clergyman—if I say to you that it is the blazing sun of adultery, what would you say then?" I think you would say that he lied. And if Mr. Moulton, Sir Philip Sidney [laughter], that never told a lie [laughter], he should say: "But if I, on the honor of Sir Philip Sidney [laughter] and my own combined—*I* say it is a blazing sun of adultery"—you would say that he was drunk. But *Punch's* catechism has given out, and we have another witness, "I, the wife of Sir Philip Sidney, I, the communicant of Henry Ward Beecher, the sisterly friend of Mrs. Tilton, I say that it is the blazing sun of adultery out of these pure heavens." What would you say to that? Well, politeness, even in a boy, would make him hesitate, but I think he would have to say (for he would not give in to the miracle)—he would say, "Well, madam, I think you must have been sunstruck and don't know the moon from the sun." [Laughter.] Now, gentlemen, there is no greater contrariety in the propositions of the natural miracle and the sense of the boy thus illustrated by a humorous story, than the contrariety between the firmament of the moral authority of this world fixed by the same Divine hand that set the courses of the stars and divided the day and the night between the sun and the moon, discriminated by as firm lines as this natural arrangement of the skies—just as impossible of derangement, just as much a final and fatal disorder as this transposition of the sun and the moon in their natural reigns, as fixed by the Author of this material frame on which we live. Nay more, He who made these moral divisions meant that they should be more permanent than the physical frame, for He said: "The heavens and the earth shall pass away, but not one jot or tittle of my law shall fail." Now, that is a respectable authority, and the date of the continuance of that law, and of responsibility under it, is so remote that it is not worth our while to run our heads against it.

ILLOGICAL PROPOSITIONS MADE BY THE PLAINTIFF.

Now, gentlemen, whenever you establish the proposition that these breaches of external morality that threaten the very fabric of society, the central point, the purity of the family, can occur without preliminary moral degradation and preparation—without being accompanied by an inflammation of the low desires and the triumph of the flesh over the spirit—can be practiced with the maintenance of all the active benevolences and the exhibition of all the beautiful virtues of life, you have struck a blow not at Mr. Beecher, not at Mrs. Tilton, but at your own wives and your own daughters. Why do you rear them in the distinction between the wise and the foolish virgins, if the wise virgins, with their lamps trimmed and burning, are to be left in the outer darkness, and the wedding feast closed against them? Why do you look at the growing beauty of the face and form, and feel safe? Because you observe and trust an equal flowering of the immortal spirit, and find that her mother's virtue shows itself in every disposition of the beautiful maiden; that she loves charity, seeks the lowly, teaches the ignorant, saves the abandoned, loves her father, loves her mother, loves her brothers, loves her sisters, has her hands full through days of constant and painful labors appropriate to her sex and condition, sleeps at night upon a pillow prepared by prayer, and watched over by Him to whom the prayer was addressed. What are all these things to you if it is demonstrated by the verdict in this trial that there is no connection between the moral nature and the lewd, wicked, low, base prostitutions of the body? And what do you think of your wives if, as you have watched them through 15 years of marriage and of duty, and found them to be (as you knew they were when you clasped hands with them at the altar) pure, noble, intelligent, discreet, wise virgins as you espoused them, and have found that they loved their husbands to idolatry, loved their children with a devotion for which there is no epithet and no comparison? Who ever heard an illustration of a mother's love? Nobody can give an equivalent for that. How often have other forms of human affection been dignified by comparing them in power and intensity to a mother's love! But you find nothing to compare a mother's love to; it is a prepossession that fills the heart, satisfies the mind, shows to the widest experience that there is nothing can be placed above it to illustrate it.

If with all this, and with your daily observation of the course of life, the coming in and the going out of a woman, the correspondence day by day during your absences, you find out, some 4th of July morning, that a course of temptation, of solicitation, of coarse and vulgar contact with the body, has prepared the way to a final adultery that has continued for sixteen months, would you not lose your faith in religion, your faith in women, your faith in society, your faith in human nature? Why, all the while it may be going on in all our families, and nobody knows anything about it. What, shall we then discard all this, shall we believe that these sins come

only by power against which no morality can guard, that there is no necessary connection between character and conduct; that these sins do not come from within, but that with all this purity they may arise. Character and fate, the opinion of society all crush you and your family. What will you believe? These idle and frivolous suggestions made by the oaths of Mr. Tilton and of Mr. Moulton, or will you look to higher authority? Now, there was once a great authority in this world whose brief sojourn in the flesh changed the nature of the world and laid the foundations of that religion which we all profess, and has redeemed man as an individual, raising him to glory ever since, and has redeemed society from the vicious influences with which heathenism corrupted it, and raised it to its present elevation. It was said of Him that he needed not, as we all need, as you need—that He needed not that man should testify of man, for He knew what was in man. Now, what does he say on this subject? "For from within, out of the heart of man procced evil thoughts, adulteries, fornications, murders, thefts, covetousness, wickedness, deceit, lasciviousness, an evil eye, blasphemy, pride, foolishness; all these come from within and defile a man." And that is the basis on which you rest the Christian education which is to preserve the chastity of your beautiful daughter against all allurements and temptations, and you watch to see whether in her conduct you find any beginning of uncertain steps outside the way in which she should go, and if you do not, but find that all her steps are firm in the paths of the Gospel, you have no fears. Now, it did not use to be so with women or with men. Are we to discard this life-giving, purifying, elevating sentiment on which our society has rested so well and so long, which is to be extended by the benevolent labors of our missionaries and the generous contributions of all Christians of all creeds, for the help of a sinking world? Are we to abandon these and go back to the old system of physical security? I should think not. I would like to see the men that would look their wives and daughters in the face and tell them that they must go back to the duennas for the maidens and to the harem for the married women. And, as we are not princes, and have no system in our equal society by which the fair and the beautiful are crowded into the possession of the princes and nobles of the world, whenever we undertake to lose our faith in religion and virtue, in the equality and purity of women, we shall have to adopt some of those associated forms of protection by which combined efforts may furnish adequate security. We shall have to have a Wife Deposit Company, where we can leave our wives during the day, and we shall have to have some patent contrivance of paramour-proof alarms by which we can be called to the rescue when the insidious undermining of this external virtue (for there is nothing left in the world but external virtue) begins.

LEGAL ASPECTS OF THE SUIT.

Now, gentlemen, this being the character of the crime, and this being the disposition, conduct in general and repute of the accused parties, let us see what the law requires to meet its exactions in reference to such a suit as this. And first, what is the nature of the suit? It is what is called, for shortness, a *crim. con.* action, by which an injured husband is allowed to seek a verdict of the jury, and as a consequent upon it, pecuniary damages for the invasion of his family, the sacrifice of the purity of his wife, and the destruction of the happiness of his household. The action is an anomaly offensive to our civilization, and grew up only under a peculiar condition of the English law in respect to divorce. Adhering to the strictness of the Romish Church, which made marriage a sacrament, and allowed it never to be terminated except by the highest religious dispensation, the English Church, the English nation maintained the indissolubility of the marriage relation for any cause but adultery, the highest power in the country being the judge of that; in other words, an act of Parliament being necessary for the dissolution, as the fiat of the Pope had been while he remained the spiritual head of all Europe. Now, Parliament would grant this dissolution only for adultery, and it would require the proof of that adultery, not to be made in affidavits and depositions, confessions and concurrence of wish and agreement, and failing to have it wrought but by public trial through the authentic and trustworthy mode of determining questions of fact by the verdict of a jury in a hostile, not collusive, suit, and in which the husband should have the means of drawing an adverse party, the paramour, into the contestation, and then the rules of law, if your Honor please, in maintenance of this great policy of society that there should be an open proof in fact, and by confessions of the act upon which the marriage tie could be dissolved and the family dispersed maintained the proposition that confessions alone were not adequate for the maintenance of the issue, that the validity, that the security, that the purity of the marriage relation, and its maintenance in good credit, as an example to the rest, should not permit of any destruction of it except by proof of the fact. Now, the nature of the act being secret, and the more elevated and civilized the society the more secret, proof of the actual, final guilty contact, as of the body of the crime, was not required, but proof of the body of the crime was required, proof of conduct, proof of disposition, proof of adulterous purposes, proof of entangled affections of sexual purpose, proof of open or discovered behavior of some kind that showed the surrender of lustful desire and the prosecution of the purpose of its indulgence, proof of the opportunity, by companionship, drawing them away from virtuous and honest haunts and scenes into relations which themselves carried imputation of unlawful purpose, and of such length as gave opportunity, and under such circumstances of sup-

posed security as rendered it justly a conclusion that the adulterous purposes that had been manifested by previous external conduct and the withdrawal from paths of innocent and open companionship into this or that situation foreign to the natural and moral relations—following that, I say, opportunity of personal contact, with security, or opinion of security, were adequate substitutes, or adequate methods of proof of the body of the crime. It is a mistake to say that the body of the crime is not required to be proved, in the same sense that the body of the crime is required to be proved in all matters of judicial condemnation. The distinction is that from the peculiar nature of the guilty act, the facts and circumstances of external proof shall be of that consistency and force and undoubtful conclusion as carry the secret act as the consequence of what has been openly seen and proved. Now, these are the requirements of our law. These facts thus proved, accompanying or supporting confessions—that is, confessions of the party implicated in the suit (for confessions of one party do not affect or conclude in the least another) may make out an adequate ground for a verdict, provided it is made manifest to the concurrent judgment of all the jurymen that the things proved are not reasonably compatible with any other conclusion than that of guilt Society, law, abhors this conclusion, and refrains from it except when, beyond all reasonable doubt, and in the varying minds of twelve independent, honest men no other result can be reached.

More than in any other case the law fears here to strike in the dark. It has made one great concession, that the mere act need not be proved, if you prove the approaches to the act by ocular witnesses. Beyond that concession it will not go; more than in all other issues of fact, it is striking the absent and the innocent; it is injuring society by aspersing and discouraging the institution of marriage; it is unsettling the faith of man in woman, and of woman in man; of parents in children, and of children in parents; and the law will not strike the blow in the dark. More than in any other case is the feeling of our humane law predominant; that it is better that ten cases of guilt should pass unpunished than that one of innocence should be condemned. In other cases the conviction of the innocent touches mainly him or her, but in this case it strikes the absent, and the infants, and wounds society in its tenderest point. Now, in this country this action has never had any respectability about it. Why? Because the basis that made it respectable in England was wanting: that is, in England it was a necessary step in the vindication of the husband's right to have a divorce from the guilty wife, and the method of their law had provided this means of an open and an adverse trial; but in our country, in our State, divorce has always been obtainable, not on any lighter cause than adultery, but upon an issue framed in an equity court, in which the husband and the wife themselves were parties, and the trial was between them, the man and the woman, and no *crim. con.* was necessary. And honest men never had a desire to promulgate their shame, their wives' shame, their children's blight. It was only in the lower orders of society, where there was always a suspicion of speculation and money-seeking, that this action found any hold in this American society. And it has attracted the notice of political, moral, and religious thinkers in England why it was that these were felt to be most discreditable actions, no matter what their result or their justification in fact, and were wholly discarded in America, and they found out the reason, and they now have opened their courts of probate and divorce, equivalent to our equity jurisdiction, to try the direct issue between husband and wife for a divorce. And what have they done? They have said to these parties, "If you don't want a divorce you can't have any action for *crim. con.;* that is abolished. If you do want a divorce you may also pursue the guilty paramour by joining him in the suit, and if you establish your right to a divorce you may have, as a consequence, a just judgment against him in the way of punitive damages, but the money shall be secured to the wife so long as she remains penitent and chaste." Now, that, that is the treatment of the question that belongs to an intelligent moral community; and I look, as a consequence of this suit, so rare in our experience, to see our Legislature purify our law and our courts in the same way. Now, look you; a husband, although he has a guilty wife, cannot get a divorce from her either in England or here, if he is also a guilty husband, and he cannot pursue the paramour in England for debauching his wife unless he can get a divorce from the wife; and therefore a guilty husband does not find any encouragement for complaining that his wife has done an injury to him. Again, the law of divorce has always been pure. It has said, and insisted upon it, "we will allow no speculation on this subject at all, not an instant of it. If you become possessed of knowledge of your wife's guilt, then show your respect for the purity of marriage, show your respect for yourself and your own virtue, show your vindication of the institution of marriage by resorting openly to the law for relief; but if, from pity, or from love, or from lust, you keep possession of the wife, one kiss after your knowledge closes your complaint. Condonation, by which a husband advised of the injury to his marriage-bed continues to cohabit with his wife, ends that business, and, *it is supposed*, keeps that secret." So you see, gentlemen, that there was not much basis for an action of divorce on the part of this plaintiff against Mrs. Tilton on any view of the facts of her conduct. He heard, it is said, a very long and minute narrative, turned over in the bed and kissed his wife; she became pregnant, and he lived with her four

years. Now, gentlemen, nobody ever brought a narrative of that kind into a court of justice since the world began until now, never—I mean among civilized, refined, and cultivated people.

A LAUGH AT "BROOKLYN EPITHETS."

Something has been said about the epithets that have been applied to the parties and their coadjutors in this prosecution. Well, now, epithets spring from a generalization of facts, and never can be made until there has been a somewhat frequent or repetitious occurrence of the facts, in order to get a generalization out of them. There is not any epithet for this conduct whatever, for there has never been any other instance of it, never, never. If you look in your grammars you will see that is so. But aside from that, gentlemen, I should not think of bringing epithets to Brooklyn from New-York, for a good deal of trouble, I think, has come from these extravagant epithets that the Brooklyn people use. [Laughter.] They are very strong, and I think really that the best test for the public safety that can be applied to our bridge between the two cities, whenever it is completed, will be to send over a preliminary train loaded with Brooklyn epithets. [Laughter.] If the bridge can stand that it will bear any burden. But seriously, conduct like that of this plaintiff upon his own showing (and no man can complain of being judged out of his own mouth) is not in need of any characterization. As Junius said once, with the pith that characterized him, such a character as this plaintiff's can escape censure only when it escapes observation. Now, it may not be pleasant; men do not like—always like—to lie in the bed that they have made for themselves, and they sometimes, most unseasonably and at great inconvenience to others, try to find a softer bed. [Laughter.] But alas! in the search that this plaintiff may make to get out of this uneasy bed in which he lies, he has not the sympathizing follower with a pillow behind him that he had on those other occasions. [Renewed laughter.] Now, gentlemen, if there had been no question in this case affecting a great character, in which there was enlisted the interest of every honest man and woman in Brooklyn, in the United States, in Christendom —I mean Mr. Beecher—if the fact of his purity had not been the fundamental fact in this case, but the question had been, as it might have been, between Mr. Tilton and one of his neighbors of an equal importance in society, between neighboring farmers, or merchants, or lawyers, however reputable and however dear to them their credit was, if a plaintiff, against such a defendant, had brought a suit of this kind, the jury would not have sat five months, one month, one week, one day, upon his case. They would have said: "Well, if you could be so cool and quiet, so generous and forgiving, so amicable in intercourse with the adulterer, and receive so many aids and favors from him, and above all if you could live with your wife four years, we do not see any good reason why we should trouble ourselves much about your misfortunes; you have been tolerably patient under them, and we guess in the long run it will be as well for you and Elizabeth and the children that you should go on as you have begun, to the end." The plaintiff would be laughed out of court, and he would not have had as uncomfortable a record for the public in that short disposition of the case as the five months' protraction of your patience and of your indulgence has made for him here. Now, our learned friends understood this perfectly, and the odiousness of tacking a money verdict on to this action of this husband against this defendant, in respect to this disturbance of his peace, if it were all believed, was so apparent that they early disdained that. Some more noble passion than the accusation of gain after this long patience was necessary, and my learned friends have found it in that very mild and creditable Christian virtue, revenge. This is their language—not for money, but revenge. Well, I never knew a jury that would like to be made an instrument of revenge. If they were to heal an honest man's injury, they would do it; but to help him to a revengeful assault upon another is not creditable. We pardon even the savageness of an enemy that, under provocation, takes vengeance in his own hands; but we do not pardon much men who lend themselves as instruments to the vengeance of injured parties—not much. If a man shoots an enemy for a great injury, sometimes he escapes condemnation when strictness of law would take his life; but I think that if he hires another man to murder his enemy, the hired assassin is not considered an institution of society whose neck is to be saved from the gallows. So here, if vengeance, if injury, if destruction is the whole motive and purpose of this suit, you will not lend yourselves to it. And you will understand that this is an issue in which the question is whether Mr. Beecher, who stood for this whole country in the hight and extremity of our perils and disasters against all England, and stood alone, and faced the frowns and jeers and "cat-calls" and "chaff" of great crowds of English gentlemen of the better classes, and faced them down in the name of the United States, who stood alone in England, and aroused, encouraged, developed, and amassed a power in our favor that no single mind or voice ever did since the world began—whether he is of that base, low, coarse, lewd fiber of soul and grossness of body that will enable this aristocracy of England to return the triumph we have had to submit to by saying, "You sent us the noblest, strongest, most courageous, most adequate man, and subdued us, but you have discovered that his courage was not of the soul of purity from love, from faith, from duty, but the mere effrontery of a voluptuary and an adulterer." Whether you are to say by your verdict this man, that, ever since this trial has been progressing, has sat in

your presence, that every stranger, humble or famous, that has visited the court-room during the trial has desired his acquaintance, the grasp of his hand, the recognition of his autograph, the knowledge of his person as a man, that not only they but you and all men should exclude from all companionship—or, I repeat, however lightly, however carelessly, however grossly people may talk about different forms of incontinence and irregularity, nobody can qualify, nobody can tolerate a premeditated and persistent seduction of a married woman, and a continuous defilement of the marriage bed. Ah! gentlemen, we must look this crime in its face. Why, there is not a sailor in Wapping, with a strumpet on either knee, badgered and beaten in the debauches of long voyages and frequent ports, but that if a comrade should venture to suggest to him that he had seduced the daughter of an old shipmate, or the wife of a young comrade, he would bury his sheath-knife in the heart of his accuser. There has never been a coarse and vulgar debauchee, voluptuary, that would flaunt his wealth and his vices in the face of our citizens here or in New-York, and ride the four-in-hand of his new riches packed with courtesans, the fact that one of his boon companions should accuse him of seducing the companion of his daughter, the wife of his friend who had been trusted to his care, but that would send a bullet through the heart of his accuser. No, there are no coarse and vulgar voluptuaries, however lightly they may deal with incontinence, and however much they feel at liberty to poach on the manors that are not confided to their care, that either in practice or in accusation will tolerate any such charge as this that you are asked to bind by your verdict against Mr. Beecher, and your verdict for six cents finds it as much as if it was for $100,000. This is not a case in which, as in some of these libel suits, they don't want to hold that an editor has kept within the bounds of politeness, and they don't want to show that the plantiff's character was worth nothing. No, no; the issue is a vital one; your verdict is for the plaintiff or for the defendant. It passes upon this issue. There is not any other crime with which he is charged. There are no qualifying circumstances about it. If he is not guilty of all that I have described to you, he is not guilty of anything. That is the plaintiff's own figuring of the dimensions, the incidents, the traits or the crime.

THE CIRCUMSTANTIAL EVIDENCE.

We may consider ourselves prepared now to look at the question of circumstantial evidence, which may be very briefly disposed of. Now, what is circumstantial evidence? It is the evidence of direct witnesses to certain facts, which are thus directly proved, and from which, as definitely and accurately ascertained, you infer, within legitimate principles of reasoning, and by the test of common sense, that what is alleged as the necessary conclusion from them is such necessary conclusion. I refer, if your Honor please, to an authority in our Court of Appeals: the case of the People agt. Bennett (N. Y. R., vol. 49, p. 144.) The principles of circumstantial evidence—

In determining a question of fact from circumstantial evidence, there are two general rules to be observed: (1.) The hypothesis of delinquency or guilt should flow naturally from the facts proved, and be consistent with them all. (2.) The evidence must be such as to exclude to a moral certainty every hypothesis but that of his guilt of the offense imputed to him; or, in other words, the facts proved must all be consistent with, and point to his guilt not only, but they must be inconsistent with his innocence.

Accordingly, in reference to a case of this kind, where, under circumstances of lewd intercourse, parties at a tavern, much more at a brothel, are found to have been shut up in the same room, locked or otherwise secured; and the preliminaries have been shown of engaged affections, of lewd desires, of adulterous purpose; why, there is circumstantial evidence which justifies a conclusion that in this security, and these circumstances of seclusion, the act of adultery may have occurred, must have occurred. All these things are to be guarded. The cases are very careful about even such circumstances. But all agree, as indeed common sense agrees, that when there is no circumstantial evidence by extraneous witnesses, of ear or eye, of such relations, either tending to or presuming the act which makes the guilt, or afterwards which confirms the character of the supposed act by subsequent lewdness and attempts to commit the act—where no evidence of that kind is present, that is the end of circumstantial evidence.

Now, gentlemen, the plaintiff has not failed to present proofs that should carry some conclusion of guilt from any delicacy, or from any want of research. He did n't hesitate to put the power of the law upon Joseph Richards to make him come here and regret that he could not give you any valuable information. He did not hesitate, in his searching, when he brought from the wards of a pauper hospital a lying, drunken woman to say that she heard Mr. Beecher say to Elizabeth Tilton: "How do you feel?" and she replied: "Dear father," or "father, dear, so, so." [Laughter.] Well, I don't know—I should think "so, so," at best, was an indifferent sort of feeling as compatible with a variety of things besides adultery. They don't reject trivial testimony, because they brought Brasher to testify that, as he was going fishing along one of the public streets, between 7 and 8 o'clock in the morning, when the sun was shining bright, he saw—would you believe it?—in open day, as the approximate act of adultery, Mr. Beecher standing on the doorsteps, having pulled the bell, and waiting for somet ody to come to him. [Laughter.]

Judge Neilson—We must have better order. I have

several very respectable people here who are not conducting themselves properly. We must have silence.

Mr. Evarts—Now, this matter of Brasher—who was a well-known gentleman, whose whole demeanor on the stand before you is a very good illustration of the perseverance, intrepidity, and indefatigableness of our friend Judge Morris in searching for evidence. Now, Mr. Brasher was a man who was well known to be very fond of fishing, and so fond of fishing that when the tide served, no matter what hour of the night it was, he was very likely to go a-fishing, and so he sometimes went at 2 o'clock in the morning, 3 o'clock in the morning, 4 o'clock in the morning. Now, there goes around a story in Brooklyn that Mr. Brasher saw Mr. Beecher, either in coming out of or going in at Mrs. Tilton's house, when he was going fishing. Well now, there is something—Beecher going there at 2 o'clock in the morning. Coming away at 2 o'clock in the morning—still more extraordinary. Either way about the same thing. Brasher is summoned as a witness here, with an immense flourish. He didn't know what he was to prove; he never saw what he had to do with it; but he had seen Mr. Beecher at that doorstep when he was going fishing, but the difficulty is, if the tide served, he went fishing at all hours. He would just as lieve go fishing at 8 o'clock as at 2, I think he would rather, and the only morning on which he had seen Mr. Beecher in any vicinity to this door step was the morning when the tide served at 8 o'clock, and not at 2 o'clock, when he was going fishing. Now, you, of course, saw the predicament of our learned friend, if I may call him so, when this cap sheaf of circumstantial evidence, approximate act of unseasonable hour, of midnight prowling, scaling the walls that inclosed this beauty, and Brasher saying that at 8 o'clock he saw him standing there, that he remained there still while Brasher passed by, and showed conclusively he was not coming away, and was waiting for the bell to be answered. Well, if he had been coming away it would not have been much; and what is more, there was not any evidence that Mrs. Tilton was in the house, or that Mr. Tilton was not in the house, or what Mr. Beecher went for, or anything else. The trouble was that the tide didn't serve for their evidence that day, and if the tide had served, why then the time of Mr. Beecher's going and the tide for the fishing would not have occurred, and time and tide wait for no man.

JOSEPH RICHARDS'S TESTIMONY.

Now, the value of Mr. Richards's evidence—is it anything? and of all circumstantial evidence when produced by a witness, to produce upon you the impression that would have been produced if you had seen the thing he speaks of. Now, there are two ways to find out what impression that would have upon you. One is the statement of what the thing was that he saw, and, second, the impression that is made upon him when he saw it, and as he saw it. Well, he makes the most unlucky prelude, for the great circumstantial evidence on which this case, so far as proof of the act is to turn, is that he begins by apologizing to the court, and the jury as part of the court, before he would tell what he saw, that he regrets to say that unless he is suffered first to tell what he heard from other people about other matters, what he saw will prove to be of no consequence. Well, that is a very strange thing. I never heard of any witness— Witnesses ought to come free from bias. What under heaven have they to do with what the impression of their testimony was or should b They are called to state what they did see. The law don't allow anybody to state what they heard, and the poor man says, "Well, now, I am here, and I suppose, therefore, I am here for something, and really I shall make a fool of myself for coming here to say nothing unless I am allowed to state the circumstances that made me think there might be something in it." Well, we will dispense with that. Now, that is the first test, out of his own mouth, of what impression and weight and power there was as evidence in what he saw, and that is that there was not any. I don't think you need trouble yourselves much about what he saw, when he tells you there is nothing in it to begin with. Well, then, he goes on and tells it, and I don't know exactly the phrase, but he saw Mr. Beecher as he suddenly opened the parlor door, where Mrs. Tilton and Mr. Beecher were conversing, Richards knowing nothing of it, except, perhaps, he had been told they were down there—he saw his sister withdrawing from what I think is called proximity to Mr. Beecher—moving away from him, and that she colored a little. Well, I don't think that that comes up to the rule, that it must be an act that not only points to adulterous connection, but is inconsistent with anything else. It does not strike me so. How did it strike Richards? He went in and kissed his sister, and saluted her, and shook hands with Mr. Beecher, and talked with him, then went off about his business!

Now, in either way that it was evidence of an adultery that had taken place, or of an adultery that was going on toward its consummation then and there, you will very easily see that, whatever had happened or did happen, it didn't make much of an impression on Richards, for he shook hands with the man and saluted his sister, and then went about his business, and shut the door or left it open—I don't know that he says which he did—and never thought it worth while to mention the circumstance to his sister, his only sister, he her only brother, and their mother a widow.

Well, gentlemen, as I said about the offense, there is no generalization of such conduct of Richards as enables me to apply an adjective to it. It never happened before. I don't think that, after his example, it will ever happen

again. I read from the case of Freeman agt. Freeman, in the 31st of Wisconsin, page 246, where the rules of all these matters of circumstantial evidence are laid down. Speaking of circumstantial evidence, the Court says:

All the circumstances are fairly and fully explained and shown to have been incident to some other object or design, and not to have been brought about for the purpose or with a view of perpetrating the offense with which the plaintiff is charged [which was adultery]. And in this connection the Court cannot forbear to remark that the character of a minister of the Gospel whose reputation in all respects, except so far as it may have become involved by the unfortunate matter in controversy, appears to be fair, goes a great way to explain the facts, if indeed any explanation of them can be thought to be necessary. Nor can the Court refrain from the observation that the good character which the plaintiff appears generally to have borne, both before and since the time the offense is alleged to have been committed, is a most significant circumstance in her favor. If found guilty, the Court would be required to believe that from a life of purity and fidelity she turned suddenly to one of depravity and vice, and then as suddenly again returned to her former virtuous ways. Such a circumstance is highly improbable, and seldom or never occurs. There is not a scintilla of proof of prior misconduct or conjugal infidelity, and her subsequent behavior appears to have been innocent and not the subject of the slightest suspicion. It was suggested by Lord Stowell, in Williams agt. Williams, as possibly "a less laudable motive" for instituting the proceeding that it might have been for the purpose of "trying the experiment of how little proof will be accepted as sufficient" to sustain the charge of adultery. A similar remark might, and with greater propriety perhaps, be ventured here, that the bringing forward of this charge, more than seven years after the occurrence is alleged to have taken place, and during all which time the husband seems to have had no thought of the infidelity of the wife, is to try the experiment of how little proof will be accepted as sufficient to raise a suspicion of her infidelity.

I have trespassed already upon your Honor's indulgence.

Judge Neilson—Gentlemen, get ready to retire. Be in your seats to-morrow at 11 o'clock.

The court then adjourned until 11 o'clock on Friday.

NINETY-THIRD DAY'S PROCEEDINGS.

SECOND DAY OF MR. EVARTS'S SUMMING UP.

THE ORATOR EVEN MORE EARNEST THAN ON THE PRECEDING DAY—CASES OF THE PLAINTIFF AND DEFENDANT CONTRASTED—SUGGESTIONS CONCERNING TESTIMONY FOR THE GUIDANCE OF THE JURY—A PART OF MR. TILTON'S EVIDENCE REVIEWED—HIS POSITION BY HIS ASSERTION THAT HE WAS THE HUSBAND OF AN ADULTERESS DEFINED—MR. MARTIN'S EVIDENCE TOUCHED UPON.

FRIDAY, May 28, 1875.

The argument of William M. Evarts in defense of Henry Ward Beecher brought together, to-day, the largest audience that has crowded the limits of the Brooklyn City Court room at any time since the great trial began.

One of the most telling portions of the speech of Mr. Evarts yesterday was partly addressed to Mr. Tilton. He had been explaining the contumely which has always attached to the husband of an adulteress, as illustrated by the meaning of the English words which describe such a man, and the severity of the Roman law affecting such persons. The argument of the orator was that there was a moral improbability of the highest sort that Theodore Tilton had suffered this disgrace in his family. Turning toward Mr. Tilton, he said, slowly, and almost in tones of rebuke, while the audience listened in dead silence, and Mr. Tilton's face flushed very red, "How do you dare to say as you do say, and I think truthfully—I certainly hope truthfully for your character—that until July you had no doubt, no fear, or thought, or suspicion, in regard to the intercourse of Mr. Beecher with your family—how can you say that and not feel that you have forced yourself into the dilemma of choosing whether you take the contumely of the English opprobrium, or the dark stain of the Roman condemnation."

Much of Mr. Evarts's address to-day might be called didactic in character. He seemed to be seeking to lead the minds of the jurymen into legal methods of thinking and reasoning. The objects and nature of evidence were explained, and the orator appeared to take great pains to point out the grounds of belief in, and the proper tests of the truth of, testimony. After stating these general propositions in the clearest language, he took examples from the evidence in this case, and deduced conclusions by the application of the principles laid down.

The evidence of Mr. Judson, of A. B. Martin, some of that of Mr. Tilton, and of other witnesses, was subjected to this process. "The juxtaposition of things said in private, and demonstrations made in public," was made to play a part in showing what the orator conceived to be the character of the plaintiff.

The testimony of Mr. Martin, who said in evidence that when Gen. Tracy had his interview with Miss Bessie Turner, at Mrs. Ovington's house, he (the witness) and Mrs. Tilton sat on the back piazza to escape the heat, and who declared that a projecting brick wall protected that piazza from the sun's rays, was subjected to a keen analysis. Finally, the orator explained, amid a burst of laughter in which auditors, counsel, and jurymen joined, "Now, sometimes men run their heads against a brick wall, but the trouble with Mr. Martin was that he dashed out his brains for want of a brick wall," and then he added, with the utmost drollery of tone and manner, "A.—B.—Martin: a—broiled—Martin."

The orator also considered the testimony of Mary Catharine McDonald, and the general character of Mr. Beecher's evidence. The nature of the rebuttal evidence, and the theories of the plaintiff's and the defendant's respective cases, were likewise reviewed.

THE PROCEEDINGS—VERBATIM.

MR. EVARTS RESUMES HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Yesterday morning I requested the audience to keep silence, to the end that we might have perfect quiet; some persons will remember with what success. Now, I repeat that request. Of course, we have twice as many people here as we should have—very likely a great many more than we shall have when we meet again. Will counsel proceed?

THE HOUR OF MR. BEECHER'S CALLS ON MRS. TILTON.

Mr. Evarts—MAY IT PLEASE YOUR HONOR AND GENTLEMEN OF THE JURY: I was asking your attention to what the law requires as an entirely indispensable element of producing that legal certainty without which no judgment is allowed to be pronounced by the verdict of a jury, on questions of this criminality and of these large relations to the interests of society and extensive influence upon the happiness of others; and I had asked your assent to the proposition that this case was utterly bare of all those facts of conduct, as seen and observed, which lead to the conviction that there had grown up in the hearts and affections and passions of these people those vicious purposes which lead to wicked acts; none of that evidence which shows the external circumstances of misconduct or deviation from proprieties; none even of that addiction to one another's private society, which is marked as having some secret and some wicked purpose; and there are none of the occasions proved in any sense in which such a purpose may have been indulged or gratified, or from which any conclusion to that effect can be drawn. Now, I have to consider some general relations of Mr. Beecher and Mrs. Tilton, which are in undisputed proof, which form quite as much a part of the case of the plaintiff, and of our theory of the association between them, its motives, its character, its traits, its action, as they possibly can do, in regard to the plaintiff's view. This was a habit of such social intimacy as belongs to a relation of a clergyman and a parishioner, though a married woman, provided there are the external indications which lead to that intimacy, and provided you find in the character of the parties, in their moral and intellectual nature, as separated from the subject in dispute, the attractions on the one side and the other, that at once account for and justify such degree of intimacy. Now, I call your attention, in the first place, on this general question of the amount and form and frequency of association, to the fact that it proceeds almost entirely from the defendant's own testimony. The number of visits during the many years of confessed intimacy and constant regard, is represented as coming perhaps to once in from three to six weeks; every one of those visits in the ordinary hours of day, day in the sense of forenoon, for us who dine as we usually do, at 6 o'clock, every one of them. There is not a witness, a servant, an inmate of the family, Mr. Tilton himself, there is not one witness who pretends that there was a visit in the evening, in the sense of a private call; some social entertainments, some invitations, some set occasions, amounting, I think, to nothing very definite, and certainly very few in number, that were fixed for an evening, of course, if Mr. Beecher was present, showed his presence in the evening; but then it was in a crowd, it was in a company, it was in the parlors.

Now, in regard to any visits of Mrs. Tilton to Mr. Beecher's house, there is no evidence at all that any such instance occurred. Mr. Beecher says, whether or no Mrs. Tilton was at the house on the 10th of October, he doesn't know; and my learned friend doesn't ask him whether he saw her. She might have been at his house without his seeing her. They don't press any further in any of those inquiries. We show by him that he has no recollection of seeing her there, or of any occurrence of any kind which should note in his memory, or produce to your knowledge any such fact; a fact that would have been wholly unimportant in itself, except as giving external evidence that would support the possibility of guilty conduct, if proof other and additional were given; for to say that the visit

of a married lady of the parish, in the daytime, at the house of her clergyman, is a suspicious act, would shock not only the sense of decency, but the sense of fairness, and intellectually the common sense of every man.

Now, what beyond these visits, that ran through these years, occurring, as Mr. Beecher states them—and he is the only witness to them, and if he spoke falsely he could be contradicted by servants—if the view that he seeks to present to you, that he only strolled around there in the forenoons as a part of the solace and the recreation of a walk, and spent there say up to half an hour or so, from five minutes up to half an hour, in a call of regard, of affection, of intimacy, if that could be contradicted, it would be. We are not to suppose that this plaintiff and his household, consisting of five servants, five children, and grown inmates, besides himself and his wife, is so unwatched, unremembered, unprotected in the observation of all who saw as that, if this general proposition of Mr. Beecher that his visits in point of time, in point of direction, in point of circumstance, were altogether and wholly of the character that I have thus given to them—you are not to suppose that this plaintiff is not able to contradict. Whether he is able to contradict or not, absence of contradiction does not effect the purpose and result of contradiction. What is uncontradicted, whether it be because it is absolutely uncontradictable or because misfortune has prevented its contradiction, is, in a court of justice, the whole proof proved on the point.

MR. BEECHER'S GIFTS TO MRS. TILTON.

Now, beyond this, what are the seductive arts, and what the corrupting influences that this visitor used? Why, there seems to have been what in the end came to a somewhat bulky collection of octavos, from the Bampton Lectures on the Divinity of Christ to the religious novel of which Mr. Beecher was the author. Well, when octavos are presented, and when the title-page contains the inscription of the giver, even if the nature of the gift is of the suspicious character of the Bampton Lectures on the Divinity of Christ, still the element of secrecy, of amulet, of love-charm, seems to be wanting on account of the bulk and the publicity of the transaction. Then there were some flowers—flowers sent to the chamber of a woman in confinement, flowers sent to the parlor of a lady living in her own house, flowers the sight of which gladdened the eyes of everybody within the house, and whose perfume betrayed their presence to every comer. Now, when a man has a garden and a farm, and when, as Mr. Beecher says, he was in the habit of strewing these flowers thick through the pathways of his parishioners, in their domestic life, I do not think that you will find much evidence of corrupt, adulterous purpose in the mere fact that these flowers, once, twice, three times perhaps, made the subject of evidence, and in the chaste and beautiful and open form in which the testimony has disclosed them, will affect your minds with circumstantial evidence tending, as the law books say, to adultery, and incompatible with anything else.

THE FIRST OUTCROPPINGS OF "MALICE AND ENVY."

Now, gentlemen, I call your attention to the affirmative proof of the absolute want of fact in this intercourse, on which to raise suspicions and interests from what is an affirmative fact, that there were constant observers, that there were watchful observers, that there were jealous observers, that there were hostile and malignant observers, that watched these persons—the wife and the clergyman—during these years. You will remember a little item of proof in which Mr. Judson gave evidence, that at a lunch at Delmonico's Mr. Tilton introduced subjects of gossip or suspicion about this, that, and the other person; for the general subject and the general indulgence of words and speech on such subjects does not seem to have been foreign to Mr. Tilton's disposition; and Mr. Judson says to him: "Well, there is one thing certain, at least, that Mr. Beecher has not been involved or suspected of any irregularities towards women;" and Mr. Tilton says: "I have lost my faith in man." Well, that is a pleasant form of meeting an imputation upon a friend—this was in 1865—a pastor, a visitor at his family, a man that for years he had been telling that a little woman at his house loved him dearly; and Mr. Judson pressing it again, Mr. Tilton still replies: "I have lost my faith in man," and for a third time this solemn, hypocritical "I dare not made to wait upon I would," is repeated by this stalwart man. Well, Mr. Judson, an intimate friend of Mr. Tilton, also a friend, or acquaintance at least, of Mr. Beecher, and a believer in him—he doesn't like these cowardly threats of malice and envy, and instead of allowing the subject to breed the mischief it was intended to breed, he brings it to the light at once, and has it smothered forever. A very wise man has said: "Suspicions that the mind of itself gathers are but buzzes, but suspicions that are artificially nourished and put into men's heads by the tales and whisperings of others have stings." Now, my plaintiff here—your plaintiff—our plaintiff—has read Lord Bacon, and he knew that these suspicions that tale-bearers carry with their whisperings have stings. He had read the Proverbs, too (in his youth), and he knew—and he lived up to it—"Where there is no wood the fire goeth out; and where there is no tale-bearer there is an end of strife." And he took care that these fires should not lack fuel, and these strifes should never miss a tale-bearer. But Mr. Judson goes at once to Mr. Beecher—goes to Mr. Beecher and tells him what Tilton has said, and Mr. Beecher seeks Mr. Tilton and calls him to an account, and Mr. Tilton denies it, abhors it, and does two things—one to Mr. Beecher—he writes him a letter that has been read to

you, and one to Judson; finding him again, he says, "I thought you were my friend;" "I am your friend, but I am also a friend of Mr. Beecher." Well, Tilton repeats, "I thought you were my friend." What was there in the knowledge of Judson that entitled this tale-bearer and strife-maker to think that Judson, because he favored him with his acquaintance, and, if you please, with his good feeling, would become a willing participant in what in every right thinking mind, in every honest heart, is condemned as the vilest and basest employment to which any man, any one, man or woman, can stoop? When the assassin faces his enemy or at least runs the risk of the resistance of weapon by weapon and force by force, or braves discovery and the opportunities of proof, and, so, exposure to punishment, it still is the basest form of enmity that is known—I mean of that deadly enmity that seeks destruction of the life. But that assassination by the slow poison of calumny, secretly infused into every vein of the society in which the calumniated character moves and is known, that is a baser and a viler form of assassination. It has every degree of cowardice, every amount of malice, every wickedness of purpose, and every mischief of result. Great characters, known characters, strong characters can resist it, but it is for us, gentlemen of the jury, for you and for me, to protect men in the common level of life, like ourselves, from such calumniation. A wave that would be dashed to pieces on the quarter of a man-of-war may swamp her cock-boat and destroy the lives that are in it. All the pelting with which Mr. Beecher has been followed through years and years has produced no effect upon him. But calumny, calumny, gentlemen of the Jury, takes its effect on those against whom it is aimed just in proportion as their general character and life are hid from observation and untested by great opportunities or trial. Now, gentlemen, we might as well start here with understanding the character, not of Theodore Tilton—he has not introduced a new *character* into human affairs—men of these evil dispositions, men of this wicked conduct, have lived long before him. This union of open and outward display, this pretension, this self-satisfaction that Mr. Tilton and Mr. Moulton exhibit themselves before you as clad in—are the very traits that are associated in all conspiracies. Why, the companions, the instruments, the agents of Catiline were of the same kind. They were long ago described—these men, Tilton and Moulton—by a great advocate much better than I could describe them, although what he said was said 2,000 years ago, and of others. *Hi pueri, tam lepidi ac delicati, non solum amare et amari, neque cantare et saltare, sed etiam sicas vibrare, et sparsere venena didicerunt:* these youths, so jaunty and so slick, not only practiced the arts of freely loving and freely being loved, nor the graces of an airy rhetoric and a bold gesticulation, but also have they learned to ply the dagger of the assassin and scatter the poisons of calumniators.

It is very well to think with complacency, as Mr. Tilton obviously does, of the showy, the brilliant, the accomplished, the gratifying traits that make the showy external of base motives, base conduct, and wicked purposes, but he has not the credit of being the model and the type. Such men have lived always, and always will live; and they have been understood always, and always will be understood. Far be it from me to disturb his complacency; if it were ever valuable to him it is more valuable now than ever. Horne Tooke said that he didn't see why a man should not thank God for his self-conceit as well as any of the other good gifts of Providence, and it certainly does carry a man through the world with a pretty high head, and with considerable enjoyment which is lost by the modest and pure. Now what passions of our kind are there that we can trace motives to, for I may as well apply the criticism at this earliest instance of malignancy and hypocrisy as at any other. You don't need to eat a whole loaf of bread to know that it is sour. A wise man eschews further experience of that batch. But some people will keep on eating and eating, thinking that the sourness has not struck in [Laughter]; that it has not, at least, reached the bottom crust, and that you may get a little healthful nourishment, and you had better not discard the bread until you have had a full trial of it. Well, if you take a loaf of sour bread in your stomach, you will be apt to find out enough about that indigestible fabric not to try another. Now, envy, as we call it, in its true sense as it is used by the great classic dramatists, and in the Holy Scripture, either in the Old or the New Testament, is the counter passion to love and charity in the sense of the embrace in brotherhood of all mankind. "Envy frets itself because of the prosperity of others and pines at their superiority." It finds its complacency, it finds its occupations, it finds its goading impulses in the destruction of that prosperity and the abasement of that superiority. Emulation, which is the noble competition and the great and beneficent influence that great characters have on those who are their cotemporaries or who follow them, is turned into the wicked passion of envy. And, as the very essence of love is that its delight is in the happiness of others for the other's sake, as when you come to the sexual relations the love of marriage is distinguished from meretricious love by that distinction, that the love is of the person loved, and beautified, and glorified in your affections, and in meretricious connections it is the gratification of selfish appetite, regardless of whatever degree of misery and ruin is inflicted upon the object of the meretricious love. So envy, the hatred of men, is the great wicked master passion, as love is the great, noble, sacred passion of our nature, beginning when the infant with a smile recog-

nizes its mother, growing till the youth takes the bride by the hand to the altar, ending for this life only when the wife is laid in the grave, and through all, expanded, purified, intensified, elevated, until, at last, it is lost in the universality of the sea of love, not because it is any less intense, not that it has lost its luster, but simply because it has faded, as the stars fade in the morning in the full blazonry of the sun's illumination. Now, where does envy or malice tend, and do its ravages cease with its single first object, or does it grow like other passions upon what it feeds on? Does it extend through the whole frame of the moral, the intellectual, the industrious working of the man. Why, if your eye be single with this true passion of love and duty, your whole body shall be full of light. But if your eye be evil, your whole body shall be full of darkness; and how great is that darkness! The ancients have a stern maxim marking the absoluteness of the dominion of this evil passion in few words, but which leaves nothing else to be said about it—"*Invidia festos dies non egit.*" Envy, malice, keeps no holiday. And Theodore Tilton spent Christmas in forging a weapon that he says he meant to strike Mr. Beecher to the heart with, and New Years in preparing what he himself calls in his writing, "a New Year's present to Mr. Bowen." Well, talk of confessions, talk of indications of character, of purpose, of nature; it is a by-word, "Actions display the man." Treatment of himself, by himself, in his own description of himself, leaves nothing to be said of him by others. You don't need to search the heart of a man who boasts of his malignity, and takes credit from its horrors. Nor do you need to measure the conduct of such men with such characters, and think how far they will go and where they will stop, and that this, or that, is too much. No wise man thinks any more of this credulity, this incaution toward such characters, the heart of whom is understood, than he does of measuring the depth to which a vulture will dip its beak in the heart blood of its prey, or how manifold or how merciless shall be the coil and the crush of the serpent when it entwines its victim. Let men who wish to run these experiments with reptile characters in animal nature try them.

MR. TILTON ACKNOWLEDGES MR. BEECHER'S BENEFITS.

Let men who wish to, run these risks with the wickedness of the heart, when that is confessed. I read to you the list of evil that comes out of an evil heart as given by one who knew what was in man. Now, having cautioned Judson never to assume to be his friend further, and never to speak to him again, he wrote Mr. Beecher this letter:

Midnight.

BROOKLYN, Nov. 30, 1865.

Rev. HENRY WARD BEECHER—*My Dear Friend:* Returning home late to-night I cannot go to bed without writing you a letter. Twice I have been forced to appear as your antagonist before the public, the occasions five years apart. After the first I am sure our friendship, instead of being maimed, was strengthened. After this last, if I may guess your heart by knowing mine, I am sure the old love waxes instead of wanes.

That was when the quarrel about the peaceful tendencies of Mr. Beecher was fresh, and when for some charity that had been extended to the fallen foes among our countrymen by Mr. Beecher, he was condemned with an exhaustive vituperation scarcely equaled by the secular press.

Two or three days ago, I know not how impelled, I took out of its hiding-place your sweet and precious letter written to me from England, containing an affectionate message which you wished should live and testify after your death. To-night I have been thinking that in case I should die first, which is equally probable, I ought to leave in your hand my last will and testament of reciprocated love. My friend, from my boyhood up you have been to me what no other man has been, what no other man can be. While I was a student, the influence of your mind on mine was greater than all books and all teachers. The intimacy with which you honored me for twelve years has been, next to my wife and family, the chief affection of my life. By you I was baptized; by you married; you are my minister, teacher, father, brother, friend, companion. The debt I owe you I can never pay. My religious life, my intellectual development, my open door of opportunity for labor, my public reputation—all these, my dear friend, I owe in so great a degree to your own kindness that my gratitude cannot be written in words, but must be expressed only in love.

Then, what hours we have had together! What arm-in-arm wanderings about the streets! What hunts for pictures and books! What mutual revelations and communings! What interminglings of mirth, of tears, of prayers!

The more I think back upon this friendship, the more am I convinced that not your public position, not your fame, not your genius, but just your affection has been the secret of the bond between us. For, whether you had been high or low, great or common, I believe that my heart, knowing its mate, would have loved you exactly the same. Now, therefore, I want to say that if, either long ago or lately, any word of mine, whether spoken or printed, whether public or private, has given you pain, I beg you to blot it from your memory, and to write your forgiveness in its place. Moreover, if I should die, leaving you alive, I ask you to love my children for their father's sake, who has taught them to reverence you and to regard you as the man of men.

One thing more; my religious experiences have never been more refreshing than during the last year. Never before have I had such fair and winning thoughts of the other life. With these thoughts you stand connected in a strange and beautiful way. I believe human friendship outlasts human life. Our friendship is yet of the earth, earthy; but it shall one day stand uplifted above mortality, safe, without scar or flaw, without a breath to blot, or a suspicion to endanger it.

Meanwhile, O, my friend, may our Father in heaven bless you on the earth, guide you, strengthen you, illumine you, and at last crown you with the everlasting crown. And, now, good night; and sweet be your dreams of your unworthy but eternal friend,

THEODORE TILTON.

Now, gentlemen, you understand what words are worth,

written or spoken, from this man. When, three days before, his slanderous tongue has spoken mischief, and a common acquaintance of Mr. Beecher, the recipient of his leasings, asked this, at least, about Mr. Beecher—"that there never have been any suggestions against his morality in respect of women," and Theodore Tilton, with the thrice-acted pomp of duty to friendship, and fidelity to truth, which forbade to ask what was untrue, and did not permit him to tell what was true, said, "I have lost my faith in man," and when asked what point there was in that in regard to Mr. Beecher—"I have lost faith in man," and a third time pressed, "I have lost my faith in man," and then, at midnight, in order that it might be preserved after he is dead, if he should die suddenly, or take poison — what poison would operate? — preserves this record. Are such characters new? They are not common. We should have got out of this world into another if the staple of our society was made up of such characters. No; "a serpent heart hid in a flowery face" is a character as old at least as Shakespeare, and thus preserved by him. Now, gentlemen, there is nothing in all this unless it seems to you to rest, as it does to me, on a correct, intelligent, candid, and not uncharitable estimate of this plaintiff's character as disclosed by his own evidence. Such I believe it to be; such the juxtaposition that we are able to make of things said in private and demonstrations made in public, shows you the character. It shows you its discords; it shows you its main current of purpose and of blood; it *is* the character. And it shows you more. It shows you that, when you are dealing with a disputed question of a particular line of conduct or incident or relation, between two men, if you can only get hold of enough of their respective characters you can tell whether one or the other construction of the controversy is to determine, comports with the character as disclosed, outside of the particular controversy, of one or the other. Truth comports with, agrees with, every fact—physical, moral, and spiritual—in the world. Error may confuse; error may distort; but be sure there is no one truth that is not compatible with every other truth in the material creation or the moral relations. Sometimes, by fortunately or skillfully acquiring facts enough to see whether the particular fact will comport with them, the cross-examiner is enabled to baffle the false purpose of a witness. Why what is cross-examination, in its subtle, penetrating power? Some think it is to exhibit the infirmity of memory, and the inexactness of expression by words, and that a great feat is accomplished when, by asking a witness to tell a long conversation over two or three times, the witty and profound cross-examiner has demonstrated that the thing cannot be done. Well, everybody of any common sense knew it before. How often did the counsel exhibit to you their inability—and I do n't refer now to my learned opponents any more than to ourselves, the counsel before you—exhibit their inability to repeat, after a ten minutes' interruption by a legal discussion, the very question that had been asked before the discussion began and was allowed to be repeated, and before your eyes, and without the least shame or annoyance, we asked that the stenographer might read the question because we could not repeat it. Now, with such a confession of this common trait between witty and profound cross-examiners and commonplace unstrained memories, it does not seem to me a very great triumph of cross-examination to exhibit this incapacity. Indeed, if the rote was followed completely in the second relation, it would show that it was known by heart—had been committed to memory. But when cross-examination, ignorant at the start or imperfectly instructed, undertakes to demonstrate the improbability, the falsehood, of an immediate statement by showing its incompatibility with facts that shall be arrayed around it, and how it will not comport with them, then it is that the cross-examiner follows this great rule and principle of truth, that truth, if truth, will match all round, with material facts, with moral qualities; but if it be false it won't; and if that triumph in the cause of justice, in the service of truth, follows the employment of the trained art of the lawyer, it is a great and beneficent result; but if confusion of error, contumely on the weakness of memory, laughter at the indifferent mental qualities of this or that witness, is the only result of cross-examination, it may answer an immediate purpose, but it does not serve justice or promote truth.

MR. TILTON'S GRAY HAIRS.

Now, I will give you two amusing incidents of how truth will comport with all truth, however remote it may seem. It was amusing enough when it happened, and my learned friend Judge Porter has called it to your attention. When Mr. Tilton wished to convict Bessie Turner of a lie with a circumstance, he gave you as a reason that her story was false, and his was true, about his speech in regard to his gray hairs going in sorrow to the grave, that he had not any gray hairs at that time. Well, that shows that he put the question of whether Bessie or he told a lie on that fact. That was the test; and he thought he knew about the gray hairs in his head, or at any rate, if he didn't nobody else did; but Bessie had combed his head; Bessie had told you how frequently she had combed his head, and I find that people who don't grow the gray hairs are quite as likely to see them as those who do. [Laughter.] But he had forgotten—and, indeed, he does not believe in the verbal inspiration of the Scriptures—he had forgotten that it is written, "Thou canst not make one hair white or black;" even under oath you cannot do that. [Laughter.] Ah! but he had forgotten more than that; he had forgotten that even the hairs of the most worthless head are all numbered. When the truth comes to light in his own letter, written three years be-

fore, when he told his wife, "Gray hairs since our marriage have stolen upon us," he shows you what there is in my suggestion that truth matches all the truth in the world, and that a lie does not. Bessie's statement matched all round, and his broke at the first attempted connection.

JOKES AT A. B. MARTIN'S EXPENSE.

Well, we had another witness, a Mr. Martin, and he thought, inexperienced in the practice of truth or in the arts of falsehood, that if he told a story in words, and there was not anybody to contradict him, or at any rate, if it was only words against words, that he could do some damage to Mrs. Tilton by his testimony, gained in friendly intercourse with her; and so he told you that he and she being too warm in the room up stairs, went down, about half past 2 in the afternoon, to sit on the piazza to get cool. Well, now, there is a matter that does not seem to have much to do with the solar system *per se*, by itself; but you have got to match all around, and truth does it without an effort, and falsehood never; and so he was shown that the sun blazed there in that July afternoon, with the thermometer among the nineties, and yet they had gone there and sat because it was a cool place! Well, that looks a little as if he had run against the solar system, don't it? [Laughter.] But what is that to an ingenious mind like Martin's? [Laughter.] Genius shows itself when most hard pressed, and its extempore efforts are sometimes its greatest; so he said, putting down this captious notion of sunshine, "Why, there was a brick wall on the side of the piazza of the neighboring house that extended out its deep embrasure and kept us from the sun." It looked a little, then, as if the solar system was not, after all, to triumph; but we brought an occupant of the house and they sent a surveyor, and there was no brick wall there. Now, sometimes men run their heads against a brick wall [laughter]; but the trouble with this Mr. Martin was, that he dashed his brains out for want of a brick wall. [Laughter.] A. B. Martin: a broiled Martin. [Renewed laughter.] Well, when he comes on the stand again he will study the solar system, and also brick masonry. [Laughter.]

SIGNIFICANCE OF MR. TILTON'S EARLY-EXPRESSED SUSPICIONS.

Now, as we go on we shall find many illustrations of this antagonism which corrects falsehood; and it proves something more, and we might as well start here with understanding that. This is not the first cause that has ever been tried; these are not the first witnesses that have testified and been tested. It is not the first time that the learned Judge and my experienced opponents, or even ourselves, have had to observe and lament the difficulties and the weakness of testimony, and lawyers have hardened their experience into a maxim which the law follows, and instructs juries to follow, and which the conscience and the common sense of jurors impels them, compels them, to follow. It is, in the brevity of the law maxim in Latin, *falsus in uno, falsus in omnibus;* satisfy yourselves that a man is false in one thing, and you must judge him false in others. When a man tells you with his own mouth that he has lied through a series of statements under a motive, and then that in another series of statements, under another motive, he does not lie, you have, in your common sense, one question for him: "How shall we trust a lying tongue to tell us *when* it lies?" Now, would not that be nice, to have a man come and say, "I lied then, and then, and then, under a motive; I now come here and tell the truth." "Well, have you any motive here?" "Oh! yes; I mean to strike Beecher to the heart; I mean to drive him out of Plymouth Church; I mean to pursue him to the grave." Well, that is enough—a motive. Now, would not you feel like sensible men if you should base a verdict upon that testimony; allowing such a man to pick and choose for you the things that are true, and taking them on his saying so? There is an end of that; and, unluckily, Moulton and Tilton are on the same platform, for that matter. Moulton has given you the series of his falsehoods, and he now gives you the series of his statements, and you have got to let his tongue choose; his motives you have in his statement that he would have the life of Beecher, that he would destroy him, and all the villifying epithets that one man can bestow upon another have been used by him on the stand and under oath. If your Honor please, in this cause we do not need to trust to the maxim so firmly established, so wisely considered, carrying such conviction, both to the legal and the common understanding, as "*falsus in uno, falsus in omnibus.*" The record in this case in its whole web of hypocrisy, of false statement, of prevarication, on their own showing requires us only to take this, the converse of the proposition, "*falsus in omnibus, falsus in uno.*" You have one question to determine, whether the truth is spoken about it, and they have shown themselves false in everything: in character, in conduct, in concealments, in prevarications, in spoken falsehoods, in written falsehoods. Ah! gentlemen, it is a terrible thing to have the length of a trial, and the methods of the law unfold a tissue and a web of false character, the woof and warp of which are all false. And then you are asked to believe that in that texture, in that tapestry, there is at least one thread of truth. They say to us, "*Falsus in omnibus, verus in uno*;" false in all else; true at least in one thing; for it is not in human nature not at some time to speak the truth, and this is the occasion. [Laughter.] But I said to you that the affirmative force of the negative proof is itself immense, when you are satisfied of the opportunities; and I digressed to exhibit to you the attitude, as early

as 1865, of Mr. Tilton as a watcher in his own household, and a watcher of his wife. Let me show you a little of his condition of mind about Mr. Beecher as a visitor and an inmate of his household—as an inmate of his house, and a friend of his wife—from another statement of his in writing: "About ten or eleven years ago," and this was written in 1872, or thereabouts: it carries it back to 1862:

About ten or eleven years ago Henry C. Bowen, for whom I was then working as a subordinate in *The Independent* office, told me one evening, while crossing Fulton Ferry, that Henry Ward Beecher was guilty of adultery, a practice begun in Indianapolis and continued in Brooklyn."

That was in 1862. It had had some years run at that time.

Between the years 1860 and 1870 Mr. Bowen repeated the accusation not less than a hundred times—[so it had not slipped his mind]—frequently exhibiting the deep sense of a personal injury, and sometimes saying that if he was so minded he could drive Mr. Beecher from Plymouth pulpit.

Now, either Mr. Tilton believed Mr. Bowen or he didn't, or else Mr. Bowen never said so, and I am sure I don't know how we are to find out that latter. Mr. Tilton has said so here. He said so on the stand in some degree. Mr. Bowen, their witness, was not asked by them the question, to purge himself of this imputed conversation and conduct. But, in respect of Mr. Tilton, we may fairly assume that, as against him, we may suppose that he had heard these stories, for he has said so. Now, either he believed them or he didn't. If he did believe them, you see that Mr. Beecher and Mrs. Tilton were under a pretty sharp observation, don't you? A husband, a rival, a man who hated Beecher, and who either loved or didn't love his wife; and he, why he would watch. If he loved her he would watch; if he didn't love her he would watch. And he comes here and tells you that up to July, the day when his wife made some sort of a communication to him, which we shall examine on its own merits hereafter so far as it is the subject of evidence—until that time he made her an idol in his head. If there was nothing wrong between Mr. Beecher and his wife, if there was anything wrong in his visits and his rides—and we have shown you that in 1870, in the Winter, when Mr. Beecher had driven Mrs. Tilton out once behind a pair of horses and a buggy in the Park, and had been thanked by Mrs. Morse, and encouraged by the great good it had done Elizabeth, and by the invitation of Mrs. Morse he went there a week afterward to give her another ride behind the same spanking team, that he found Mr. Tilton there, and the invitation was given, of course, as it would have been whether he was there or not, and Mrs. Tilton having some reason that disinclined her to go, he urged her to go. So you have the misconduct evidence, that after that time, which was two years after the adultery, or the second year after the adultery began, while it was going on, before it was discontinued, he had not observed anything, or, if he had, his conduct was not candid and open, was it? He won't take that alternative. It contradicts his oath that he had no suspicion or idea. Now, you will see, then, that the material circumstances of this alleged seduction and alleged adultery are just as inconsistent with all the external circumstances of life in which these parties were placed, and the observation to which they were exposed, as the moral incompatibility of wicked conduct with religious character and pure morality is impossible.

Now, how can you get over that? Why, if your Honor please, it is one of the singular, perhaps unfortunate, traits in the manners and morals and everyday reasoning of the English people and ourselves, that we have not a single word to describe the husband of an unfaithful wife that is not inspired with the bitterest contempt and contumely for the husband. There are two words—and that it may not be supposed that my memory fails me in the exactness of the definition, I will read them to you, gentlemen of the jury. Now, as a plain matter-of-fact definition of the word "cuckold," this is accurate: "The husband of an adulteress;" and then the adjective "cuckoldly,' "having the qualities of a cuckold, mean, sneaking;" and then we have an ancient word, not much in use, as indeed the word "cuckold" is not in use, because the occasion for it does not occur in our society. Wittol describes a cuckold as "a man who knows his wife's infidelity and submits to it—a tame cuckold." Now, that shows either a coarse or barbarous feeling, which may, perhaps, account for it. I don't sympathize; I have no desire to sympathize in any such contumely, but it shows the strong sense of our people, whether it has grown up here or at the birth of English manliness before our removal thence from England, and you will find in every language, the German, the Italian, the French, having the same civilization and the same Christian religion, the same contumelious aspersions of the husband. Now, what does that mean? Why, it means that the victims of such injuries are simple, silly, blind, indifferent, carried away by affection to an absurd obfuscation of their observation, and that when the evil finally happens, as it must in its approaches have been noticeable, and if noticed, or unnoticed, making no impression—either way the character is contemptible; and to call a man a cuckold (which is simply the husband of an adulteress), carries contumely and aspersion. Well, there is not any other name in the language for him; there is no other word that expresses that condition of the relation of a husband to a violated marriage except that word. Now, the Roman law, if your Honor please, was not so indulgent as merely to visit with contumely the husbands of violated marriages. They had a law in Rome—for the Romans were a virtuous people,

the chastity of the Roman matrons and of the Roman maids was equal to that of any nation, and the grandeur and power of that society, even without a pure religion, shows how much can be built if the corner-stone of the family is maintained by sentiments of honor and reverence. The *lenones*, or pimps, or panderers, or procurers, were watched and punished; and the crime of *lenocinium* was visited with heavy punishments. That parents should prostitute their daughters, or owners their female slaves, or husbands their wives, was treated as an evil that must be watched and punished; and the *Lex Julia De Adulteriis* provided that any husband who kept or took back a wife caught in adultery should be classed as a lenocinant or panderer, and punished as such. It was a condition of the family that was *pessimi exempli* of most dangerous influence upon society. If the Roman matronage was still to include in their pure roll of honor prostituted wives, wives that violated the marriage vow, where was the honor of the matronage? If young wives entering into matronage were to see that the power of public opinion, and the virtue of that noble state, was not disfigured by the presence of wives still cherished by husbands with knowledge of their infidelity, however creditable it might be to the extraordinary charity and affection of the particular husband, it was subversive of the institution, and should not be allowed.

Now, if your Honor please, and gentlemen of the jury, I have not the least idea that Mr. Tilton is exposed, on any facts in his own family, to the least imputation of either this contumelious opprobrium of the English phrases or this darker condemnation of the Roman law. I wish to save him from both—from either—and I think I shall succeed; but he stood on a very perilous edge, and he has got as far down the precipice as he could get of his own movements. And I present, as an utter improbability (not going quite as deep into the foundations of morals and character as those I have suggested about a pure wife and a noble woman), but, I put it to you, that it is a moral improbability of the highest grade that Theodore Tilton has suffered this disgrace in his family. He is a man of large intelligence; he is a man of active doubts and fears and suspicions. He is a man not inexperienced in the wicked ways of the world. He has had, year after year, an inculcation into his mind that Mr. Beecher was a dangerous visitor in the families of the pure-minded women of Brooklyn; and he has encouraged, has observed, has been pleased with the visits of Mr. Beecher. He has seen his wife by night and by day; he has seen her in the privacy which the law says that even the great interests of Justice never should invade; he has seen into her soul; he looked into her eyes with love or hate, with suspicion or fear, during these many years of the seduction and adultery. He has watched Mr. Beecher in his comings in and his goings out; he has talked in restaurants about his want of faith in Mr. Beecher, and has set other people to watching, and thinking, and suspecting; and, now, in two households, such as Mr. Beecher's and Mr. Tilton's—in two houses, such as theirs, in the relations possibly more public than when covered by those roofs, there has not come one fact in evidence against them; and there didn't enter one doubt, one fault, one fear into Theodore Tilton's mind or heart. Well, I don't think you will be able to find any evidence of it. If nobody else could not, he could not. I don't think you will. Why, gentlemen, consider what it is to have had such vigilant, vindictive, persevering, intrepid, audacious, and trained hounds after a man; and then to see the petty, trivial, contemptible, external evidence produced as circumstantial, or as proof of the facts! Why, gentlemen, we all understand the difference between suspicions, or aspersions, or evidence, not coming against a man because suspicion has not once been opened, but it was opened in Mr. Tilton's mind, and kept alive by Mr. Bowen through ten years. He watched and watched, and saw that Mr. Beecher was pure, and he knew his wife was. That is the result. Now, gentlemen, if, in your grain trade a broker came to you and gave you a handful from a cargo of wheat, and you see it full of weevil and of rust, and he asks you to buy it, you say: "You expect me to buy a cargo of wheat of which that is a sample? Why, a man wouldn't take it as a gift. What is the price?" "Full market price." "Well, you must take me for a fool." "But," the broker says, "perhaps you had better wait and let me tell you. That is all the weevil and the rust there is in the whole cargo. Buy it at any price." Now, that is what has happened here. He brought you the samples, and it is the sample that is scraped from the whole life of Henry Ward Beecher. Had not Tilton written of violence enough, of vehemence enough, of particulars enough, identified in that New-Year's gift he prepared for Mr. Bowen, in which he described the debaucheries and wicked adulteries and rapes of Henry Ward Beecher. Why didn't they prove something? Why didn't they show any proximate traits of conduct or character leading to doubt or suspicion? But, I don't put it upon that; I put it upon the question, Why do you dare to say, as you do say, and I think truthfully—I certainly hope truthfully for your character—that until July you had not a doubt, or a fear, or a fault, or a suspicion, in regard to the intercourse of Mr. Beecher with your family—how can you say that and not feel that you have forced yourself into the dilemma of choosing whether you take the contumely of the English opprobrium or the dark stain of the Roman condemnation?

If your Honor please, I think we had better adjourn now.

Judge Neilson [to the audience]—Gentlemen, keep your seats until the jury retire. [To the jurors.] Return at 2 o'clock, gentlemen.

The Court here took a recess until 2 p. m..

KATY McDONALD'S TESTIMONY.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—But we are not left, gentlemen, on this question of external facts and direct testimony, to mere conclusions from its absence and the absence of witnesses. A witness was finally brought, no doubt a most estimable person, of intelligence and of truthfulness—whether any mistakes intervened in her testimony or not it is quite unimportant either to the cause or to this just expression of confidence in her for me to inquire—and that was the old family half servant, half friend, Katy McDonald, who had gone in and out with that family from 1855, onwards, from the marriage to the end, and now, at present, occupied, I take it, in some way, in connection with Mrs. Tilton's household, a servant or friend, coming to them from her relations to his father's family, devoted to him, descending to him, devoted to the children as his children, no doubt recognizing and feeling the beauty of the wife's character, and having the natural sentiments of an honest heart, exerted in her favor; but still she belongs to the father's side of the house, and in the break of the family, and in the crim inations and recriminations that proceed between them, and in the outgoing of her sympathies, and in the adhesion of her fidelity, she stands now with the father and his children, as in his care; and she, called for a purpose of no great importance, showing that their vigilance omits nothing, is wholly silent on the question of whether there occurred anything from the time of the marriage in 1855 to the broken household in 1874, that could indicate either evil desires, loose conduct, erring purpose on the part of the wife, or impropriety of visit, in time, in length, in respect to occasions, on the part of Mr. Beecher, within that house—not a word. You find, then, in the absence of all the other servants—for we have called none of them; none of them have adhered to us; none of them are within our control, and yet there were servants running through that family, five at a time, during all these years, their whereabouts, their accessibility not brought into doubt, and not one of them is brought. Finally, the intelligent, experienced, sober, sedate observation and judgment of this excellent woman, Katy McDonald, is brought before you, and the reason that nothing is said is that nothing existed in fact and in truth to be said. Now, you must deal with this matter as between man and man, and according to the ordinary rules of human nature. You are men with the qualities of intelligence, the sentiments of heart and the experience of life that belong to men, and you are to judge of a man and a woman, and to judge of families, and to judge of actual, practical, daily life, in the face and eyes, and on the level of the society of Brooklyn. You are to judge of witnesses and of the absence of witnesses; you are to judge of the frivolity of testimony as it is produced, and the absence of any more weighty testimony which could be produced, should be produced, always will be produced if there is any fact at the bottom to warrant it and give it growth. These men (Mr. Beecher and Mr. Tilton), this woman (Mrs. Tilton), are to be judged of as men and a woman of our day, of our society, of our daily life, so far as all external relations go. They are to be judged fairly; they are to be judged justly. When individual differences, from the common traits of life, whether in intellect, in character, in ideas, in habits of thought, or habits of expression, come to be scrutinized and weighed, each man, each woman is entitled to be considered fairly, according to the texture and the qualities of their own nature, so far as they are developed on the testimony, although it differs from *your* nature, or *your* nature, or my nature. That is fairness; but at the bottom we must judge them as men and women. If they are angels, we have no mode of judging about their conduct. If Mrs. Tilton is all spirit and no body, and Mr. Tilton is all body and no spirit, we haven't any mode of judging of such abnormal characters. We assume that intelligence, education, experience on the part of Mr. Tilton, expose him to our judgment as of a man thus having his faculties, large by nature, sharpened by education, hardened by experience with the world; and it is—and I put it in the utmost good faith to you, as I have all my illustration and my argument on the question of the probabilities of his having been a deceived husband—I put it to you that it is one of the greatest improbabili ties in respect to his intellect, in respect to his character, in respect to his experience, in respect to his life, that it is possible to impute to another. I could almost as soon expect to convince myself that he is not six feet high, that he has not a beautiful rhetoric and accomplished taste, and educated faculty of rhetoric and of speech, as to convince myself that with this power of intellect, and with the traits of heart that this evidence displays, and with the sharpening of all the observations and elements of judgment that treat of this domestic calamity of an invaded household, that he should have been its victim. There is no satire and no sarcasm about it.

WHAT WAS NOT DONE WITH MR. BEECHER.

My point is that there has never been a reason for his suspicion, that there has never been a fault on the part of the wife, that he is not the husband of an adulteress. Now, gentlemen, laying out of view, then, the trivial and feeble and worthless evidence that bears upon the question of the guilt or the innocence of two excellent people, what is there in the ordinary experience of mankind on these questions, or on the maxims of safety and security that the law and common justice have provided for such controversies—what is there left to inquire about? I think, as I have said, that but for the great

ultimate fact of the question of the vindication of Mr. Beecher against this impeachment, there would be no further inquiry. I think the intelligence and the experience of every juryman were appalled at the poverty of a judicial examination, when the plaintiff rested, that had simply reproduced the pamphlets of last Summer, and the words that flowed from their mouth; but yet you were kept in expectation that Mr. Beecher, who knew all, and who knew, if he came upon the stand, even if he did not fear God, might fear man and his punishments, said he never would come upon the stand; three oaths of witnesses were too many to be breasted by a man that was to tell a lie. They were altogether too many; but they were not too many to be breasted by a man who knew the truth and was going to tell it. If you watch the tortuous courses of the evidences drawn hither and thither, of Mrs. Moulton and of Mr. Tilton, you will find that there has been a very great ingenuity exercised to avoid misstatements that carried imputations of consciousness of falsehood, when any such statement ran against *two* witnesses that could speak and contradict the same thing; for the law of perjury, which refuses that a conviction should take place for false oath, by the oath of one witness speaking the contrary under oath, allows the judgment to come if there be two witnesses, and the jury believe the two against the one. And so, day after day, this unhappy human nature of ours showed its qualities so discreditably to it, in the bravado, and defiance of Mr. Beecher to come upon the stand; and then, when he came upon the stand, I will agree that most of that sentiment slunk away, and, without waiting for his testimony, knew that he would speak the truth, and that the truth was innocence. But you heard him testify, you heard him cross-examined, and had heard also the immense expectations of what cross-examination was to do. Well, it was as able, it was as discreet, it was as vigorous, it was as skillful, it was as intrepid, it was as comprehensive, it was as penetrating, it was as severe, as it is in the nature of cross-examination, by any forensic powers that our community furnishes. And then they said, "Oh, wait for the rebuttal;" these men have kept back the damning facts, in order that Beecher might have put himself in their power, giving his oaths and his denials. Well, he had; he had put himself in their power if there were any truth or facts or witnesses to speak against him. That was right. Nobody appeared against him. Mr. Bell and Mr. Bowen gave testimony which, in its volume, and in its application, was as valuable to this defendant's case as any witness that was produced on our side, as I shall show you.

THE ROSSEL PROCESSION.

And leaving them out, why a string of people about the relative positions of Mr. Tilton, Mrs. Woodhull and her sister in the Commune procession, filled out the body of the rebuttal. Well, it never was a matter of any consequence what relative positions these people held among themselves in that procession. Honest witnesses, certainly witnesses with whom we had nothing to do, were clear of the opinion, are clear of the opinion, wrote the next day in the newspaper statements of it, published to all the world, of the relation of these processionists on that march. Others come and give you a tangled maze, reduced, finally, on the part of the great political leader who nominated Mrs. Woodhull for the Presidency, to the final conclusion that all he could say in respect of the march, or its order, was that the procession marched. [Laughter.] The Chief-Marshal said that he saw them both, Tilton and Mrs. Woodhull, and her sister, Miss Claflin, not connected in the way that our witnesses said, but so that when as he marched at the head of the procession and turned around, he can take in all their persons at a glance of his eye; and Mr. Tilton and Mr.—the Pantarch—Andrews, he swore that they were not in sight of one another. Now, do you believe that the Chief-Marshal, by turning around could see them in the same glance of his eye, and in the same division of the procession, as he said—for he was not on horseback, he was not mounted, he could not see any further than anybody else—and that Mr. Tilton and Mr. Andrews, and Mrs. Woodhull did not know where each were in that procession? Well, I don't know that the Chief-Marshal was right. I have no doubt he was entirely honest. It is difficult to say who is right about all that. But the only merit of this controversy about the relative and accurate positions and relations, is on a question of veracity, or on a question of exposure to contradiction and contrariety without there being any want of veracity on either side. The great point on which that evidence was introduced by us was to show that Mr. Tilton and these ladies in that communion or association, that had been introduced into the case by Mr. Tilton's evidence—the plaintiff's evidence, not personally, perhaps, but the evidence on his side—carried it so far that they sympathized in public principles, and included in that sympathy the procession in honor of the Commune, which had the history that it had; and included in its history the murder of the Chief-Justice of France and the Archbishop of Paris. It is seldom, if your Honor please, that our profession has, in the experiences and exposures of life, so noble a sacrifice as was there made by the Chief-Justice of France. Held, like the great head of the clergy, the Archbishop of Paris, among the hostage of this mob; they, the mob, the Commune, desired the Chief-Justice to be a bearer to the Government at Versailles of their desire for some terms of capitulation and surrender, on his pledge that he would return if terms satisfactory to them were not accorded to them. He said, "No, I cannot go on that errand. The Government of Versailles will never recognize any obligation to a mob like you. They will never

allow me to return; it cannot be that they will allow me to return. No power of my will, no adhesion to my promise, no protestation can ever save me and the cause of truth and faith among men, from the condemnation that I have violated my pledge and my honor. I cannot go because I cannot return." And he submitted to the slaughter, and showed what a lawyer can do at the post of honor, and duty, and in maintenance of his own honor, and, more important still, of faith in human nature that there are men that can keep a promise. The clergy, from the time of the Apostles down, have had the crowns of martyrdom widely distributed among them; and in modern times it has been the singular honor, when martyrdoms, when cruelties, when the fierce hatreds against religion and morality have been subdued by the prevalence of religion and mercy—it has been the singular honor of the Catholic Archbishops of Paris to furnish within our time two martyrs to their religion. I am as much a Protestant by birth, by education, by conviction, as anybody, but I would like to see the rivalry between the old Church and all the branches of the new, and then among all the branches of the new an emulation of Christian faith, duty, courage, hope, and labor. That is my view of the advantages of the emulation among good men.

Well, this procession was in honor of the Commune, that had made these sacrifices of the noble men of France. I am not to dispute the freedom of conscience, the freedom of thought, the independence of action, that belong to men having the courage of their opinions and manifesting them. I question nobody's motives in the procession, provided only they accept the facts, and have the courage to stand by them.

MR. TILTON'S POLICY OF SILENCE.

Now, gentlemen, this cause must be explored, in what constitutes the great volume of the evidence, almost entirely, as it seems to me, within the sphere of moral evidence. No doubt, some tests are necessary, on legal principles, as to the degree of credibility of the witnesses, as compared with one another; or, on particular points of evidence, where they may differ. And, gentlemen, I shall assume for the witnesses upon our side no different measure of moral or legal test for your belief in them than I accord to the witnesses of the other side. Errors of memory are as likely to happen to witnesses on one side of a cause as to witnesses on another side of the cause. Errors of memory are likely to happen even among intelligent witnesses and conscientious witnesses. Nor, shall I presume that, because Mr. Tilton is plaintiff and maintains his theory, that his evidence is to be probed, or trusted, or in advance accepted, less favorably than Mr. Beecher's. I propose to test him and Mr. Moulton, and Mrs. Moulton, by the same rules of candor, of justice, of good sense, as I ask to have applied to any of the witnesses on our side. But, that includes the question of character, not as involved in the controversy, for that would decide the controversy in advance, but as exhibited by life, and conduct, and maintained in repute, as shown by them in motive, in candor, in intelligence, in accuracy, in good faith, on the stand during the trial. And, then, I propose that each, witnesses for us and witnesses against us, should be compared in your judgments, for the diminution, or the confirmation of your confidence in them, to the contradicting or the supporting of the evidence, of testimony, given by witnesses in support of either one or the other in this controversy.

The theory of the plaintiff is this, that up to the breaking out of this matter of difference between him and Mr. Beecher, or up to a date of some six months preceding, his wife and he held such relations to each other and to their children and to the family as were properly described as an ideally happy home. But I won't hold to epithets—that, up to that time, the sentiments, the feelings, the conduct of each as known to each, their feelings toward each other as expressed, their daily life as seen to the most inmost inspection, was such as belongs to a family in accord, of elevated character and conduct and of happy sentiments toward each other; that the only intrusion, the only rupture, the only discord, the only dissonance, came from the seducer and through his debauchery; that under (to be sure, they must admit) circumstances of grave import in the affairs of Mr. Tilton, unconnected with this disturbance of domestic happiness—I mean, the disasters which he came to, as between him and his employer and in regard to his employments, his prospects, his livelihood, his fortunes, and his good repute—in connection, I say, with these disasters and this situation which had no relation to the intervention of Mr. Beecher—in connection with them, it became suitable in protection of the good name of his wife, and the fair fame of his children, that he should come into relations with Mr. Beecher to guard against the casualty of a controversy between Mr. Beecher and Mr. Bowen, insensibly and thoughtlessly drawing into it this aspersion and this disgrace to his family; that thereupon all the purposes of all the interviews was to secure that result of secrecy. To be sure he had no idea that Mr. Beecher would on his own account desire to explode and expose the matter. He was quite sure that his wife was nervous and sensitive as to any exposure coming from her; and in respect to himself, why he would have "lost confidence in human nature" if he didn't suppose he would want to keep it secret. So you have then thereafter, when the secret is known to these persons on their own theory, the most ponderous system of machinery to keep the secret, the most extensive and elaborate reduction of it to writing, apology, and defense, accusation, argument, reasoning, all put into the permanent form of writing, and then a

judicious, to be sure, and circumspect communication by Mr. Tilton to a handful of friends, or those who he thought ought to know about it, in order to secure the secret; that then there came to be a necessity of suppressing or humoring to the result of prevention any hostile promulgation of this secret on the part of certain interests which would lead, for the public good, to its promulgation —I mean, the publication in the interest of the opposite opinions of society and religion of this exposure of the conduct of good, excellent people, and that then there came to be a prolonged, a manifold, diversified, intricate series of confidences, efforts, plots, falsehoods, to keep the secret that had thus been communicated and had run down the streets like water; that, in that, there came to be the necessity of a compulsory association by Mr. Tilton, and by Mr. Moulton, as his coadjutor, and by Mrs. Moulton as the wife with persons whose association, as it runs through this evidence, as produced by the plaintiff, is denounced by him and his witnesses as discreditable in a very high degree; that that policy, judicious, deliberate, circumspect as it was, failed, and there came to be an outburst of the Woodhull and Claflin promulgation in the end of 1872; that, then, it was necessary to have new devices and conferences to put the secret back again where it was before the enginery for its suppression, ending in the result of its explosion, was first constructed; that this suppression was approached, success was again frustrated, and, finally, duty compelled Mr. Tilton to reverse the policy of saving his wife and children and commencing their destruction; that all the while Mr. Beecher, as he run along as a party to these confidences, these conferences, and these plans, was leading a life and exhibiting lines of action and conduct which were in the nature of circumstances, or argumentative confession; that in regard to the collateral or interior arrangements which sprung out of suspicious accusations, examinations on the West charges, or on the inquiries concerning Mr. Tilton's continued membership of the Religious Society of Plymouth Church and its responsibility for him, and during the council called by the neighboring and sister churches from the general denomination; and then in the intolerable wit of Dr. Bacon, which galled Mr. Tilton, came the final and definite promulgation of the scandal in the Bacon letter, followed then by the formal, sworn accusation of Mr. Tilton, by the evidence contradicting, refuting, suppressing it, and relieving Mr. Beecher, and then by the bold, irresponsible, unmeasured accusation of the public press after the trial was over by the long, elaborate papers of Mr. Moulton and of Mr. Tilton.

MR. BEECHER LIKENED TO ST. PAUL AND THE VIPER.

Now, gentlemen, that is their theory. They thought that the boldness, the heinousness, the elaborateness, the circumstantiality of the charge, including picked items of evidence, selected pieces of Mr. Beecher's handwriting, reënforced by a foul accusation that had nothing to do with the relations of Mr. Beecher with Mrs. Tilton (except in the way of blackening his character and preparing public belief to believe him a scoundrel and a debauchee) I, mean the the Proctor imputation, was thrown into the elaborate denunciations of Mr. Moulton under the council of a wise adviser, as he was regarded, and with the purpose to strike to death in the public judgment, forestalled, excluded, derided, the question of resistance, of inquiry, and of truth. Out of all this heat there came a viper, as when that reptile fastened upon the hand of St. Paul, but the apostle shook it into the flames, and the barbarians looked to see that he should have swoolen with the poison or fallen down suddenly, for they thought that he was a murderer that vengeance had pursued in the form of a viper. But when they had waited a long time, and the Apostle showed no change, they changed their mind and in the same rudeness of superstition they said, "He is a God." The viper did as little execution upon the physical life of the Apostle and came to as speedy a death himself as the malignity of this poisoning of the life blood of character has accomplished upon Mr. Beecher. It was a terrible trial, a terrible ordeal. No man would wish to be exposed to it. But, nevertheless, when the best test came, better than the oath and the judgment of jurymen, however conscientious and however intelligent, under the limits of testimony, which after all is but ragged and piecemeal compared with the knowledge of a man's life by men who have known him always, when the Christian men and women that knew Mr. Beecher for twenty-five years see him in their houses, and in his and their church, and see him in the world in all his labors and in all his conduct, when they without dissent confirmed his virtue, and their virtue quite as much, by their judgment, they had shown the difference between Christian men and women and barbarians. For they did not wait to see whether he would have swollen under this poison, or whether he would fall down suddenly, for they knew he was not a murderer, and they did not fear the viper or his poison.

THE THEORY OF THE DEFENSE.

Now, gentlemen, the general theory of the defendant's case is this: that the relations of Mr. Beecher and Mrs. Tilton were, in the judgment, feeling, and apprehension of both of them, as Mr. Beecher understood while those relations were growing up and going on, entirely moral, faithful, true, wholly above suspicion on the part of others, as they were wholly free from sus-

picion that there could be misconstruction on their own part. Both these people recognized the duty not to be led willingly into temptation, both recognized the external duty of avoiding the appearance of evil, and neither of them imagined that in either carelessness or attraction there was anything that was not as open as the day, and that was not as clear in the inspiring motives, and in the actual sentiments developed in that intimacy, as the best and severest judgment could require; then, that by what was a revelation to Mr. Beecher, the desertion by the wife in the month of December of her husband's house and his protection, and an appeal to the judgment of the pastor and so, gladly, of his wife, on his suggestion, and then of the church, if that should be thought advisable (in respect to which Deacon Bell was consulted), there came to be a very distinct and very lamentable occasion to discover the household not to have been happy, and growing faults, and growing discords, and growing opprobiums, and growing dangers, such as to require a definite course of action to dissolve that family for temporary and restricted opportunities of safety to the wife, and of hope for correction, remonstrance to the husband; that that matter came to an end, so far as Mr. Beecher was concerned—so far as it was an element of duty or of consultation with him, or on his part; that then there came to be a new and equally sudden, and equally unexpected, and equally intelligible assault upon him in the name of Theodore Tilton, brought to him by Mr. Bowen on the 26th of December, in which, with all the pride of an emperor, Mr. Tilton required Mr. Beecher to quit further obedience to the duty of preaching and to leave Brooklyn. That came to an end so far as Mr. Beecher, or so far as disturbing him, was concerned, in about five minutes after it was communicated. That was the end of that, and he neither inquired nor cared what wild inflammation of enmity or of suspicion had started this arrogance or this malice of Mr. Tilton. The testimony leaves all this undisputed, that he did not move a hair's-breadth or seek for any interview with anybody, and when my friend Mr. Fullerton, thinking he was going to put a poser to him, said, "Then you settled down on your indignation, did you, all that week?" Mr. Beecher answered, "No; I settled down on my work;" and that is exactly what he did, and that he has done always at every stage of this matter. There has not been an interruption, whether with alarm mainly for others—mainly for Tilton and his family, or disturbance or appreciation of the turmoils and bewilderments that would grow out of irresponsible and unregulated meddling by people in other folks' affairs—none of these have interrupted a sermon, a prayer-meeting, a pastoral duty, a public service, or a night's rest. That then in the same week of the 26th or 30th of December, Mr. Tilton opened to him grounds of complaint which he had against him, which were serious and which excited serious commiseration for the disasters that had fallen upon the family, the prospects, the fortunes, and the livelihood of these persons, for whom everything from the beginning to the end shows that Mr. Beecher felt a great regard, and, although he might not approve Mr. Tilton, a great responsibility and anxiety for his restoration; that thereupon Mr. Tilton's character and life, as Mr. Beecher had rashly misconstrued it on insufficient evidence, was restored by the asseverations and the intimate knowledge of Mr. Moulton concerning it, and any part that Mr. Beecher had taken in either increasing, or confirming, or assuring Mr. Bowen's resentment, condemnation, and dismissal of Mr. Tilton, became the occasion of self-reproach to Mr. Beecher. But more than all, that Mr. Tilton complained then, that there had been bred in the affections of his wife a strong attachment and a conflicting feeling as between Mr. Beecher and her husband, that had qualified, had reduced, had disparaged the absolute devotion and the unquestioning submission that had formed the whole fabric of their marriage before; and then that this lady had, either by some confusion of mind, or by some unhappy subordination to a wicked purpose, to make peace with her husband, been led into making an extraordinary accusation of himself. I do not take up the details of interviews or of statements until I come to them directly upon the testimony; but we shall see that under the impulses (which were pressed upon him and developed and executed by these parties) of commiseration toward the family suffering these unhappy disasters, and of self-reproach for any share, either in these external matters, or, more seriously, in the unconscious and careless and thoughtless progress of a woman's attraction beyond the duty of undivided submission to the husband and special devotion to him, Mr. Beecher was led to concur in the great duty, as well as the unmixed interest, that there should be a reparation for the broken fortunes of this family as far as justice and truth, kindly and liberally measured by affection on his part, should carry him; and above all, there should be an exclusion from the public eye of these unhappy dissensions in the family and of any connection of himself, however innocent, as their cause; that thereafter, what was called a "policy of silence," which he supposed was an honest, an open, an upright purpose in good faith to secure the protection of this family, as it was pressed upon him by Mr. Tilton as the sole object of his resort to him, and by Mr. Moulton, as Mr. Tilton's agent and friend, as the first duty, the indispensable duty to precede, or make possible, the restoration of the external fortunes of Mr. Tilton; that under that everything that was done, everything that was said, everything that failed to be done, everything that failed to be said on his part, was subordinate to, was in good faith conformed to, was a necessary and faithful maintenance of his duty as pledged, and as supported by every moral and religious consid

eration. Then that all the efforts in regard to the improvement of the affairs of Mr. Tilton, to the establishment of a paper for him, and in regard to pecuniary assistance, were all faithful, honest, and just efforts, liberal if you please, growing out of an exaggerated sense of duty and responsibility on Mr. Beecher's part, but still, in accord with his whole nature in all that he has ever done, all his life—that all these efforts, which have been turned into arguments and evidence of consciousness of guilt, to be suppressed or bought out of from this husband and his friend, by a party involved in guilt, were all of this elevated, straightforward, plainly intelligible character and motive; that all anxieties, that all efforts, in any form, were simply to maintain unbroken, against strangely inexplicable and adverse influences, as we now look at them—to maintain unbroken this good faith and this promise and prospect of restored domestic confidence and improved business relations for this family.

Now, gentlemen, the range of this evidence opened itself under the plaintiff's introduction and presentation of his case. This fact of adultery, which usually is open to proofs of the nature that I have proposed to you, and which, when it could with such confirmatory confessions as, under a just scrutiny, may be accepted and trusted, could take but a very short time, was made, under their lead, to consume many weeks, to involve an examination of Mr. Tilton himself, that covered, I believe, in the direct form, over eight days, and of course involved a considerable consumption of time in cross-examination; that on the part of Mr. Moulton covered many days, and on the part of other witnesses took a considerable time, and involved an examination of all these lines of conduct, and all of them exposed to you, and presented under the oath of the plaintiff, and of his supporting witnesses in maintenance of his theory of the case. Our duty involved us in the necessity—for we could not stand upon points of law, or appeals to the arrest of irrelevant inquiries which went beyond any of the actual and substantial evidence that could support any verdict, whatever your conclusions might be upon them, without being exposed to the imputation of excluding Mr. Tilton's evidence, or of excluding some inquiry that might suppress the truth, our duty involved us in the necessity of meeting the plaintiff's evidence by that which we have presented to you. We never, gentlemen, have given any evidence in this case by itself for the purpose, of itself, and by itself, of aspersing, depreciating, or injuring Mr. Tilton, outside of the relations to the proofs of the accusation here. Nor have we given one word of testimony with the purpose of affecting what is called the question of the damages that should be recoverable against Mr. Beecher, by showing, as is permitted by the law, and as, in many cases, may be proper when there is a contest involving money sought on one side, and money sought to be saved on the other—we never have given one word of testimony with any such purpose as that. All our evidence has been to meet the false views of the condition of that family in respect of peace and happiness; the false statement that any disturbance of that peace or happiness came from the intrusion of Mr. Beecher, or any other seducer; the false view that the complaints against Mr. Beecher grew out of that interference; the false pretension that Mr. Tilton owed his disasters, in respect of Mr. Bowen and employments, to any malignant influence of Mr. Beecher, instead of to his own damaged reputation and his own misconduct; and such necessary disclosures bearing on that question as grew out of Mrs. Tilton's resistance to further reproaches, and further disgraces, and further oppressions from the misconduct of her husband. That the pretenses of Mr. Tilton that there was no selfish or sordid motive and object in the impressions, and the false impressions, which he desired to produce upon Mr. Beecher's mind, in order to secure his aid, his commiseration, his good disposition toward him, that those pretenses, I say, of the want of a sordid interest upon Mr. Tilton's part, had no foundation; and, as we go into the details (it is not worth while now to anticipate them—it would be a useless consumption of time) of the motive and the character, as pretended on the part of this plaintiff, of his associations and his efforts with Mrs. Woodhull, whatever they may have been we shall find that the pretense that they were excited, were measured, were directed by any interests or any relations of Mr. Beecher's, is equally false; that those relations, whether they were suitable or unsuitable; whether the lady is of a character, and her house of a repute that made the visits of Mr. Tilton, of Mr. Moulton, and of Mrs. Moulton suitable or not, did not grow out of, and were not measured and numbered by, any interest or any feelings or wishes of Mr. Beecher; that in regard to the measures and efforts by which money came into Mr. Tilton's pocket, all the pretenses that those measures and movements were but for the just collection of a conceded debt, so far as Bowen was concerned, were untrue; and that, in respect to the contributions to Miss Bessie Turner's support at her boarding-school in Ohio, the pretense they were in Mr. Beecher's interest for the suppression of a scandal against him, were equally false; that there was in her removal the object of the protection of Mr. Tilton's reputation, against her knowledge and her probable evidence, if occasion should arise, and that Mr. Beecher's relations to the matter began and ended with the idea suggested to him that Mr. Tilton's means did not permit him to bear the expense of this measure to which he resorted; that, when there came to be either an actual resort to pecuniary contributions, to make up a fund to carry along the enterprise that had been founded, by the friends of Mr. Tilton and Mr. Moulton, without any contribution by Mr. Beecher—I mean *The Golden Age*—and when it came to the point where it was represented

by Mr. Moulton that without a considerable sum of money, some thousands of dollars at least, the enterprise must come to an end, but if tided over this period, it might hope for an established prosperity, and when a generous friend of Mr. Tilton had been ready to furnish the means, and had impressed Mr. Moulton with her munificence, but when that high sense of honor and delicacy which characterizes Mr. Tilton made it unsuitable that he should accept such friendship, that then Mr. Beecher, under these motives, and only these motives, of endeavoring, of professing, of desiring, to do all that reasonably, or unreasonably, could be asked from generosity and friendship, gave the contribution that has been put in evidence before you. Now, in running out those lines in counter-movement to their production of those lines of evidence, there has come necessarily into display a large area of Mr. Tilton's conduct, concerning which he originally gave his views as true, concerning which we endeavored by cross-examination to get at least a reasonable statement of what the truth really was, but concerning which it became our duty, by evidence exposing his conduct, of certainly a not very agreeable character with certain unnamed ladies, and the real length and breadth of his admiration of the character and the principles of Mrs. Woodhull and her new dispensation, to traverse and collect from the region which we traversed a combination, a variety, a weight, a power of damnatory evidence which has, in your judgment, not with any complacency to my client, or my client's counsel, put this matter upon the footing of truth.

THE LETTERS IN THE CASE.

Now, gentlemen, in regard to the antecedent period, before we come to the first movements of actual opening important relations to this controversy, I mean the month of December, 1870. Now perhaps all that I need to add here to what I have already laid down as the length and breadth and utmost scope and impression of the evidence of such relations as existed between Mrs. Tilton and Mr. Beecher—I need, I say, perhaps only to add to that that no love-letters of any kind have been offered or pretended to exist between these parties, Mr. Beecher and Mrs. Tilton, during the whole period of their acquaintance down to this very month of December, 1870. Not one letter. All the letters of an inculpatory character that have been produced in this case, of written communications between the paramour and the wife, have been letters written by Mr. Beecher after the accusation, and the whole apparatus and machinery of the December and January and February interviews had been through with, or while they were going on, openly left by the wife, as she left everything when she left the house, exposed, and her taking with her, as her husband said, nothing but his love and good will, which she still had. And, in respect to the letters to Mr. Beecher from Mrs. Tilton, they were all after the explosion, all during the periods of arrangement, or after the period of reconciliation, and all, so far as my memory goes, made as deposits in the hands of Mr. Moulton. Well, now, that is a very odd state of things. They were letters begun after the situation has been made public to the husband and his friends, and we actually have had, I think, not much on this trial. Still, I cannot say what my learned friend may think his duty and the truth of the case may call upon him to say in his behalf when he follows me; but I think not much on this trial, but in some publications that are part of the public history of the case, some of these letters have been made the occasion of the basest and vulgarest interpretation, such as I am sure Mr. Tilton in his senses could never have imputed to his wife, for he has said to you that there was nothing lewd could possibly find a lurking place in the heart or the life of Elizabeth Tilton. And on the part of Mr. Beecher these subsequent letters have been made the imputation against him of gross and coarse vulgar equivoques that were introduced to the notice of an exasperated husband, and of a largely experienced friend, in matters of common life (Mr. Moulton), and first have their appearance in the life or the writings of Henry Ward Beecher in these subsequent letters. Well, gentlemen, this proves, as all such efforts do prove when tested, evidence in favor of these parties. Rightly explored, sensibly and naturally read, there is nothing in them but the most elevated expression of feeling and purity. But if there is in these letters these coarse, loose, lewd exhalations from the heart of Elizabeth Tilton, what becomes of the theory; the comprehensive, and, as I believe, the honest testimony that Mr. Tilton has borne to the absolute purity of her thoughts as well as of her heart—what becomes of the generous, simple, complete, all-comprehensive confirmation of this purity of mind and of heart which Mrs. Bradshaw, their witness, has given, in a phrase of singular power, when, in addition to her delicacy, her morality, her piety, her devoted love to her husband and her children which this lady said remained unbroken down to the time she spoke of, 1872, she added that she was the cleanest minded woman that she ever knew. And, how of Mrs. Ovington's estimate of this friend and sister, of whose purity, whose piety, whose words of love and affection and duty to her neighbors and her household Mrs. Ovington had so rich an experience in her watchings and ministrations, her visits in the sickness in her family, whether of herself or her husband—she, Mrs. Ovington, as honest, as open, as clear-minded a woman as ever lived; but Mrs. Ovington has no idea that Elizabeth Tilton is not in all these regards up to all the imaginations of men or poets, of the dignity and elevation of her

sex. Ah, what a terrible imputation upon the plaintiff, if he now presents, or if, under his instructions and inspiration, the learned counsel, taking these instructions and inspirations from him, imputes obscenity, vulgarity, as the hidden meaning of the innocent expressions of these letters, which, as I say, show themselves as envoys into the exasperated camp of the husband, and in her answer as delivered to the keeping of the mutual friend.

OTHER GENERAL TRAITS OF THE PLAINTIFF'S EVIDENCE.

Now, gentlemen, there is another general proposition to which I wish to call your attention, and which the experience of judges and of lawyers, and, I think, the experience of common life, will show you carries great significance. There is not any evidence that is brought into this case after I have left the area of what may be called circumstantial evidence but which comes to nothing; there is not any evidence that comes into this case that does not have its origin, not while either seduction or adultery is going on, but long after both had come to an end, and long after both, if they ever existed, had been discovered. There is not a word, an act, a movement, a construction upon Mr. Beecher's conduct that does not have its origin subsequent to the 29th day of December, 1870, having the first pretense of any such evidence originate on the 30th day of December, and not one word of evidence produced out of the mouths of the witnesses, repeating what they say, came from his, that didn't have its birth after and upon the voluntary, the earnest, the exacting requirement that Mr. Beecher should be careful not, by any heats of controversy with other people, to impair the security of the honor of Mr. Tilton's family. Confessedly every word that is produced here as coming from Mr. Beecher's mouth has come after and under the benevolent purpose of suppressing the approach of suspicion, or of combination, of a breath against the fame of his wife and his children. Nor, in respect of Mr. Moulton, except as brought into being as between one who confides and one in whom he confides, upon their own showing, nothing ever passed from Mr. Beecher to either of them under that confidence that betrays guilt or consciousness of guilt; but much did pass that proceeded warm from his heart, in sympathy for the condition, in love for the afflicted parties, and in effort to relieve and restore; and all that comes to be the subject of evidence before you out of the mouths of men who avow that the utterances of Mr. Beecher and the freedom of confidence and of confidants grew out of the demand, the entreaty of Mr. Tilton that his wife, who was the subject—no matter what the subject was, for that we are not now discussing—should be protected, and of Mr. Moulton, that they were bound by their efforts to repair the mischief that had overtaken with such rapid and complete disaster the external circumstances of Mr. Tilton. Now, I deal with their own showing, and that introduction don't attract confidence.

Another most extraordinary and universal trait of this evidence is that it all comes, every bit of it, out of the Moulton mansion, and none out from the house of Mr. Beecher or the house of Mr. Tilton—none, I mean, of any extent or measure, and the only exceptions are of the interviews at Mr. Tilton's house which grew out of arrangements made through Moulton. Now, there in the Moulton house is the hotbed in which this testimony has been raised. You look for facts; you look for conduct to arise in the domestic establishments of the two parties to criminality of this kind, and during the time that the alleged familiarity and the guilty connection subsisted; but, as I have shown you, there is not a particle of proof that does not have its birth after it was all over, does not spring out of confidence in the interests of the family that was injured, and of coöperation in the friendship that was proffered by Moulton for the restoration of the broken fortune, and none of it that does not come out of the Moulton household in the person of its head, and of its familiar guest, who there had his lodging, not often perhaps, but his meals certainly, or, as Mrs. Morse says in one of her letters, in Elizabeth's broken circumstances he could not find at home food sufficient for the nourishment of his brain.

AN ADJOURNMENT TO TUESDAY.

Judge Neilson—Gentlemen of the jury, you will remember the other day something was said about our working on Saturday unless the counsel closed their argument to-night. Since then we have lost part of a day. Now, it lies with you to say whether it will suit your views to attend to-morrow.

The Foreman—May it please your Honor, I would say that the jury are unanimous in objecting to holding court to-morrow. One of our number is in feeble health, and others have very important business of their own that they wish to attend to.

Mr. Beach [exhibiting a package of papers]—If your Honor please, that package of papers has been sent in by the officer in attendance, who says they were handed to him by a little boy, and they seem to be addressed to the jurors individually. They are a sort of elephant on my hands, Sir; I don't know what to do with them.

Judge Neilson—I think you had better keep them.

Mr. Beach—No, Sir; I cannot keep them. I don't know what papers they are, but I think it would be at least judicious that your Honor should open one of the papers to see what it is, and from whom such messages to the jury come.

The Foreman—May it please your Honor, we would like to know about Monday, whether it is a legal holiday?

Judge Neilson—We are not at liberty to sit on Monday. The statute provides that the day shall be set apart from business, and we who administer the law are bound to see that it is not broken after it is made for us; and, therefore, when we adjourn we will adjourn until next Tuesday morning at 11 o'clock.

Mr. Beach—Your Honor will permit me to pass those papers to you?

Judge Neilson—I will look at one of them.

Mr. Beach—Your Honor must exercise your discretion and indulge your curiosity, as far as you please.

Judge Neilson—I will take the liberty of opening the one that is addressed to the foreman, as I have the pleasure of knowing him. [After opening one of the papers.] It is an illustrated paper, Sir; quite harmless.

Mr. Beach—It is what, Sir?

Judge Neilson—It is an illustrated paper; yet, I will instruct the Clerk to keep the papers until the jury have performed their duties; and then, perhaps——. [Laughter.] [To the jury.] We now adjourn until Tuesday morning, at 11 o'clock, gentlemen; and I hope to see you here in good health.

Mr. Beach [To the jury]—I am sorry to have deprived you of fun.

The Court then adjourned until Tuesday morning at 11 o'clock.

NINETY-FOURTH DAY'S PROCEEDINGS.

ARGUMENT OF MR EVARTS RESUMED.

DIFFERENCES BETWEEN MR. AND MRS. TILTON IN 1870 CONSIDERED—CONDITION OF MR. TILTON'S FINANCIAL AFFAIRS EXPLORED—RELATIONS OF MR. BOWEN AND MR. TILTON GONE OVER—HOW MR. BEECHER'S TESTIMONY WAS AFFECTED BY THAT OF MR. BOWEN—WHO DESTROYED MRS. TILTON'S FAMOUS LETTER.

TUESDAY, June 1, 1875.

The argument of Mr. Evarts in summing up for Mr. Beecher was continued to-day.

The first part of the argument, which was devoted to the alleged separation between Mrs. Tilton and her husband in December, 1870, was very long and elaborate. Asserted contradictions between Mr. Tilton's testimony in regard to a conspiracy to separate himself and his wife, and the statements on that matter in the "True Story," were pointed out. The testimony of Mr. Tilton, Mr. Bell, Mr. Bowen, and others was made to bear upon this topic, and the subject was developed by the orator with great care. The condition of Mr. Tilton's finances at the time of his discharge from *The Independent* was exhaustively considered. Mr. Evarts asserted that Mr. Tilton had endeavored to pretend in court that he was a man of property and of assured income, and that the pretension was false.

The "Winsted affair" was explained, and Mr. Evarts pointed out the object which he had had in view in putting certain questions to the plaintiff, and the alleged inconsistencies and contradictions in his testimony. Points in the evidence seemingly far removed fnom one another were connected by the chain of reasoning pursued in developing the argument. The interview between Mr. Bowen and Mr. Beecher was taken up. Mr. Evarts declared that Mr. Bowen had acted with Mr. Tilton because he desired to put Mr. Beecher out of the rival paper to *The Independent*. The preparation of the letter which Mr. Bowen carried from Mr. Tilton to Mr. Beecher was amusingly described. The alleged corroboration of the testimony of Mr. Beecher by that of Mr. Bowen, which has been so often referred to by the defendant's counsel, was dwelt upon with great force.

The alleged letter of confession got by Tilton from his wife, and afterward destroyed, was the subject of some of the keenest argument of yesterday's address: The orator declared that it had been destroyed because it would not help the plaintiff's side, which lost nothing by the destruction of the paper. "What would you give," said Mr. Evarts, addressing the jurymen, "to see that paper?" Then he continued, answering his own questions, which were delivered in a high key and rapidly, with great deliberation, and in a low, almost guttural, tone of voice:

"It is destroyed.

"Who destroyed it? Theodore Tilton.

"Who gave it to him to destroy? Francis D. Moulton."

THE PROCEEDINGS—VERBATIM.

MR. EVARTS RESUMES HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

The Clerk (Mr. Mallison)—The jurors can obtain their money for services in the month of May by calling at the Treasurer's office any time that suits their convenience.

WAS MRS. TILTON'S RESORT TO HER MOTHER'S HOUSE A DESERTION?

Mr. Evarts—Before coming to the first movements in the opening drama of this false accusation, I had endeavored to lay before you the situation of the parties as disclosed in their character, in their conduct.

and upon the evidence, as preparing you and your judgment for a just estimate of these movements as they shall come to be portrayed before you; and I do not know that I have omitted any incident or trait of particular import in regard to the relations of Mr. Beecher and Mrs. Tilton, and Mr. Tilton and Mrs. Beecher and Mr. Beecher—for with Moulton there were no relations on the part of Mr. Beecher, or on his part to Mr. Beecher, antecedent to these first movements, except this single item and element of proof which was adduced upon the cross-examination of the witness Bowen. It appears by his testimony, and undisputed, that as an incident or attendant of the actual interviews and intercourse which make the first approaches to this drama—I mean the interviews and intercourse in the middle of December which arose upon the wife's movement of flight from her husband's cruelty, disgraces, and oppressions—it was drawn out that Mr. Beecher referred Mr. Bowen to Mrs. Beecher, and to certain letters of Mrs. Tilton that were in her custody. Now, I do not anticipate at all the scene or the transaction of this attempted separation of Mrs. Tilton from her husband, but I call your attention to the significance of this merely incidental statement, that Mr. Beecher referred Mr. Bowen to his, Mr. Beecher's wife, as either the correspondent of Mrs. Tilton regarding these troubles, or the depositary of his letters received from Mrs. Tilton. There has been an aspect attempted to be insinuated into this cause that the antecedent relations between Mrs. Tilton and Mr. Beecher were of a nature, consciously, on his part, to preclude or discourage any intelligence of his wife on the subject; and yet here you find when Mr. Beecher was cross-examined, whether there were any letters received by him from Mrs. Tilton during the period antecedent to December, 1870, he answered that there were letters that had been searched for and found, and were in the possession of his wife, or of his counsel—found in the possession of his wife, and perhaps now in the possession of his counsel. Well, my learned friends had access, by the methods of the law, to those letters. They had a fund and a field for exploration there which was worth their while, if this husband had imparted to them any facts, or any sound opinion of the guilt of his wife; but they drew out no such letters; they sought for no such letters, in any sense that would bind them to their production, and they did not produce them. But it was reserved for Mr. Bowen, their witness, to let you further into the cotemporary fact at the time of these occurrences, that Mr. Beecher, in the end of December, referred Mr. Bowen to his wife for her intelligence and her views of the situation as between Mrs. Tilton and her husband, Mr. Tilton, and stated to him that she had letters received from Mrs. Tilton during the antecedent absence of Mrs. Tilton at Marietta. So you have, gentlemen, when you come to the beginning of this movement between the parties, no reason to think, no reason to fear, no reason to suspect, that there had been any consciousness, any concealment, any maneuvering, any change of the ordinary rule of that household, that all the correspondence of Mr. Beecher passed first through his wife's hands.

Now, gentlemen, there are two important matters of dealing, matters of situation, and of feeling growing out of the dealing and situation, which precede the time when the accusation is first made, and Mr. Beecher and Mr. Tilton first meet at its making and at his response to the charge. That occurred on the 30th of December, as we all remember. But there are two matters of fact, important in their bearing, that form a large part of the conscious knowledge of both parties at that meeting, which are presented in directly opposite views by the theory of the plaintiff and by the theory of the defendant, and in regard to which I challenge any answer from the learned and skillful advocate who is to follow me, to the propositions that I shall make. It is, that in regard to both these preliminary inquiries, the theory of the plaintiff, important, necessary to sustain the subsequent proposition to this theory, is not only utterly refuted by the evidence, but consciously false in his own knowledge, and the first of the series of impositions upon your intelligence and your consciousness that he expected to practice through the forms of law and evidence. These two matters that I refer to are the actual character and position of the first promulgation, not publicly, but outside of the walls of Mr. Tilton's household, of there being domestic discord, and an occasion to appeal for assistance; I mean the situation which is rightly described as the flight of the wife from the home of the husband, and an attempt to receive aid and advice and protection from the cruel circumstances in which she was placed. The second is as to the real situation of Mr. Tilton's personal, pecuniary, business fortunes, as they stood at and before the 30th of December. In regard to the first proposition, about the wife, Mr. Morris in his opening lays down this as the rule and view that they propose. Referring to the letter of Jan. 1, 1871, which they regard as in the nature of a letter of contrition, betraying guilt, Mr. Morris lays down to you and the court these views:

I presume that my learned friend upon the other side will have some explanation—at least, I hope so—but I have never been able yet to discover one. But at the time that this letter was written Mr. Tilton's family had not been broken up; he was living with his family, and although his contract with Mr. Bowen was ended, and his loss of the position of editor had taken place, it was entirely without the influence of the defendant, and therefore furnished no cause and no reason for this great grief which was manifested. * * * It is claimed, and has been claimed, that the feeling that produced that letter [that is, Moulton's memorandum of grief on Beecher's part] was brought about by the advice which Mr. Beecher had given Mrs. Tilton to separate from her husband. The point that I wish to call your attention to in this connection is this: that the advice, if ever

given at all, was not until after the 27th of January, 1871, as the documentary evidence that we shall introduce before you will conclusively establish. Especially, you have the strange anomaly of the defendant's mourning over wrongs not yet committed, if they were wrongs; over acts not yet done.

And so Mr. Tilton, on his direct examination, denies that there was anything in the way of separation, and of serious incompatibility of temper or of views of their domestic relations.

Q. Mr. Tilton, from the time you were married until your wife left you, as you have stated, about the 8th of July, 1874, was there any separation of home or residence between you other than such as happened by journeys or engagements that took you apart? A. No, Sir. Perhaps I should qualify that answer by saying that in the early part of December, 1870, Mrs. Tilton went two or three days to her mother's house, at her mother's request, and came back again. * * * It has since been called a separation. I did not regard it so at the time. I wish to be entirely accurate in my answer.

Q. It was a separation in the sense of her being away from the house, and at her mother's, a certain period of time? A. Two or three days, I think.

Now, not only in these two direct forms of the counsel's proposition, and of the plaintiff's own testimony, but all through, as an incidental light or an incidental observation was cast upon this preliminary situation, it was wholly to the point and effect that that amounted to nothing, that there was no reality in it, and that the pretense on the part of the defendant that there had been a serious, although perfectly justifiable—an important, though wholly suitable—intervention on the part of Mr. Beecher and his wife in the affairs of Mr. and Mrs. Tilton as between themselves—I say the proposition on our part that there had been, was treated as an afterthought and a subterfuge. In the light of the evidence, gentlemen, what becomes of this view of the plaintiff; and as it was a matter within his own conscious knowledge, as it had produced its rankling effect within his own breast, and had been an urgent motive with him in his conduct during this unhappy period of the end of the year 1870 and the beginning of the year 1871, what becomes of your faith, if the very foundations of the cause are thus laid in falsehood, and in conscious falsehood?

THE BEECHERS ADVISE SEPARATION.

Now, the evidence is very plain on Mr. Beecher's part, and he is uncontradicted, and he is supported by Bessie Turner, and finally in the most remarkable way by Mr. Bowen and Mr. Bell, their witnesses. It appears that there came upon Mr. Beecher in the beginning or the middle of the month of December, 1870, as a thunderbolt out of a clear sky, intimation of a terrible condition of injury, of contumely towards the wife, and of profligacy and cruelty on the part of the husband. Is there any doubt about it? Of the principal fact, and of the strange incident within the household that led to it, you can have no doubt. Of the principal fact that Mrs. Tilton deserted her husband's house, resorted to the protection of a mother little in a condition to afford protection either of support or of guidance to this unhappy woman, and that immediately thereupon the resort of Mrs. Morse, the mother, by and with the concurrence, if not the prompting, of Mrs. Tilton, was to Mr. Beecher, and the girl Bessie Turner was the messenger by which the knowledge was conveyed, and the invitation as well, to the meeting of the unhappy wife and her mother; that thereupon Mr. Beecher went to Mrs. Morse's, and after a brief interview, which filled his heart with anguish, he referred them to his wife as the better person for advice to a wife and a mother, in regard to so unhappy and so sudden a revelation; and then Mr. Beecher and Mrs. Beecher went together; and then interviews passed, the greater part of them in private with Mrs. Beecher, on the part of Mrs. Tilton or of Mrs. Morse; and then deliberation into which Mr. Bell, the deacon of the church, was called; and then a final conclusion, which, by a happy circumstance, came to be preserved, so far as Mr. Beecher's final concurrence or share of it was concerned, in the shape of a slip, which he handed his wife, as you remember, because he was engaged with company, and could not accompany her or talk with her. Now, Mr. Bowen, coming as a witness for quite other purposes, in the interest of this plaintiff, and talking in the main upon quite other matters, of importance, as we think, in support of our views of this case, shed a flood of light upon this business. As a part of the conversation on the 26th of December, after Bowen has opened to Mr. Beecher the budget of scandals, and reproaches, and complaints against Mr. Tilton which were crowded into his magazine, and which he had already considered and decided upon as involving the necessity of an absolute rupture between him and Tilton, Mr. Beecher introduces the corroboration of certain imputations he had heard, asking Mr. Bowen if he had heard of any difficulties, or of the situation of difficulty in Mr. Tilton's family, to which Mr. Bowen answered that he had not. And then there is disclosed to Mr. Bowen what was immediately recent in occurrence and in memory with Mr. Beecher, this whole transaction of the flight of the wife from her husband, an appeal to him and Mrs. Beecher, an examination of the case, the result of their views, and the reference to Mrs. Beecher as the person having most knowledge and having had the largest participation in the matter—and she had had. You will remember in the evidence how there was a long interview betweeen Mrs. Beecher and Mrs. Tilton at the house of Mrs. Morse at which Mr. Beecher was not present; and the views and opinions of this clear-sighted and watchful woman, Mrs. Beecher, were there formed; and when Mr. Bowen went to her, no doubt, they were expressed to him. Mr. Bowen had a reluctance to visit Mrs. Beecher, for he seems, in common with Mr. Tilton,

to be one of the men that Mrs. Beecher had seen through and discountenanced as visitors at her house for many years; and Mr. Bowen did not look with any great complacency on the interview with Mrs. Beecher, who had seen through him, and made him understand that she saw through him. But Mr. Beecher said, "No hostilities, no unpleasantness or fear of it, need prevent you. Mrs. Beecher will receive you; I will speak to her on the subject." And Mr. Bowen goes and talks it all over; and whether he sees the letters or not that had been received and were in the custody of Mrs. Beecher at that time, I don't know; but he had an opportunity to do so; there was nothing secret about it. And then Mr. Beecher resorted to Mr. Bell, a deacon of the church, a man of intelligence and of integrity, a man to be resorted to by the pastor, or by any parishioner, in case of difficulties of this kind arising that gave a right to resort to the advice and the guidance of the fellowship of the church. He tells you that Mr. Beecher then laid before him this whole situation and took his advice. We had endeavored to prove it by Mr. Beecher. We desired to prove it. We thought we had a right to prove it. But, the rules of evidence as administered by the learned Court under that division which permits proof to one side in aid of their views and excludes it from the other because it is in their favor, a rule of law well founded, of necessary and of valuable application, excluded it on our part. And when we tried to prove it by Mr. Bell when he was first on the stand the same just application of the same just rule of evidence as it was construed to be applicable by the learned Court excluded that testimony on our part. And, finally, they recalled Mr. Bell, and having found that they had no right to examine him as to one point that apparently they had called him to, they did go into a complete proof, on their examination, which we did not object to, of this entire evidence that they had twice excluded from us, in our earnest efforts to prove it. Now, that advice, that evidence is plain:

He stated to me—that is, Mr. Beecher stated to Mr. Bell—that he had been sent for by Mrs. Tilton to consult in regard to the position of domestic affairs in her own household; that she had left her husband and was then at Mrs. Morse's, her mother's; that she was in great trouble and great anxiety; that the conduct of her husband had been in a great many ways very severe, very cruel, and everything but what (I was going to say) a decent man's conduct ought to be to a woman. He stated that Mr. Tilton's conduct in regard to other matters, in regard to licentiousness, was very low. He stated that he had been called upon by a young girl—he did not mention any name—a young girl who had been in Mr. Tilton's family—and she had related to him circumstances occurring in the family, in the household, by Mr. Tilton, which were exceedingly licentious. He stated—I presume I need not go into the circumstances of the statement; I have sufficiently indicated what it was. He stated that, at last, Mrs. Tilton had been forced to fly from her home; that she had done so, and had gone to Mrs. Morse's; that she had sent, then, for him, to advise with him as to what course she should pursue; that he had consulted Mrs. Beecher on the subject, and that they thought—both thought that it was better that they should mention the fact to some member of the church, so that they might not go on in the matter without the whole church [with the whole church, it should be] being ignorant of this proceeding, or what advice they might give, might tender to Mrs. Tilton. They had, therefore, called for me, not so much to take my advice as to inform me of the facts that were occurring, and inform me of what advice they proposed to give, if any, to Mrs. Tilton. He asked me then—or said then, that he proposed to hand the matter over to Mrs. Beecher, that it was a matter that a lady could manage better than a gentleman, and Mrs. Beecher intended by his suggestion to go and see Mrs. Tilton the next day. The question was particularly as to what advice Mrs. Beecher should give to Mrs. Tilton; I don't know whether from Mrs. Beecher or from him, the question came up about a permanent separation—that is, Mr. Bell says, "I don't know whether it was from Mrs. Beecher or from Mr. Beecher," that the question came up and was presented to Mr. Bell, but from one or the other that suggestion was made, of a permanent separation between Mr. and Mrs. Tilton. "And Mr. Beecher asked me what I thought of that. I said, in answer, 'Of course nothing else can be possible; it is impossible for Mrs. Tilton to live another day with Mr. Tilton on such facts as you have presented to me.' Then Mr. Beecher asked me if I thought it would be well to call in any of the ladies of the church. I said, unquestionably not; it was a matter of great delicacy; it was a matter far more easily managed by a few than by many, and it would be exceedingly harmful to bring it into the church, or even to hand it over to any ladies unofficially, and that it was certain that the best management of the case would be to have it left in his own hands and those of Mrs. Beecher."

Now, gentlemen, you have in the touching narrative of Bessie Turner as to the midnight flight from the house, when this wife goes down in her stocking feet to the door, puts on her shoes there, and at 1 o'clock at night seeks protection against her husband's treatment, and of her prudence and consideration that she rejected Bessie Turner's wish to go herself with her, and required her to return and retire into her bed with the children, and look after them through that night, and then Bessie's following the next morning and taking the children with her, and then this interview and then this consultation, you have a direct, and plenary, and indisputable proof that the defendant's proposition of the first movement of complaint being of the wife against the husband, and of that gravity that it disclosed his profligacy and his cruelty, and that it meditated protection permanently, or at least until separation, tried, should have put the wife in her true position before the public and the church, and put the husband under the corrective, it might be hoped, influence of a declared exposure of the wickedness of his household—you can have no doubt of that. What was Mr. Beecher's written memorandum handed to his wife as the final result of his reflection after his conference with Mr. Beecher?

I incline to think that your view is right, and that a separation and a settlement of support will be wisest, and that in his present desperate state her presence near him is far more likely to produce hatred than her absence.

HOW MR. TILTON TOOK THE ADVICE OF SEPARATION.

Now, did this impress itself upon Mr. Tilton as a grave interference in his affairs? Did he acquiesce in it or did he resent it? Did it rankle in his heart? Did he lay it up as a blow at the integrity of his household and the respectability of the name and fame of his family on the part of Mr. and Mrs. Beecher that was to be resented and punished? Ah, it is said that we use grave words of imputation when we charge conspiracy to defame Mr. Beecher, as if that were a word pregnant with terrible meaning. And it is not a trivial term. Now, let me show you how Mr. Tilton viewed this interference in his family in December upon this appeal of his wife as included in a letter that he brought in the handwriting and with the signature of his wife to Dr. Storrs in December, 1872. It is a letter that will come into view in reference to the first sentence of it, as it has been made the subject of frequent remark in respect to that part of it. But the sentence immediately following shows whether or no this separation was a phantom, a figment, an afterthought, a subterfuge, a casual occurrence without significance, for he makes his wife say in this letter to Mr. Storrs—no more her truth or her feeling, or her opinion than the first sentence—but he makes his wife say, after saying:

In July, 1870, prompted by my duty, I informed my husband that H. W. Beecher, my friend and pastor, had solicited me to be a wife to him, together with all that this implied. Six months afterward my husband felt impelled by the circumstances of a conspiracy against him in which Mrs. Beecher had taken part, to have an interview with Mr. Beecher.

Now, gentlemen, there you have in writing, in form, that the impelling motive of the interview of December with Mr. Beecher was the conspiracy in which Mrs. Beecher had taken part against him and his family, for I discard all notion that it is anything but new evidence how Mrs. Tilton is made by this husband to express his sentiments at his pleasure. Did Mrs. Tilton think it was a conspiracy on the part of Mr. and Mrs. Beecher against the peace of the Tilton family when she had left her house and resorted to her mother for protection, and sent for Mr. and Mrs. Beecher for their advice and aid? Did she think it a conspiracy of theirs, in which she, Mrs. Tilton, was the first mover, the first source and origin of any impression or any knowledge that there was any situation that needed to be taken up and disposed of? No, I have read you at once Mr. Tilton's firm written statement that the interview he held with Mr. Beecher on the 30th of December was impelled by the circumstances of a conspiracy against him in which Mrs. Beecher had taken part; and then in the letter that this same husband, Mr. Tilton, gives to Mr. Moulton in his wife's handwriting, and under his wife's signature, in which she is made to approve and applaud her husband's conduct, she says:

You have risked so much as he has sacrificed for others ever since the conspiracy began against him two years ago.

And Mr. Tilton in the "True Story" says:

Mrs. Morse once went to a lawyer in Brooklyn and, with a plausible air, consulted him about a divorce between my wife and me. It is sufficient to say in reference to my case with Mr. Bowen and Mr. Beecher, and to the case of each against the other, that she (Mrs. Morse) made a careful and malicious use of the few facts in her possession and of the many fancies which these engendered in her diseased and unhappy mind. Mrs. Morse, in plotting her insane mischief, chose a confederate for a brief time in Mrs. H. W. Beecher, another lady of abnormal type, whose peculiarities having less aggravation, are also less pardonable than Mrs. Morse's. For 11 years Mrs. Beecher and I have not been on speaking terms, nor have I ever had so relentless an enemy.

Well, she was a truthful one anyhow. She never received any confidences from him. She never valued anything that would come from his mouth, and she never was deceived by any discrepancy between his face and heart. Mr. Storrs giving the narrative, and an important narrative, and Mr. Storrs was Mr. Tilton's best friend, next best friend to Moulton—no, standing in equal rank with Moulton—the man he would have gone to as his agent and his confidant, and the manager of his affairs with Bowen and of his interviews with Beecher, on his own statement, if he had only happened to meet him instead of Moulton. Now, I am afraid to trust even that hypothetical view of Mr. Tilton. But if it were so, how unfortunate that Mr. Tilton did not find in the confidence of a friend the intelligence and also the integrity and practical good sense of Mr. Charles Storrs. But Mr. Storrs says on that "He rose and said he wanted me to go right round to Frank Moulton's with him." Now, this was the 2d day of January—the 2d day of January, 1871—right after all these interviews that I am coming to:

Q. Did you go? A. I did.

Q. With him? A. Yes, Sir.

Q. Did you have any conversation on your way there? A. We did.

Q. What was it? A. I asked him what the trouble was. Well, he said that Mr. Beecher, Mrs. Beecher, and Mrs. Morse had been talking against him to Mr. Bowen and influencing him against him, and he also said that they had influenced his wife against him.

Now that was the friend of whom in this very interview he says that "it was mere chance whether I had not taken him instead of Mr. Moulton. And he said, 'I want you to go right round and see Mr. Moulton.'" They started, and they did see him; and Mr. Storrs tells you a good many other things that occurred that day that ex-

plode the whole fabric of the false charge against Mr. Beecher, as you will see when I come to direct your attention to it—explode it then and there on that second day of January, while it was all fresh; put it on the footing that we say it stands upon both in respect of fact and in respect even of this false charge or erroneous charge on the part of Mr. Tilton. I am now dealing with the plenary proof that this discord in the family, that this flight of the wife, that this appeal to Mr. Beecher, that this intervention of advice and consultation and of responsibility was the moving cause of the hatred, of the approach, the interview, the charge that he made against Mr. Beecher. I have it under his own words, for you do not doubt that these letters that he brought to Dr. Storrs and that he handed to Mr. Moulton from his wife were his letters, approved by him, if not, as I think very plainly, written by him; and as to this statement of Mr. Storrs, I do not need to say anything more on the subject, except to say that when Mr. Tilton is recalled to the stand on rebuttal this entirely new matter that we had introduced from Mr. Storrs of this pregnant consequence that I have read to you is not contradicted by Mr. Tilton at all. Was it not important? Does not our view exclude his view? Does not our view falsify his view? Does not our view convict him of willful, purposed contrivance of evidence against the truth to beguile your judgment and mislead your verdict?

THE STORIES THAT MR. BOWEN KNEW TO MR. TILTON'S DISCREDIT.

Now, immediately on his wife's return, or very soon, there occurs the misfortune of her miscarriage and serious illness. That began on the 24th of December, and the next movement originated also in the troubles of Mr. Tilton, wholly in the troubles of Mr. Tilton, and wholly in troubles with which Mr. Beecher had nothing whatever to do until they were forced upon Mr. Beecher's attention by what was considered undoubtedly a very bold and very wise act by Mr. Tilton. On Saturday previously, on the 24th of that month, Mr. Tilton having been deposed from his place as editor of *The Independent*, and having received, in lieu of that eminent and permanent position, contracts of employment, contracts which gave Mr. Bowen complete command over the durability and circumstances of terminating the relation *instanter*, that being the situation just established and ostensibly and presumably to be secure for some two or five years,—two years in the case of one paper, and five years in the other, Mr. Oliver Johnson, then a companion in employment on *The Independent*, intimates to Mr. Tilton that Mr. Bowen had heard stories, and was considering them, prejudicial to his character, and he had better see Bowen. Mr. Bowen didn't want to see him; Mr. Bowen had not asked an interview with Mr. Tilton; Mr. Bowen had not advised Mr. Johnson that he wanted to see Mr. Tilton, but Mr. Bowen had talked with his managing editor, Mr. Johnson, on the subject of these imputations upon the character of Mr. Tilton and the necessity of terminating his relations with *The Independent*, and Mr. Johnson, not in betrayal of confidence, but as a friend of Mr. Tilton, as he was, brought it to the notice of Mr. Tilton and advised him to see Mr. Bowen and force some open consideration between them of these causes of complaint. The result of that is that when an attempt had been made at an interview earlier, Christmas, as a day of leisure, was assigned for an interview, and Mr. Tilton attended at Mr. Bowen's house with Mr. Oliver Johnson, and then Bowen informed Mr. Tilton of the stories against his character which had come to his knowledge. Briefly it is thus, and indisputably thus, whether in the testimony of Mr. Bowen, in the testimony of Mr. Oliver Johnson, or in the testimony of Mr. Tilton himself, that Mr. Bowen had had no suspicions, had received no intimation, had heard no rumors prejudicial to Mr. Tilton prior to the time he had dissolved the connection as editor. And when that was announced in public, when it was seen that this great throne, that this lofty crown, that this powerful scepter, were no longer in the hands of this king, but that they had all been resigned, and another king that had new views, at any rate not the personal interest in the question that Mr. Tilton would have had was announced, then the stories came to Mr. Bowen. What are his figures? They came in clouds, they came in an avalanche; they came from near by and from afar off—the story from the ante-room of *The Union* office, the story from Winsted, and the story from the North-West; the story of an intrigue with a woman in fashionable life—everything, as Mr. Tilton admits (it is all admitted), came to his knowledge in the sense of imputation or information. Well, now, I am not talking of the truthfulness of these imputations; I have never gone into them any further than was necessary to show the situation to be such as it was pretended on Mr. Tilton's part it was not, but what manifestly it was, that there had come to be such a knowledge on Mr. Bowen's part of misconduct on the part of Tilton, and such a basis of fact, such a definiteness of name, and place, and circumstance, as made it, at least, the subject of inquiry, and responsible inquiry, and of necessary action on Mr. Bowen's part. That being so, this movement became an important element in this false accusation, and in all the surroundings of gloom, of malignant calumny, that have attended Mr. Tilton's course toward Mr. Beecher through years.

MR. TILTON'S FINANCIAL POSITION IN 1872.

I have shown you the interference in his family that he stigmatizes as a conspiracy, as proceeding from relentless foes, as being such as to compel him to come into such a controversy as he did come into with

Mr. Beecher. Now, here there are, in regard to this matter, two propositions on the part of this plaintiff which he deems it important that you should accept as proved, and which you should stand upon as the foundation stones for your footing when you come to consider the interview of the 30th of December. He says that at the time of that interview, first, he was in no disaster, and secondly, that Mr. Beecher had had nothing to do with it; that the pretense on Mr. Beecher's part of his having rashly, inconsiderately, uncharitably, taken for granted that the imputations against Mr. Tilton were well founded, and joined, and aided in, and supported, Mr. Bowen's ill-construction of his conduct, and the severe decisive action in striking, at a blow, character, property, livelihood, family, everything, so that at the end of the week, when this interview was held, the 30th of December, there was no more deplorable condition of what had been a proud, a haughty, a self-confident, a high-headed attitude, demeanor, walk, and conversation in this community, so that he was "lying stripped and bleeding on the sidewalk," to use his own phrase to Sam Wilkeson, a pitiable object, and needing aid from anybody that professed friendship—all this in their case, in their evidence as produced by this plaintiff himself, and by the witness, Moulton, by whom they have attempted to support the plaintiff's evidence before you, all this notion has no foundation. He was a man of comfortable and assured property; nay, up to the 30th of December he was in possession of contracts which gave him a securer and a better position than that of editor, which gave him $15,000 a year, as he has attempted to impose upon your understanding—not very successfully on his own testimony to be sure, and we shattered to atoms the whole fabric of that view by the testimony on our part—that it was not until late on the night of the 31st, when the chimes of St. Ann's were ringing out the old year and ringing in the new year, that the first notion came to him that any moth had corrupted the garment of his pride. It is of the gravest importance to this plaintiff that he should strike out this state of facts as within the consciousness of himself and Mr. Beecher, and as a matter of substance and of fact, at the time of the decisive interview of December 30, 1870. Well, what are we to say on this subject now? How do the proofs stand now? Why, gentlemen, I shall not weary you nor myself by long observation upon the general mass of this evidence on that point, for it is all one way. Now, gentlemen, I asked Mr. Tilton if, after the interview with Bowen on the 27th day of December, he didn't go to his house, exhibit great distress, and say he was ruined, and then, by conduct pursued there, indicate the extremity of his disaster and the extremity of his resort for means to fight off the further completion, the hopeless consummation of it. No. As usual, he wants to have a circumstance to fortify his statement, and he says, "I was not ruined;" and through a long direct examination they made it appear that he was worth some $30,000 or $35,000, all made up in this way. Speaking of the beginning of 1871, he says:

I owned a house, in which I lived, No. 174 Livingston-st., which, with its library, furniture, and pictures, I suppose was valued at about $25,000. I owned a piece of property in Llewellyn Park, New-Jersey, valued at about $10,000. I owned a share of THE NEW-YORK TRIBUNE, valued, I think, at that time, at a little more than $10,000. I owned a small farm out West, in Iowa, valued at about $1,500. I owned a piece of land, a little fragment of it, near Prospect Park, in this city, valued at about $1,000.

Then he gives his mortgages, and then the fact that The Tribune stock had been assigned to his father. But counting all that up, it comes to this in the end, that he had a house and furniture, whatever it might be worth, which brought him no income; that he had about $4,000 on deposit with the firm of Woodruff & Robinson, which was drawing, I suppose, four or five per cent interest, whatever rate they made up the account at; that he had a fragment of land near Prospect Park, which produced —assessments [laughter;] a farm in Iowa which had the usual crop of wild land taxes, and the Llewellyn Park property, which ended in having been got for advertising and having been turned over to his particular friend Franklin Woodruff as an additional security for the mortgage of $7,500 upon his house. Now, there is another friend that sticketh closer—to his property—than a brother. [Laughter.] I never saw such a set of friends as the man has about him! Help him! help him! Why, all his property comes to nothing. It amounts to nothing. That is no imputation upon Mr. Tilton, no reproach. The reproach is in the false and shallow attempt to impose upon your understanding that he was a man of income and property; and the attempt ends, as I say, in this Llewellyn Park property, salable never, sold never, coming to be needed, in the generous estimate of one of his best friends, as a further support to a lien of $7,500 on his Livingston-st. house. Any income? Oh! no, no income from anything. The Tribune Stock belonged to his father, and it so remained. No income from anything. And I proved to you, out of his own mouth, I think, that from that 1st of January, 1871, down to the time that he stood before you, with the exception of what he might have picked up in one of his broken and discredited lecture tours that he took in 1872-3, didn't he? [addressing Mr. Tracy.]

Mr. Tracy—1871-2.

Mr. Evarts—Only in 1871-2?

Mr. Tracy—Yes.

Mr. Evarts—Well, he made some money then in 1871-2 but none in 1872-3, and I proved by him that all the money that he had had and that he had spent was the $4,000 that was in the hands of Woodruff & Robinson to start with, the $7,000 that he had got out of Bowen in

the manner that you now pretty well understand and will still better understand after I have remarked upon it, the money to help Bessie Turner's schooling, paid by Mr. Beecher, and the $5,000 that Mr. Beecher also had contributed to *The Golden Age* in its necessity; excepting that Mr. Moulton, Mr. Franklin Woodruff, Mr. J. P. Robinson, Mr. Mason, and Mr. Southwick had made up a contribution, to the same object to which Mr. Beecher gave $5,000 in its necessity, of $12,000, one-half of which was consumed, and the other half returned to those munificent donors out of the money that he got from Bowen.

Gentlemen, how do we stand now upon the question whether in the middle of the week of December that closed that year Mr. Tilton had come to an absolute prostration of his affairs, and was convulsively scrambling out of the flood that was overwhelming him, and seizing upon any straw, even upon a woman's hand, careless whether he drowned her with himself, provided he saw the last chance of her feeble aid saving him—what shall we say about that? He carries it, as I say, with a high head through his direct examination. "Nothing! Why, we had just made the bargains; there was not any trouble; we had talked, to be sure, and he had said, when I had thrown out an intimation that he had better run after Mr. Beecher and let me go—I sent him on that scent, and we had combined in a great move, that Bowen said would be successful, to drive Beecher from further editing the rival newspaper, *The Christian Union*, and that would take effect in 12 hours, and that he and I—Bowen and I—should be masters of the situation, clear of a rival and clear of a hated enemy, an enemy, if an enemy, because we had injured him, an enemy hated, if hated (and I do not doubt that Mr. Beecher was hated by these men), because Mr. Beecher knew that they had injured him." Now, to be sure, when on the cross-examination—or, indeed, on the direct, but more fully on the cross—it was made to appear that the vigor and success of that war against Mr. Beecher that was commenced on Christmas did not come up to the sounding phrase of the manifesto, and all that had come of it, although what had occurred had not been displayed to you as it now is, for Tilton could not speak of it, and Bowen was not called—what had occurred between Mr. Beecher and Bowen—when it was proved that on the next day after Bowen carried this missive that was to hurl Mr. Beecher from his pulpit and from his editorial chair, and to drive him from Brooklyn, when it was given in evidence that all that happened between the joint actors in that brave act was that the next time they met, which was the next day, Mr. Bowen, with a countenance livid with rage, and with greater excitement than Mr. Tilton supposed it possible for him or any man, perhaps, to exhibit, shook his fist in Mr. Tilton's face and said to him:

If you ever mention that I was an ally, that I was a conspirator, that I ever knew or heard of that letter that you wrote and I carried to Beecher, I will cashier you; I will drive you out of the office; I will call a policeman and turn you into the street.

When that was proved it was pretty evident that Mr. Tilton did not stand on velvet with Mr. Bowen on the 27th day of December, and that is the last time they ever met, as I understand the testimony of Mr. Tilton.

Now, don't you think, on his own showing, when he went home on that Tuesday, that he did feel that he was ruined? Bowen and Johnson had told him that he was going to be turned out unless he arrested the hand. A contrivance, exhausting malice and reaching all prospect of ever being supported by proof, and carrying any practical results, had been the only scheme that he could suggest for his temporary salvation. That petard had been fired by this engineer, and who was hoisted by it, Beecher or he, Bowen's interview with him, as testified to by himself, shows you. Now, don't you think that he knew that he was ruined? I am bringing to you the evidence hereafter, but, on his own showing, you know that he was ruined. You know that he knew he was ruined, and you know that he swore that he was not ruined, but was in the proud possession of this long assured career with Mr. Bowen on *The Independent* and *The Brooklyn Union*, and the $15,000 a year. Now, gentlemen, I am not dealing with this witness and this plaintiff on captious criticisms, of which best remembered words or conversations, or obscure and incidental facts are the basis. I am dealing with him upon the very basis of his cause, upon the very basis of our defense, and I show you at every step in it, that he invents, contrives shallow and foolish pretenses that, looked at by themselves, won't stand the penetration and the discomfiture of a truthful interpretation of his own testimony.

MR. BEECHER'S SUSCEPTIBLE POINT.

But, when you remember the evidence of that excellent, candid, simple, straightforward woman, Mrs. Mitchell, the nurse, and when she tells you what went on in that household during the three days after his accomplished ruin, after he had brought it into the family, up to the time when he had prevailed upon that sick, that feeble, that hysterical woman, standing, upon the evidence, between a swoon and a gasp, you don't doubt that he was ruined, and he knew he was ruined, and that his resort to Bowen's hatred of Beecher instead of saving him had hopelessly plunged him deeper, and that now he must contrive some approach, some operation upon Henry Ward Beecher that should not attempt to intimidate him, that should not attempt to antagonize him, that should not attempt to affront him, but should come around that great, generous, magnanimous heart of his, which Mr. Tilton has testified made his (pointing to Mr. Beecher) greatness, and distinguished him from

all other men. He had told you that the way to get the aid, the sympathy, everything in respect of sentiment and effort that one man could do for another out of Mr. Beecher was to make him think that he had done you a wrong, however slight, and that it was in that way that men did impose upon him, and that if they knew him as well as Mr Tilton knew him they would impose upon him a great deal more—all that I have laid out in these generalities of testimony which so try the patience—not of you, gentlemen of the jury, for you understood them—but of the all-wise critics of the press that wondered when I was going to prove Mr. Beecher innocent, and let alone those generalities of proof.

It is a generality of proof for Mr. Tilton to disclose to you that the way to get hold of Mr. Beecher is through his heart; that the way to get hold of his heart is through an impression of an injury has been done to him; that men who understand that practice it upon him, and if they knew as much about it as he, Tilton, does, they would practice it a good deal more. Now, that is a generality that covers the whole malicious scheme to work out of the tenderness of heart and the tenderness of conscience of Henry Ward Beecher that moral evidence, as they call it, that he must have done something very wrong because a man of the world, a gambler, a profligate, a Sir Philip Sidney, or Sir Marmaduke would not ruffle a feather unless it was three years' seduction and two years' adultery. Ah, gentlemen, a sad thing it is for us, in this civilization of ours, if you are to argue the magnitude of an unknown offense by the reach of generous, of solicitous chagrin, regret, remorse, compunction that will flow out even of the wounding of the feelings, much more of a serious interference with the domestic condition and with the external prosperity of one of a family standing in the relations of friendship. I do not know how to express my scorn of this reduction of human nature to coarse and vulgar standards by which the lowest and the coarsest are to impose their nature upon all the grades of character, of conduct, which we are striving, by education, by religion, by all the humanities, to raise higher and higher toward heaven. Our system is—and how wonderfully successful it has been—to raise a mortal to the skies; theirs to drag an angel down, and it is under those two opposing forces and estimates of human character, human conduct, and human destiny, that the division takes place to-day before you. Cowper, who besides being the most instructive and religious moral poet of our language, and the sweetest composer of devotional hymns familiar to us all, has the credit of having written the wittiest, the most laughter-moving verses of our tongue also; but, besides John Gilpin, he also had a touch of humor in some other matters, and having occasion to exhibit the pranks that the parishioners practiced upon a tithe-collecting clergyman in England, he concludes the coarse jokes of the farmers and the miserable sufferings of the clergyman in this pithy statement:

> "Oh, why were farmers made so coarse,
> Or parsons made so fine;
> A kick that would not hurt a horse
> May kill a sound divine."

Now, gentlemen, when they talk of agitation of mind and feeling and compunction they are dragging you down from an elevated, purified, Christianized frame and fabric of character and mind and heart to compare him with the groveling and coarse sentiments and feelings of men without character, without conduct, without aspiration, and without hope in the world, and they who are without hope in the world are without God in the world.

SOME INSTANCES OF BAD MEMORY.

Now, Mrs. Mitchell says that Mr. Tilton was back and forth with Mr. Moulton with his papers, with his interviews with his wife in the sick chamber—for the wife could not leave it—against her remonstrances, against her fears, against really her duty, but what could she do against the husband and the husband's friend? and that the result of all that was, as you know, the procurement of a certain paper on the 29th, which is Thursday, which was used on the 30th, which is Friday, and Bessie Turner tells you the same thing, and the distress was so great that Bessie Turner, seeing it, sank down, as it were, and swooned in that sick room at these terrible demonstrations of Mr. Tilton's lamentings, and bewailed the woe of that family thus openly declared, and Mr. Tilton tells you himself that he told his wife of his troubles, whatever they were, and he told her on the 30th, before the 30th, before the 29th, when he got this accusatory note from her (its contents, its character I shall make so plain to you that you won't really feel you have lost anything by its willful destruction), that he got from her that note of the 29th as the means of an interview with Mr. Beecher, or to be used in an interview with Mr. Beecher which did take place on the 30th, because she was distressed in mind—at what? That these troubles with Mr. Bowen, and an enhancement or exaggeration of them between Mr. Bowen and Mr. Beecher, would bring into display or action this connected trouble in her house, whatever it was—you have his own telling of it; I am only telling what his confession on his part is—that his troubles, and the dangers, and the difficulties, and the fears and anxieties that surrounded them were the topic of conversation between himself and his wife, as indeed Mrs. Mitchell has plainly told you; and what does Frank Moulton tell you about it? He thinks he was there once. Not more than once, I think.

Mr. Shearman—Twice.

Mr. Evarts—And he don't know whether the woman was sick; he could not remember; it made no impression on him; she might have been sick, and, very likely, was

sick. Well, now, gentlemen, what do you think of a man's memory that could go into that sick chamber, and see that woman lying on her bed, and all this turmoil (for the nurse says he was in the chamber over and over again)—all this turmoil going on, conferring with Mr. Tilton in his own house and elsewhere, coöperating, suggesting, requiring, demanding, the agency of the wife to be invoked, and tell you coolly that a note that he had from her desiring the return of this important paper he cannot remember; thinks she must have given it to him, but, whether she did or not, he don't know; and he don't know whether she was sick or not. Well, gentlemen, there is nothing like command of your faculties; that is a great merit in a man; and as memory is one of the faculties, I suppose it is a good thing to have command of your memory. Memory, Mr. Moulton and such witnesses think, is a very good servant, but a very bad master. You may remember the delicious wit of one of the conversations in Sheridan's "School for Scandal," where that bright coterie of men and women that never overvalued their neighbors were commenting upon *Miss Vermilion's* beauty, and *Mrs. Candor* says: "She has a very fresh complexion." "Yes," says *Lady Teazle*, "when it is freshly put on." "Well, but then it must be natural," says *Mrs. Candor*, "for I have seen it come and go." "Yes," says *Lady Teazle*, "come at night and go in the morning." "And, what is more," says *Sir Benjamin*, "her maid can fetch and carry it." Well, now, gentlemen, the testimony of these witnesses was very fresh when it was freshly put on, and you could see it come and go. Three hundred and five things we wanted to know that Mr. Moulton did not recollect; and I don't think it would be too much to say that you could sometimes almost see Mr. Tilton fetch and carry their memories. Ah! gentlemen, you have been but dull witnesses of these witnesses if you need anybody to explain to you the character and the system of their testimony. Not remember that the woman was sick; not remember whether he got that note from her hands; not remember that he was there once; not remember whether she was in bed, or not; whether she wrote it in bed, nor any of these little items of proof! They didn't know that we had an honest, an intelligent, and a candid witness who told what she knew and what she remembered, and it fitted with every proof in this case; whereas their testimony is at variance in all these shadowings that they attempted to detract from the scenes and the occurrences of that week; at variance with the whole moral force, with the whole necessary aspect of this situation.

Suffice it, then, gentlemen, to say that on this testimony you know and feel that Mr. Tilton was ruined, and he knew it; that he so acted, and that all his movements with his wife, and toward Mr. Beecher, were governed by that knowledge, and were contrived in order to repair the ruin or build anew the structure after it were hopelessly irreparable.

Now, there is one thing that Mr. Tilton and Mr. Moulton agree about—that during all this preliminary period the only thing in the way of accusation, in the way of imputation, in the way of detraction, in the way of calumny—the only thing that they pretend is that Mr. Tilton had given birth to the charge of improper solicitations. So it was, so it continued up to the interview of the 30th of December. So it was after that interview, so far as any demonstration, any statement to outside people was concerned, up to July, 1874, when it was determined to change it into a charge of adultery. But—I do not insist now upon a course of reasoning applicable to this particular proposition that I have just stated—but during this period, up to the interview, nobody pretends that anything was said or suggested except a charge of improper solicitations. Well, now Mr. Bowen comes in, a witness called by themselves, and says they called him for the purpose of showing that Mr. Beecher didn't take part in the movements, conclusions, decisions and actions on his part in regard to Mr. Tilton's relations to *The Independent*; I will leave that for the moment. I take him now on his statement that he told Mr. Tilton on the 26th of December, in that Christmas interview that preceded his carrying the note to Mr. Beecher for him, and in Mr. Tilton's name, that he should sever his entire connection with *The Independent*, and with the other newspaper, and he gives as a reason why Mr. Beecher didn't influence him toward that decision, that he had completely decided before he saw Mr. Beecher. Well, if you take the story for its own working one way, you must let it work the other also. You have proved by your own witnesses, and not left it for me to argue, from Mr. Tilton's own statement, though that would have been enough, what occurred between him and Mr. Bowen on the 27th—you have proved by your own witness that on the 26th of December you knew you were ruined; that the ax was to fall; and when your last despairing effort to change the attack upon Mr. Beecher and save yourself had failed, as you knew it had when Mr. Bowen shook his fist in your face on the 27th, you knew the ax had fallen—absolutely fallen.

The Court here took a recess until 2 o'clock.

THE WINSTED SCANDAL.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—Another element important to be brought into view as bearing upon the conscious knowledge and feeling of Mr. Beecher and of Mr. Tilton when they first come into one another's presence on the 30th, grows out of the real gravity, weight, and substance of these imputations against Mr. Tilton's morality, which had come to Mr. Bowen's knowledge, and were made the occasion of his deliberation, decision, and its announcement to Mr. Tilton. Now, that these topics and incidents included the Winsted affair, and the dealing with a woman in the

offices of *The Independent* or *The Brooklyn Union*, there can be no doubt, upon Mr. Tilton's own testimony. His mode of disposing of them you have heard. He has no difficulty in brushing away, while it merely depends upon the turn of phrases, either these or any other facts; but the difficulty is that when the facts return, they return not only with the force of proving themselves, but of discrediting him. If he had admitted the truth, then the character of the facts would have been all that was to be gathered of import from their evidence; but if he denies them, if he misrepresents them, and they are facts within his own knowledge, then when our duty brings back in a shape not to be contradicted, not capable of being disparaged, these ugly facts that he had swept away by the breath of his mouth, then the facts come back, proving him to have been false, deliberately, consciously false. And how many times have these blows to be given—not to the fabric of the testimony, but to the character—the ingrained character of the witness, and the plaintiff—before they tell to its destruction? Why, gentlemen of the jury, if witnesses are to be believed in their own case, under the operation of the bitterest and most hateful passions, by their confession, that ever actuated men, they must at least carry a clear tablet for their testimony, and not have it disfigured by obliterations and double texts.

Now, this matter about the charges brought to Bowen's notice, to the prejudice of Tilton, were regarded by Tilton and his counsel as important, if true, and grave, on their bearing upon what became a principal question with them, and has been made a principal question with them, and which I shall consider on its own merits, and that is, as bearing on the question of whether Mr. Bowen owed Mr. Tilton any money for suddenly abrogating the contracts and dismissing him. The contracts provided that at his will he might dismiss him without cause, but then upon a penalty of paying six months' salary, or compensation, which amounted in the aggregate for the two papers to $7,000. Very well. But if his character was unworthy, his conduct unsuitable to the position of an editor of a religious print, if his personal credit and conduct were such as to justify, nay, to demand dismissal, why then Bowen was discharged by law, in conscience, from any responsibility whatever for the sudden and summary termination of the relation. And that *was* the situation. Bowen understood it so. Bowen never departed from that position until, under certain influences which attended the final arbitration and the "Tripartite Agreement," he surrendered that position and closed at once the pecuniary and the other controversies in which he had become involved. Well, we have, then, as a sample of these stories, thus to be tested whether there was solidity in them, this Winsted affair, which I shall spend but a very few moments upon. But in it you have not only evidence of the gravity of the imputations, but you have evidence of the lightness with which Mr. Tilton's oath deals with such questions. It was charged that, in public rumor, public fame, at Winsted, Mr. Tilton's conduct with a lady there on the occasion of his delivering his lecture, had been unseemly, immoral, and profligate. Very well. Now, he does not prove that it was; that I will agree; but the rumor was of that kind. Mr. Tilton knew everything that had occurred. What did he do about it? Nothing in it; a mere child—a sick child at that—put upon him by his wife because she could not go, and this girl would like to go, and that it was a shameful, scurrilous calumny against him and against her, and had no real foundation. Well, it occurred toward the end, I think, of December, 1869, and it had been sharp enough in its impression to occasion the writing of a letter of inquiry to him while it was fresh, and he had written an answer, and that answer we have, and that answer was written, I think, on the 9th or 10th, or 8th, of January, 1870. There had been a casual misdating of it, you will remember—"1869," by that common error by which, at the first of January of a new year, we are very apt to put the date of the old year. Well, that helped him a little while. He said that in 1870 this Winsted affair, the knowledge of which had been thus brought to Mr. Bowen's attention, was an old affair; it had happened years before; there was nothing in it; a little school girl, young. Well, when I got hold of this letter, that "1869." you know, helped him a little. If this was written January, 1869, then it would have been December, 1868, that it happened; but I probed the matter and got from him, finally, by reference to the memoranda of engagements, I having the means always of holding him to the truth, that that letter of his was written on the 8th of January, 1870, and within two or three weeks after the transaction occurred; and in that letter he represents this little bit of a girl as shockingly disproportionate in size to the magnitude of this scandal, and that if there had been anything observed, it must have been an intrusion; disgraceful to anybody that was witness to any such fact. Well, if Mr. Tilton had told the story as it was, or reasonably so, there would have been no occasion for our going into it as a matter of fact. Its only importance to us was as an element, substantial in its character, in Mr. Bowen's judgment, and his action, and as showing that Bowen had solid grounds for his opinions, and, in his opinion at least, for the course he took with Mr. Tilton, and if so, that he did not owe him the $7,000, and that as to its being an honest debt, payable, demandable on its own merits, and finally collected on its own merits, that there was nothing in that idea, that it was got by that outside pressure which may not be blackmail, but which is utterly disreputable, utterly contemptible, and which the judgment of this community, in its length and its breadth—I mean not merely of these great cities but of this whole great country of ours—pronounces at once as the vilest

mode of extorting money, from the fears of reputable people against public defamation, and the less there is of fact and truth in the supposed charges, the more sensitive is the unsullied repute against this public detraction. And it was not desirable that Mr. Tilton and Mr. Moulton should have it proved against them that they extracted and coerced the payment of money from Bowen under the threat, "unless you pay I publish these scandals," and therefore they desired to make it appear that Bowen had no defense, and knew he had no defense, and had always admitted he had no defense. Well, they made very little progress in that, for Tilton and Moulton both stated to you that Bowen said he didn't owe anything. Now, we are obliged to go into this matter of the Winsted affair, disagreeable to all, and how does it turn out? Why, that this lady was of the age of some 17 or 18.

Mr. Tracy—Twenty-two.

Mr. Evarts—Twenty-two years, weighed 150 pounds or so, people took her for 27 or 28, twice as large as Mrs. Tilton, it was stated; and so the idea of the little sick schoolgirl that could not support the scandal, and that it must break down therefore of its own weight, wholly disappears. Well, now, gentlemen, did n't he know about that? And yet the letter he wrote to Hastings, and the story he told, was a very different matter from this; and then the disclosure of the innocent—if they be innocent—relations that he held to this young woman in the privacy of the room is such as may make no impression on your mind, perhaps, of impropriety; and the shamelessness with which he disclosed it, and takes virtue to himself for his want of sensitiveness on its impropriety, may make no impression upon you; but I think this plaintiff and this cause would give all the evidence that they have given before you in five months, if they could show a journey between Mr. Beecher and Mrs. Tilton up to Winsted, and the occupation of one room, reading Milton, and lying on the same bed, in half undress, and so repeatedly seen and disclosed and exposed by witnesses, that no man can question either the intelligence, the integrity, or the candor of. They are no parties to this litigation. They are sensible, respectable business men of Winsted, and you do not sympathize with cross-examinations that bring out no disreputable facts, but are disreputable questions when there is no fact to justify them. You would not like it if you went to Winsted or to Boston, to have inquiries of injurious imputation that jurymen expect to harbor on the idea that there had been something of that kind, or counsel would not ask the question. No; jurymen do not sympathize with that mode of disparaging witnesses, that puts the depreciation in the question and misses it in the answer. Now, there is nothing in it, perhaps, and I have not the least desire, either directly or indirectly, to carry any imputation of a serious character in regard to this young person, but I do put it to you that the circumstances justified the rumor, justified the discredit of Mr. Tilton, and that his oaths on the subject show him to be unworthy of credit in any matter that he chooses to put his own interpretation and his own evidence upon.

THE WRITING AND PRESENTATION OF THE RESIGNATION LETTER.

Now we come to the Bowen and Beecher interview, so far as I have not already disposed of it, in its relevancy and application to the principal issue here, and which I now ask some little attention to. Mr. Beecher is the sole witness to that interview, up to the point of the introduction of the rebuttal evidence of the plaintiff, which brings Mr. Bowen on the stand. Now, see the attitude in which Mr. Tilton places himself in regard to that missive, and see the judgment that he exposes himself to, when the only conclusion in regard to Mr. Beecher, to affect him, is not the sending or the forging of the weapon, but the manner in which he receives it. Tilton tells you that when Mr. Bowen was running on with this tirade against him, somehow or other it became appropriate for himself to introduce an insinuation or an accusation against Mr. Beecher in respect to his own, Mr. Tilton's, family, and that that accusation was not in the least discreditable to his wife, or his children's fame, but an accusation against Mr. Beecher, to wit: that Mr. Beecher had made improper advances or improper proposals to his (Mr. Tilton's) wife; that thereupon Mr. Bowen, either then giving, or before that having given the catalogue of Mr. Beecher's profligacy, from Indianapolis down, the terror and the danger that he was to all the people of Brooklyn, Mr. Tilton's quite moderate suggestion that he had been guilty of these improper advances, immediately eclipsed, in Bowen's mind, all this horrible scheme and system of profligacy that he had been enlarging upon; Bowen thought, no doubt, to himself: "Now, here is something that looks as if there was something to it. I have been dealing in this cloudy calumny and nobody has heeded what I said; but really, now, this young man—he has got something that is not too incredible. and that as he gives his own wife as the object, to be sure, saving her innocence, his credit, and the fame of his children—really now there is something. It is your duty, Mr. Tilton, to arrest this long career of profligacy, to stem this tide of adultery, to restrict this wide-spreading seduction. You have got a fact. Use it." "Well, but Mr. Bowen, you have been talking about facts that were a thousand times as great as this little fact of mine. Why don't you use some of your facts?" "Oh, a sense of honor restrains me. Mr. Beecher and I have come to a settlement, and all things are ended between us." Why had n't he thought of that sense of honor before he told Mr. Tilton of those infamous aspersions of Mr. Beecher? I think his sense of honor comes and goes, and you can see people fetch and carry it. But anyhow, he did, and that was enough

for Tilton, because Tilton saw the point of honor at once. At once Bowen recoiled. "I will not ask you to be guilty of a breach of honor; far be it from me." "How shall we arrange it then?" "Why, you open the matter by this insinuation about your wife, and that will open the question of Beecher's moral character in general, and then I shall be relieved upon the point of honor, and I will back you up." Well, now, was there ever a more fitly adjusted contrivance between two "men of honor" to maintain their honor? and yet, when they tell you their own story of it, they wonder that people don't think it as honorable as it seemed to them. [Laughter.] "Now," says Bowen, "you write a letter, an open letter, and I will carry it;" and, as Tilton says, it was their joint act—their joint act. Said I to Mr. Tilton, "What was your object? What did you expect to accomplish?" "I expected," said he—"My object was, to strike him to the heart! I expected to accomplish his expulsion from his church and from Brooklyn within twelve hours." Bowen said, "He can't stay twelve hours under that letter. Put in," says Bowen, "nothing definite; but put in, 'for reasons explicitly known to him;'" and they altered the draft and put that in—an appeal to Mr. Beecher's consciousness, hoping that when he saw "Theodore Tilton" signed to that, he would pack up his trunk and go. Well, we are coming nearer to the proceedings of the Ku-Klux than we ever expected to be in these civilized communities. "Put in," says Bowen, "'leave your pulpit, quit the editing of *The Christian Union*.'" "Well, no," says Tilton, "we have got enough in." Now, Bowen did not think there was enough in, provided Beecher was not driven out of the rival newspaper; but still, I suppose he concluded that if he left Plymouth Church, and left Brooklyn, probably he would not continue to edit *The Christian Union*. Now, now, the missive is forged; now the messenger is charged; and now Bowen, if he has not got Beecher, has got Tilton—got him, *got him*—body and soul. He has got, under his signature, a bold, defiant, blackmail letter against Mr. Beecher; and, although the space between Bowen's house and Beecher's house is not very long, yet there was time enough to lead Bowen to reflect that perhaps it would be as well to seal up that letter and not carry it open; and he did so. We got that much of truth, at least, out of Bowen's lips and from his tongue, the moisture that closed that letter. That is plain; there is no denying that. Well, Bowen goes there and hands it to Beecher. Beecher opened it, and read it, and he did not fall down dead, but, on his own view of it, turned to Bowen and said, "Why, this is sheer insanity; the man is crazy." That was enough for Bowen. He knew that that appeal, "for reasons explicitly known to yourself," did not carry any consciousness to Mr. Beecher, and that what Tilton had told him had disappeared like the baseless fabric of a vision; and then he felt, "I had Tilton before; now, I have got him with the evidence that his charge is false; for I have delivered it to the man against whom it came as suddenly as the stroke of the lightning; I know he was unprepared, I know now that this was an arrogant, a grave, a deliberate challenge to him, which, if the reasons 'explicitly known to himself' that were suggested by Tilton to me had existed, would have immediately brought some confusion to the face, some tremor to the lips, some perplexity to the understanding." And is it not so? If you, or *you*, Sir, knew that you had been living in adultery for sixteen months with Theodore Tilton's wife, and somebody suddenly brought you a letter written and signed by the husband, appealing to your consciousness of some relation to him that should suggest and justify that demand, don't you think that it would make some impression on you? All the evidence shows, and it is a part of the plaintiff's case, that no intimation whatever, proceeding from Mrs. Tilton, or proceeding from Mr Tilton, had ever brought to Mr. Beecher's knowledge the fact that this terrible guilt, prolonged, persistent, inexplicable, had become known to the injured husband; and Bowen who had been only that very day unrolling to Tilton the enormity of Beecher's profligacy and the Christian duty of arresting it, and had siezed upon Tilton's suggestion that he at least had an effort to be profligate to charge against Beecher—seized it and carried it there, looked at Mr. Beecher as he read the letter, heard his answer, and at once concluded: "Whatever Mrs. Tilton may have said to Mr. Tilton, whatever jealousy may have invented, or hatred magnified in Tilton's breast, there is nothing in Beecher's consciousness that makes the color come or go in his open countenance, that is coursed as immediately by every tell-tale flow of blood as a young maiden's in the flush of health. Ah! Mr. Bowen has not lived in vain. He knows something about false charges; he has seen the ways of this wicked world; and he saw that instead of that charge relieving him of the rivalry of *The Christian Union* or crushing the antagonism of Beecher to him or to Tilton, all that had happened was that Beecher was in possession of this conclusive proof of Mr. Tilton's enmity and malignity. Ah! Bowen must have rubbed the hands of his understanding and chuckled over his forethought in having closed that letter; for if it had remained unclosed, Mr. Beecher would have had the same evidence against him, Bowen, that he had against Tilton. Now, Bowen says that Mr. Beecher treated it, so far as any spontaneous expression of his, Beecher's, own went, even more contemptuously than by this statement which he made that the man was crazy. Bowen says that he put it into his pocket, and did not show anything at all, and that Bowen then said to him, "Well, what do you say about that letter?" and then Mr. Beecher said, "Why, this is sheer insanity; the man is crazy." I think Mr. Bowen does his sagacity an injustice. I think the same wit that closed the letter

with his mouth would not open it also with his mouth, or show any interest in it, or that he was a messenger that was expected to bring an answer; and I think Mr. Beecher's statement, therefore, is more conformable to the probabilities and to the character of Bowen.

Now, gentlemen, these little differences in the memory of witnesses come to nothing. The real question was, when you had heard from Mr. Beecher that narrative, when Mr. Bowen comes, brought in here to speak to the same interview—the real question was, and you watched for it, and we on our side watched for it—whether he should put a different complexion upon the transaction, whether he would show confusion on Mr. Beecher's part, tremor, solicitude, anxiety, entreaty; and he did not. He said Mr. Beecher treated it with contempt, showed no solicitude. Bowen does not remember that he said to Mr. Beecher when Mr. Beecher said this spontaneously, "Oh, I don't know anything about the letter; I only brought it here." Ah! but gentlemen that was the very attitude he had prepared for himself by closing the letter, that very attitude, to be able to say, I don't know anything about the letter. That is all he had done it for; and rely upon it, he preserved that advantage after he had seen the way the lion received the insult of a less noble animal. You may rely upon it that Bowen, who meant to keep out of the reach of the lion's paw, and not to have his precious head crushed between the lion's jaws, didn't think it worth his while to thrust it in when he saw that he had kept it out, and that the lion was by no means tame. Ah! Mr. Bowen! Mr. Bowen! Men must be judged by their character; and whatever uncertainties there may be about yours, they do not touch your calculations about your safety and advantage, that you displayed hereby your caution in not carrying an open letter. Then Mr. Beecher, according to Bowen, as would be very natural—Bowen does not say he told him he knew what was in the letter, or had any suspicion of it, or was any party to it, but he thought he had to move Mr. Beecher to talk about that letter. Well, he admits that Mr. Beecher said to him on that motion of his the same thing that Mr. Beecher testifies that he said spontaneously; that they agree about. But then Mr. Beecher said, according to Bowen (and here there does not seem to be any very particular difference)—Mr. Beecher said, "Well, Sir, do you come here as a friend, or how do you come?" Did that look as if Mr. Beecher cared how he came? But he wanted to know how he came. "Oh!" says Bowen, "as a friend; oh, as a friend by all means!" [Laughter.] Now, if Mr. Beecher could have heard the conversation between Tilton and Bowen about an hour before, that took place in Bowen's parlor, what would he have thought of Bowen? You have heard them both. Well, the trouble about this conference at which only two are present, and both of the same way of thinking, is, that when you have too many of them, and you are the constant party, with changing partners, and you profess to be of the same way of thinking all the while with each partner that you are with, when you get them together, that is the trouble, ah, that is the nitro-glycerine that blows up the whole concern. Innocent, harmless acids and alkalies, oils and powders, if you will only keep them apart; but if you get them together they do play the mischief with the best laid foundations and the most *honorable* characters. [Laughter.] Only think of it. Bowen, that with Tilton an hour before had been so sensitive to his own, Bowen's honor, that he could not suggest anything, move anything, towards arraigning Mr. Beecher, but said that Tilton might and he would back him up, and they together would drive Beecher out in twelve hours; he beards the lion in his den and the lion says to him, "Sir, how do you come here? Do you come as my friend?" "Oh, certainly, certainly;" and while he was not willing to admit, as Mr. Beecher had stated, that he grew more and more friendly all through the interview, yet he admits that it began friendly, ended friendly, continued friendly, and the only reason it didn't grow was that it was without variation or shadow of turning.

Well, what a pity it is, at several times during the long, tortuous course of these slimy calumnies, these contemptible hatreds, that you could not have got three or four of these people together, and had them put their interviews together. That that is the miscalculation about the resources of the Divine provision for the administration of justice among men, forming a part of the moral government of the world. These two conspirators, Moulton and Tilton, Bowen and Tilton, when they are together, think that no eye overlooks their machinations and no ear overhears their plottings; as if human justice and the moral government of the world had no other power or overseeing and of overhearing than that the particular privacy in which they are dealing. Shallow, ignorant, foolish calculations thus rebuked by the great prophet and poet of the Hebrews, "Ye fools, when will ye be wise? He that planted the ear, shall he not hear? He that formed the eye, shall not he see?" Here, in this little juxtaposition of these two interviews—within an hour of each other—between Tilton and Bowen, and Bowen and Beecher, the resources, easy resources of that justice which is but a part of the moral government of the world, shows you that men can be overheard, and their privacy can be penetrated by the sight, when they think that they are alone.

CONSEQUENCES OF THE RESIGNATION LETTER.

Now, if nothing had happened to Beecher from the transaction of the 26th of December, a good deal had happened to Bowen and a good deal to Tilton.

Bowen saw the necessity of his rapid retreat from his companionship with Tilton, and he left no doubt in Tilton's mind of what the result of the interview between Bowen and Beecher was, nor of what his, Tilton's, fate at Bowen's hands was to be. We have a very graphic description of it by Mr. Tilton, and Mr. Bowen was not called upon to contradict it by our learned friends. Now, the staple of the further conversation between Bowen and Beecher was this. Bowen was slow to remember it, but it all came. There is not a word wanting in his cross-examination and direct examination together to corroborate and sustain every word of Mr. Beecher's testimony in regard to that interview; and I call upon you to notice it, not merely because it gives an absolute confirmation of the spirit and character of the interview, but because it corroborates the strength and accuracy of Mr. Beecher's memory. Mr. Beecher has displayed to you the conversation about Mr. Tilton's profligacy, or the rumors of it, as they had come to Bowen, that he had heard nothing of them—Bowen hadn't—until after he had deposed Tilton from the editorship of *The Independent;* that then they came in, came like an avalanche, came from here and there, from the West and from the North, and that they were horrible; and then that he, Mr. Beecher, said, "Well, I have heard about Mr. Tilton myself," and within a very short time, Bowen says that Beecher asked him if he knew anything about any troubles in Mr. Tilton's family. "No," says Bowen, "no; I have heard nothing *of any consequence* about any troubles in his family." Well, I am sure I don't know that he had. I have nothing but Mr. Tilton's word for it that he told him anything against Mr. Beecher in their conversation. Mr. Bowen, on a further direct examination by his own side of the case, the side that called him, is made to answer that at the time of the signing of the "Tripartite Agreement" he had never heard of any imputations against Mr. Beecher in respect to Mr. Tilton's family. That is in 1872. He says that he never had heard that Mr. Tilton had made any charge against Mr. Beecher. They had an object in asking him that question, and he favored that object by his answer; but the difficulty is that when you get an answer into a case you cannot get it out, and it is competent for both sides to comment upon it. Now, then, Mr. Beecher proceeded to tell him about the flight of Mrs. Tilton from her husband's roof; the resort to her mother, Mrs. Morse; their joint resort to him and Mrs. Beecher, and the advice and the grounds of the application, and of the flight of the wife, the Bessie Turner matter, other intrigues with ladies of more distinction and credit, and Mr Beecher concurred in the opinion of Mr. Bowen that it would not do to have Mr. Tilton at all connected with *The Independent.* Now, the point about Mr. Bowen is that he had already made up his mind the day before, and so all these statements of Mr. Beecher, which he admits were made to him, concurred in that view, tended to that result, really produced no impression upon him, because his mind, self-poised, had already determined it. But he agreed on a question I put him that there was nothing in what Mr. Beecher said that tended to unsettle his decision, and he had said, too, that although he had substantially made up his mind, and had substantially informed Mr. Tilton on the 26th of December that he was going to discharge him, yet he had not absolutely. And then, in the next column he said that he had, absolutely, and so you have those insensible vibrations of a great mind between absolute and semi-absolute determination. Why, the touch of a child will rock a great bowlder that is poised in that way, and I should think that what Mr. Beecher said might tend to the absolute, and dispose of the semi-absolute determination. Well, gentlemen, you all understand that interview. It was of the kind that Br. Beecher states, and Mr. Bowen absolutely confirms it. We have got into a curious question of where the conversation took place, and which is right about that, an unimportant consideration, as there is an entire agreement that the nature of the interview was that Mr. Beecher did not care that [snapping his fingers] for the missive, and showed it. Mr. Bowen cared everything for having it appear that he had nothing to do with the missive, and Mr. Bowen was friendly, and friendly, and friendly, and glad to find that if he had not succeeded in triumphing over Mr. Beecher, he had at least successfully concealed from him the deadly enmity and hatred that he felt for him, and he came back rubbing his hands again, figuratively, to Mr. Eggleston, who was waiting for him, and said, "Mr. Beecher is delighted that Mr. Tilton is discharged"—*is,* in the present tense. "And he is your friend, and my friend, and he has told me stories about Tilton"—"horrible stories," Eggleston says—"and our compact, and our amity is complete."

Well, gentlemen, I don't know whether Tilton has misrepresented Bowen in that previous interview between himself and Mr. Bowen, or not, and I don't know that we ever shall know, for by the very terms of the proposition it is only the statements of the two about each other that we shall ever get at. Mr. Tilton's statement of the interview stands as the truth in this cause. It is uncontradicted and furnishes, so far as that enters into the estimate of the feelings and relations of Mr. Tilton and Mr. Beecher, and Mr. Tilton and Mr. Bowen, and Mr. Beecher, the evidence on the subject—I mean of these calumnies against Mr. Beecher, the animosity of Mr. Bowen, and the subjugation by the strong mind of Bowen of the weaker character, Tilton, to his, Bowen's, objects. Mr. Bowen contradicts distinctly Mr. Tilton on the question of his discharge as then determined upon, and then communicated, and he contradicts him further by saying to you that on the morning of Saturday of that week, he informed him of his then present absolute and actual discharge.

DEDUCTIONS FROM THE NATURAL BENT OF HUMAN ACTION.

Now, gentlemen, I have occasion to ask your attention to the vast value of these two facts that we have fought against—the evidence of the plaintiff out of his own mouth, out of other witnesses, so far as they could show collateral support to it—we have fought against these two propositions of there being this action of the wife contemplating separation, resort to the pastor, this dealing by the pastor with it, openly, clearly, decisively, and this second point of the dealing between Mr. Beecher and Mr. Bowen whereby Mr. Beecher espoused the view which Mr. Bowen communicated about Tilton's character, and the necessary action of Mr. Bowen in regard to it, corroborated, assisted, confirmed, secured, and aided by his disclosures of this conjugal discord and of this personal profligacy with Bessie Turner and with others. Gentlemen, you are full grown men. Some people seem to think that if they have come into a jury-box they are to lose all their common sense, all the elasticity of their understanding, all their personal knowledge and views of human nature and of human conduct, and take up a dry and formal following of testimony as it may be long drawn out before them. Why, gentlemen, you are here because you are practical men, because you know something of our common nature, because you come from the bosom of the very society in which these parties moved, and in which their action is taken, and by which it is to be judged. All the number of witnesses that would prove to you that the moon was made of green cheese would not justify you in bringing in a verdict that it was made of green cheese, not in the least. It would justify you in bringing in a verdict that the witnesses were made of green cheese. [Laughter.] Now, I ask you this—do you believe that there could be a relation of paramour and mistress between a man eminent in society and a woman the wife of a man prominent in society, and moving in the circles of social intercourse, of religious association, of public notice, that belonged to these people and these their respective families—do you believe that that relation between paramour and mistress could have continued for eighteen months, and then, by chance—much more if by confession or communication from the wife—come to the knowledge of the husband and then, everything being lovely and quiet between them, so that there was no outbreak there—do you think the wife and the mistress would have left the paramour six months unadvised that somebody else knew of it, that that somebody else was the husband, and that husband the hater on independent grounds of the paramour? Do you think so? Did you ever hear anything like that, that would lead a woman that had had that degree of affection and submission to a man, that she would not warn him against the unguarded course of his life toward this family, that would expose him to the observation, to the condemnation, to the resentment of the husband? That would be a new chapter in human character, and I think if it could be understood as a natural and probable sequel of these illicit relations, and of their discovery, that it might tend to discourage the ventures that men make in that direction. No, gentlemen, common sense discards that. Well, if a wife, conscious of this final, deepest guilt of a woman as toward her husband—conscious of the long course of seduction concealed from him, and of the long pollution of the marriage bed and contamination of the offspring by a stain, had confessed and found a forgiving husband ready to conceal, unwilling to resent against the injurer—do you think that that wife, with that knowledge of her own conduct and of her husband's privity to it, will be the first to pick a quarrel, and desert the shelter of that roof? What roof could be so hospitable to her guilt as that? What shelter against discovery, against publicity, against ruin so safe as that? What could break the tacit or the actual compact of immunity, of secrecy, of restored and continued love on the part of the husband to the fallen and penitent wife so necessarily, so absolutely, as the wife's desertion of the home and accusation of the husband of profligacy? Well, gentlemen, if you can imagine that a wife so situated, so sensitive, so morbid on the question of secrecy, could rush out of that house, and accuse her husband when he knew of her profligacy, you must have some strange views of human nature, and if we cannot try these people as human beings we cannot try them at all. But, do you think she would go to the paramour and the pastor, and if she did, do you think he would turn over to his wife, and his wife *this* woman [turning to Mrs. Beecher], this matron who makes the name of matron all the more noble that she is conspicuous in its roll of honor, this woman that saw enough into the eyes of Theodore Tilton eleven years before to banish him from her house, and enough into the eyes of Henry C. Bowen to keep him from crossing her threshold? Do you think that Henry Ward Beecher would turn over his mistress to his wife for her to examine, with all the power that a woman knows to apply to a false woman? Now, you may think that is natural, and you may think it is safe, and you may think that out of these two women being shut up, Mrs. Beecher and Mrs. Tilton, there came nothing but advice to quit the husband, brave him, to sustain her purity. You may think so. I would not like to have any client of mine convicted of any crime like this, but I assure you, gentlemen, if he has to be convicted I would like to have him convicted on evidence like this, for the evidence answers the conviction and convicts the tribunal that condemns.

Look, now, at the enormous value of the dealing which Mr. Beecher exhibited to the Bowen missile, proceeding from the bow and the skillful archery of Mr. Tilton. Take Bowen's statement; was there ever greater unconcern, was there ever greater indifference, ever stronger,

more definite braving of it than Mr. Beecher's treatment of the missive and his treatment of the man? Was there any yielding? Was there any entreaty of Mr. Bowen? No. All Mr. Beecher wanted to know was, "Whether you came here, Mr. Bowen, coupled with, conscious of, in complicity with this insane, mad contumely of Mr. Tilton?" If Mr. Bowen had said, "I did; I suggested it, I urged it, I am going to back it up," then Mr. Beecher would have faced them both, and he has faced them both ever since. But neither Bowen nor Tilton has faced him. I can imagine no possible construction of human conduct that would treat this charge, this demand, under Mr. Tilton's own signature, as Mr. Beecher treated it, if there had been the least consciousness of those guilty relations. What did he do? He talked with Mr. Bowen as long as Mr. Bowen chose to talk, and then Mr. Bowen went about his business, and Mr. Beecher never troubled himself in the least, never sought Mr. Tilton, never sent a friend to see him, never thought of the subject further, and waited what anybody would have to say or to do about it. Well, gentlemen, we might, I think, consider all attempts to convict Mr. Beecher of this crime, upon moral evidence, as substantially ended by these two penetrating thrusts into his very soul that this evidence has given to him, and you read on its unruffled mirror the placidity of innocence which forbids you to imagine guilt.

Are you to take an alternative proposition, that he is an old offender, full of wickedness? Well, there you run against a thousand improbabilities, not to say impossibilities. You run against what, even in the case of a single instance of guilt, is really a moral impossibility. Is there nothing, then, in the wisdom of the Great Master that when you are judging of moral character you are to judge by the conduct of the life? Is there nothing in the proposition that men do not gather grapes of thorns, and figs of thistles? Do you plant thistles to raise figs, and thorns to expect a vintage from? What greater vintage of Christian beneficence and activity has ever been poured out into the wine-vats of a nation than the life of Henry Ward Beecher has furnished? And, yet, all these grapes have been gathered from this thorn tree, and are gathered still. If, under this fig tree, men could not repose, what beneficent shelter has ever been reared in the human character and human conduct for the confidence and the safety of one's fellow men? And, yet, this is but a prickly thistle bush that everybody that ever approached must have been wounded by, and yet nobody has found it out. This long course of wickedness has run in a parallel stream through this life, and divided it between its muddy waters and its crystal flow, so that those who stood on either bank proclaimed it vile or healthful as they happened to be on one bank or the other. Why, gentlemen, if you will not take philosophy, and the great teachings of the Scriptures, on these subjects, let us understand, as we all do, the generosity of character, openness of nature, warmth of heart, universal sympathy by which every child is his friend, every woman reveres him, every man confides in him, as inconsistent with the course of profligacy that hardens the heart. Who knew better than Burns, the poet—an authority on misfortune—as a man in respect of his morality, who set aside all former teachings and says to the youth whom he would guide through life:

A sacred, pure and well-placed love,
Luxuriantly indulge it;
But ever scorn the illicit role,
Tho' naething should divulge it.

I waive the quantum of the sin,
The hazard of concealing;
But, oh, it hardens a' within,
And petrifies the feeling.

And yet a warm and generous fountain of beneficent acts and sympathetic nature, as Mr. Tilton describes it, that was open to the imposition and accessible to the appeals of friendship's impositions, of ill design, and accessible to the appeals of friendship, remains the uncontaminated and the unhardened nature of this defendant. So now, so always in your opinion, in the opinion of everybody that ever knew him or saw him, and all these monstrous absurdities that defy the faith in man and the faith in God that holds the world together, you are to establish in order to save the credit of the oaths of a few witnesses.

THE DESTRUCTION OF MRS. TILTON'S WRITTEN ACCUSATION.

I come now, gentlemen, to the first meeting of the injured husband and the adulterer after the alleged discovery of the guilt. Six months after it is said a communication of some kind prejudicial to Mr. Beecher's relation to Mrs. Tilton and to the honor of his intercourse with Mr. Tilton's family, these two men are brought together, and I think, gentlemen, that you will in advance agree with me that this interview carries more importance in its real occurrences, if you can get at them, than any other interviews. If there was any accusation made at all, it was made then, and what was made then was the accusation that existed, either in imagination or had been produced by invention, or had any basis of mistake or any solid support in truth. Whichever your theory may be on which you finally rest, whatever the accusation was, or was to be, as an honest accusation it was then and there made. Whatever of confessions, whatever of concession, whatever of acquiescence on the part of the accused ever took place, took place then and there, and there was the period, then and there was the situation, then and there the aspects of the matter all around, that, if you can get at the truth, will be worth more to you than any long-drawn party-colored piece-meal aspects, and intercourse of the years afterward. Now, about that I don't think there will be

any dispute. What had Mr. Tilton done on his own showing in respect to that proposed interview before it occurred? He had got from his wife, as he says, and as apparently is true, a paper written in her own hand, of some character and purport—that is admitted. He had got it by efforts in that sick room, persisted in day after day, against the remonstrances of the nurse, and that paper he obtained on the 29th, on Thursday, and kept it unshown, he says, to anybody till the night of the 30th. Now, what would you give to have that paper? It has been destroyed. Who destroyed it? Theodore Tilton. Who gave it to him to destroy? Francis D. Moulton. When? They both swear, not giving day and month and year, but with relation to another event, "Immediately after the 'Tripartite Agreement.'" What justification was there for Francis D. Moulton "immediately after the 'Tripartite Agreement'" to give to Theodore Tilton that paper to destroy? Ah! gentlemen, they all swear, all these people, that there was not any agreement, nor any connection, nor any idea in reference to the destruction of the papers with the "Tripartite Agreement," or the arbitration. All our witnesses swear the other way; Claflin, Freeland, Storrs, and Wilkeson all swear that there was an agreement that all the papers should be destroyed. Now, I have got the oath of Mr. Moulton and the oath of Mr. Tilton, that immediately after that Mr. Moulton handed to Mr. Tilton the papers to be destroyed, and I have got the oath of Mr. Moulton that he told Mr. Beecher that he would keep that paper tied to the other, and that they never should be separated, and should be kept together for his protection. Ah! gentlemen, you have a self-confessed, absolute treachery, and absolute conviction of their own falsehood; you have got them both. Their conduct shows in their ready seizure of an opportunity given by that compact, to destroy all, to hurry to destruction this one, and then in order to explain their possession of all the others to use against Mr. Beecher when he wanted this one for himself of all others in the world, they say there was not anything said about destruction of papers, and there was no right to destroy any papers. Where is your promise that the two papers should be kept together? Ah! gentlemen, what did Moulton tell Charles Storrs about this unilateral (to borrow a phrase of my learned friend and brother Porter), this unilateral destruction, and this unilateral saving of papers? Charles Storrs was asked what Mr. Moulton said about burning the papers, and he says that Sam Wilkeson had seen him, or written him that he wanted him to be sure to burn Mr. Beecher's "apology," and all the papers, and Mr. Moulton says: "Of course I burned all the papers," and laughed, and he says, "Mr. Beecher thinks I have," and then he says: "If Sam Wilkeson thinks I have burned all the papers he is mistaken. What would Theodore do with his trouble?" And when Mr. Moulton is recalled he don't deny a word of that. Now, don't you believe that it was a part of the arrangement that peace was concluded all around, and that all the papers were to be destroyed; and don't you believe that this man hastened to destroy the paper that we want, and that we miss? If truth would be on their side from it, so much the better for them, so much the less reason for their destroying it. So you needn't worry yourselves that they have lost anything by its being put out of existence. Ah! how they jumped at the idea that, now, this pledge of Mr. Moulton would justify the destruction of all the papers, and that the treacherous wickedness of Mr. Moulton, self-confessed in act, that he did destroy one, separated it from the rest, and his production here of the rest, that he did save the rest, and then his sneering remark to Mr. Storrs:

"Oh! I have burned all the papers, of course," and he laughed, and then he says, "Mr. Beecher thinks I have;" and then he says, "If Sam Wilkeson thinks I have burned all the papers, he is mistaken. What would Theodore do with his trouble?"

"What of the trouble that he was using heretofore and means to use hereafter? Now, Theodore and I have only burned that one paper."

The Court here adjourned until to Wednesday at 11 o'clock.

NINETY-FIFTH DAY'S PROCEEDINGS.

MR. EVARTS FURTHER ANALYZES EVIDENCE

THE FAMOUS INTERVIEW AT MR. MOULTON'S HOUSE BETWEEN MR. BEECHER AND MR. TILTON THOROUGHLY CONSIDERED—ALLEGED INCONSISTENCIES AND IMPROBABILITIES IN THE PLAINTIFF'S STATEMENT DWELT UPON WITH EMPHASIS—HOW MRS. TILTON'S ASSERTED CONFESSION IS LOOKED UPON BY THE DEFENSE—HER CHARACTER DECLARED TO BE IRRECONCILABLE WITH THE SUPPOSITION OF GUILT—EVIDENCE FROM MR. BEECHER AND MR. TILTON COMPARED—A DAY OF FREQUENT WITTY AND STIRRING PASSAGES.

WEDNESDAY, June 2, 1875.

William M. Evarts continued his argument for Mr. Beecher to-day in the Brooklyn City Court room. He considered the first interview between Mr. Beecher and Mr. Tilton after the alleged discovery of adultery, the destroyed letter of Mrs. Tilton to her husband, Mr. Tilton's account of his wife's oral confession to him, and other portions of Mr. Tilton's evidence, and Mr. Beecher's statements concerning the interview between himself and the plaintiff in Mr. Moulton's house in December, 1870.

Mr. Evarts argued at considerable length to-day upon the inconsistency which, he asserted, exists

between the plaintiff's statements and theories and the acknowledged principles and motives which govern human actions. Whenever his argument was thus based on asserted characteristics of human nature he infused a fire into his words that fully aroused the attention of the auditors, while witty passages abounded to make them laugh. The first subject taken up by the orator was the first interview between Mr Tilton and Mr. Beecher after the alleged discovery of adultery between Mrs. Tilton and Mr. Beecher. Considerations that had governed Mr. Tilton, in what the lawyer asserted to be the fabrication of his story, were pointed out. Mr. Moulton's account of his walk with Mr. Beecher to Mr. Tilton's house, on the occasion of the interview under consideration, was analyzed. "Out of the fullness of the heart," exclaimed the orator, "the mouth speaketh, even when the heart is small and the mouth large, as in Moulton's case."

Perhaps the most interesting portion of the address to-day was that in reference to Mr. Tilton's account of the interview with Mr. Beecher and of the alleged oral confession of Mrs. Tilton to her husband. The orator asserted that it was improbable, and not according to common sense, that Mr. Tilton should have talked in the manner in which he said he did to Mr. Beecher, supposing the latter to have been the paramour of Mrs. Tilton. "Look," he said, referring to Mr. Tilton's statement of the beginning of the interview, "at the cool way in which this rhetorician opens the deepest passions and resentments of the human heart."

The analysis of the alleged oral confession of Mrs. Tilton to her husband was made with such sarcastic and witty keenness as to excite continual bursts of laughter from the counsel and audience. The jurymen also smiled appreciatively, Mr. Beecher laughed, and even Mr. Tilton once or twice joined in the merriment. One of the humorous comments on the alleged words used by Mrs. Tilton, which attracted much attention, was in reference to the statement that she had told her husband the dates and places of the commission of the asserted acts of adultery. The last act had occurred at her own residence. "She is talking," said the orator with a smile, "to her husband, and for fear there should be doubt, as they had removed from time to time from one house to another, she adds, 'At her own residence, 174 Livingston-st.'" This particularity, in some of the asserted statements of Mrs. Tilton, served as the basis of an argument against the probability of the whole story, because Mrs. Tilton was represented to have declared that acts of adultery had occurred at other places which she appeared not to have disclosed.

The persuasions which were alleged to have been used by Mr. Beecher in overcoming the virtuous scruples of Mrs. Tilton afforded another subject for the wit and argumentative skill of the advocate. "Ah," said he, "he must have preached with a power to conscience and intelligence that he has not exhibited in public if he could reduce a woman's nature to scruples, and then puff them away with a breath."

Mr. Evarts insisted on the inconsistency between Mrs. Tilton's pure-mindedness, which even her husband lauded, and the supposition of her guilt; and he pointed out instance after instance of alleged improbability and want of harmony in regard to circumstances, times, and chains of reasoning in the statements of Mr. Tilton. Finally he took up Mr. Beecher's account of the interview at Mr. Moulton's house, to which the cited evidence of Mr. Tilton referred. The two accounts were laid together, and compared, and their contradictions were clearly brought out. Mr. Beecher stated that Mr. Tilton said to him that the writing of the letter demanding that he (Mr. Beecher) should leave Brooklyn, was a grand thing to do, but it would have been grander not to have done it. "Now," exclaimed the orator, with biting sarcasm, that caused the plaintiff to color to the roots of his hair, while the audience laughed, "What a happy condition a man is in when whatever he does is grand, and if he had n't done it, it would have been grander!"

THE PROCEEDINGS—VERBATIM.

THE INTERVIEW OF DECEMBER 30.

The Court met at 11 a. m. pursuant to adjournment.

Mr. Evarts—We may perhaps consider for a few moments in advance what would be the probable attitude, what the tone, what the temper, what the method of accusation, and what the reception of the accusation that would, on the known proof of human character and human conduct, mark the first interview between the accusing husband and the guilty adulterer. Nay, more, if the accusation were to proceed upon the information conveyed to the unsuspecting husband by the corrupted or uncorrupted wife—I mean the adulteress—you would like to see what, upon these same recognized principles of human character and human conduct, would be the

terms, the attendant circumstances, the emotions with which this dreadful fact was first disclosed by the offending wife to the unsuspecting husband.

MR. TILTON'S STORY OF THE INTERVIEW INCONSISTENT WITH HUMAN NATURE.

Is adultery in a reputable family, in a respectable connection of society, and with a woman of even the ordinary traits of purity, of intelligence, of piety, and of domestic affections, a commonplace occurrence? Is it to be treated like a cut of the finger or a bruised brow? Is there anything that more upturns the deepest feelings of the husband and of the wife, when, brought by the urgency of conscience, guilt is disclosed, pardon is begged, and either the wife is slain by her husband or is pardoned by his superhuman charity? What tears, what sobs, what solemn silence, what deep contrition, what conflicting, convulsive emotions, fill the husband's heart and show themselves in conflicting exhibition of his purpose, and finally of his conclusion! And then, when the injured husband meets his friend, the corrupter of his wife, the destroyer of his own honor, the defiler of his marriage bed, and the shame and disgrace of his children, and his children's children; when a husband thus outraged, of whom it is said by a wise man, that I have had frequent occasion to refer to, not much in repute doubtless with the new dispensations, that get direct revelations from heaven through mediumistic fits —Solomon says that "jealousy is the rage of a man;" and when two such parties come together, you may imagine that if there be at the bottom either information on the part of the accuser, mistaken if you please, certainly if well-founded and conscious guilt on the part of the accused, that you will have a scene that cannot be handled by any mere conception and preparation beforehand. Nature will, *will* show itself in such an interview, if the great and central fact exists, either as a truth, or as a conviction on one side, that of the accuser.

And now, gentlemen, I shall satisfy you upon a mere reading of this plaintiff's story of that interview, rightly interpreted, by that knowledge of human affairs which you possess and that knowledge of his character and of Mr. Beecher's which you have gained in this trial, that that narrative, upon its own reading, is a self-exposed and self-convicted invention, framed by that degree of cunning that believes in words, their instrumentality, their rhetorical connection. This plaintiff understood that the wife's confessions, if there ever had been any, could not be made the subject of evidence against Mr. Beecher. Our law convicts parties on their own confessions, not on the confessions of others. This idle word about Elizabeth's confession, or Mrs. Tilton's confession, that has been dragged in by Moulton and Tilton as often as might be during their protracted evidence, is a solecism in terms. It was an accusation of another, never a confession of her own. I will show you—what was supposed to be cunning on the part of this inventor of this story, to cover his disgrace in bringing to light the shame of his wife that he had once pardoned, to make it probable and possible that such a woman could be in such a guilt—that he has covered it with inconsistencies with human nature that make the whole story incredible and self-contradictory. He knew that the confessions, I say, of a wife could not be given in evidence; he knew, too, that confidential intercourse between the husband and the wife (although the law of evidence were so much relaxed, as it was held by the Court, as to permit the husband to testify against the wife, or against the defendant, in the wife's cause)—that the law did not permit his statement of anything that passed between him and his wife. He knew that the only mode in which he could bring to your notice, as having occurred between himself and his wife, what it suited his purposes to propose to you as having occurred, was by weaving it into a recital or narrative that he should repeat to Mr. Beecher; and then he thought: "Now I have an opportunity to weave the web of my metaphysical argument, that a woman that was good and pious, and that loved me, and that still loves me, could be led into what all the world considers as betrayal of the husband, prostitution of herself, desertion of a mother's duty to children, an abandonment of everything that makes up good character and conduct and pure fame, and yet remain unsullied in her conscience and untouched in her purity. So, too, I can weave into it an explanation of how a good man and a great man can find in conscience, and in religion, and in duty, a provocative and a support to a course of conduct that, in the general judgment of mankind, would be, must be considered as base, as vile, as injurious to all the interests of society, as fatal to the fame of everybody and everything that the good and great man valued, as it is possible to portray even in the imagination of a poet, in the conduct of a wicked man. I thus," he said, "by the enchantment of my words and the prettiness of my sentiment will gild this awful guilt with what will make it credible, or else it never can be believed." And there he is, the victim of his own shallow philosophy.

PURPOSE OF THE INTERVIEW.

You will observe, gentlemen, that as we have led you up to this interview we have shown you the occasion of Mr. Tilton's resentments against Mr. and Mrs. Beecher's interference with his domestic peace and credit. We have shown you his deep ground of resentment against Mr. Bowen, and his deep sense of the folly of his attack upon Mr. Beecher, and of the ruin that had come from it, in destroying the only counterbalancing influence against Bowen's absolute condemnation that the wit of man could suggest: the support—the recurrence to the support of Mr. Beecher. Now, we will show you by the traits of this matter of the 30th of December, in all its

stages, that the great effort was to find some means by which the audacious attack of the 26th upon Mr. Beecher, and its absolute recoil, could be displaced from his mind and put out of the way. Why, gentlemen, you would suppose that the first feeling of Mr. Tilton, if he had suffered this injury, and Mr. Beecher was guilty, no matter whether his purpose was to ruin Mr. Beecher or whether his purpose was to coerce Mr. Beecher into cooperation for his—Mr. Tilton's—restitution, that he would follow up that attack, whose support had not yet been disclosed, except in the consciousness of Mr. Beecher, if the cause existed—by the open, by the vehement, by the damnatory accusation, and give the adulterer the choice, to take his ruin or become his servant; and so any man would have dealt with any man if there had been any fact upon which to rest. On the contrary, on the showing and admission of Tilton and Moulton, and more, upon the absolute and necessary conclusion from the facts that they state, the whole object of this interview was to undo the mischief that had been done, not to Beecher but to Tilton, by the attack—joint attack of Bowen and Tilton in the missive of the 26th. Before I am through with the close examination of this day's proceedings, the 30th of December, I shall have occasion to point out to you, step by step, how wholly consistent with this proposition of mine is everything that occurred, how absolutely inconsistent with the theory and with the charge, and with there being any truth in the charge, as now proposed, of adultery, is everything that came out of the mouth of Mr. Moulton, out of the mouth of Mr. Tilton, out of the mouth of Mr. Beecher upon that day.

MR. MOULTON'S SUMMONS TO MR. BEECHER.

I take up now the evidence of Mr. Moulton as it attaches itself to the preliminary walk from Mr. Beecher's house to Mr. Moulton's, where Mr. Beecher was to expect to meet Mr. Tilton. He says to Mr. Beecher, in the house of the latter:

"Mr. Theodore Tilton is at my house and wishes to see you."

The answer of Mr. Beecher is perfectly natural and unconcerned:

"This is Friday night; this is prayer-meeting night; I cannot go to see him."

"Well," I said, "he wants to see you with regard to your relations with his family and with regard to the letter that he has sent to you through Mr. Bowen."

Well, Mr. Beecher knew perfectly well that his relations to Mr. Tilton's family, in those terrible scenes in which he had been engaged by Mrs. Tilton's appeal, a fortnight before, and in the deliberations and in the advice, and in the fact that Mrs. Tilton had gone back and doubtless had conveyed to her husband everything that had occurred on Mrs. Tilton's part, and on his, and that in this patched-up amity between them they were perhaps, neither of them, certainly not Mr. Tilton, disposed to look with equanimity and patience upon this intervention of Mr. and Mrs. Beecher in their domestic affairs—he knew perfectly well that there was a just right of Mr. Tilton to desire to speak to him concerning those affairs. He knew, also, that Mr. Tilton had sent him that letter on the 26th, and he knew that Tilton, if there was any reason for sending that letter, which had not shown itself, certainly, in any consciousness as betrayed by Mr. Beecher, might very well want to say something about that; in other words, Mr. Beecher saw and knew that on these two points of his and his wife's intervention in the domestic affairs upon the invitation of Mrs. Tilton and Mrs. Tilton's mother, of this moody, passionate, willful, capricious man, Mr. Tilton, and the strange attack followed by the strange (in connection with that attack), interview with Mr. Bowen and the ruin of Mr. Tilton in his relation to his employer, his employment, and his livelihood, which Mr. Bowen had announced to him (Mr. Beecher)—he knew that the situation in which Mr. Tilton and his family found themselves was grave, was serious, was calamitous. And when Mr. Moulton said to him, "These are the two topics on which Mr. Tilton wishes to see you," Mr. Beecher, with that sensitiveness of sympathy and that profuseness of magnanimity, saw at once that it was his duty promptly to accede to this not unreasonable appointment. Now, look at it, "He wants to see you"—these are the first words of Mr. Moulton—"in regard to your relations with his family, and with regard to the letter that he has sent to you through Mr. Bowen." Now, leaving out all irrelevant matter, you will see how Moulton was in the common purpose of inflaming Mr. Beecher against Mr. Bowen, and attracting him to friendship for Mr. Tilton.

And we walked along together and I told him what Mr. Bowen had said to Mr. Tilton concerning his (Beecher's) adultery. I told him that Mr. Bowen had charged him with adulteries, in the presence of Mr. Tilton and Oliver Johnson.

Now, did that look like an honest interview between an accusing husband and a guilty paramour concerning Mrs. Tilton's guilt and concerning Mr. Beecher's injury to Mr. Tilton, and as a proper introduction to the sentiments, the purposes in that interview that must have influenced Mr. Tilton, unless he was either more or less than man? Oh, no, this confidential friend wanted to propitiate the mind of Mr. Beecher in advance to the friendship that Mr. Tilton needed from him, by showing him how wicked Mr. Bowen had been, and how that letter of the 26th, which Mr. Moulton had told him was the reason of the interview, had proceeded from Bowen's wicked, unrestrained imputation against him—Mr. Beecher—and that what that letter meant "for reasons best known to yourself"—oh! "well known to yourself" meant the consciousness of the adulteries that Mr. Bowen had treasured up and had infused into Mr. Tilton, animating his zeal for public morality and his duty for purity in the

households of Brooklyn. Mr. Moulton weighs his words and chooses his topics for the object. Now, Mr. Beecher said that was singular; when Bowen brought to him that letter he pledged his friendship to him. Well, what that was you have seen. Bowen said he came as a friend and continued a friend. He did not inform him that he had told Tilton any such thing. No, he had stuck the letter together so that Mr. Beecher should not even know that he knew what was in that, and he told him furthermore——now, look at how these traits show there was no guilt in Mr. Beecher's mind, no accountability, no fear of his resentments on any other grounds than these: "And he told him furthermore that he had sympathized with Mr. Bowen in the stories told him against Tilton; that Mr. Bowen told him some stories against Mr. Tilton and that he had sympathized with them." Now, those are the topics, those are the interests in Mr. Moulton's mind, those are the thoughts in Mr. Beecher's mind—"Tilton finds that Bowen has been using that interview with me contrary to what was the declared purpose and confederation between Bowen and Tilton, and I find—I, Beecher, find, from this gentleman's statement, that Bowen's adulteries—that Bowen's slanders, for which I have the utmost contempt, as I have trampled them under my feet for years—that those have been inspired into this young man's mind and he, in his extremity, has been made the tool of Bowen, and Bowen sent that blow and the recoil has killed Tilton."

Now, that is the way they came together. Out of the fullness of the heart the mouth speaketh, even when the heart is small and the mouth is large, as in Moulton's case. [Laughter.] Now, that is all on the topics that were to be the subject of consideration. There was something said about the weather, and an avowal by Mr. Moulton that he was not a Christian, which was uncalled for under the circumstances. He was not pushed into it as St. Peter was when he stood before the fire and warmed his hands. It was a voluntary avowal, in a Christian city, that he was not a Christian and was a heathen. But thinking that that alone would not recommend him to a Christian minister, he said: "Now, as the best pledge of any friendship I can frame and propose to you, I will show you how a heathen can serve you." And whatever else may be said, and proved, and charged about Moulton's inconsistencies and his treachery, he has never been unfaithful to that pledge; he has shown you how a heathen can serve a Christian minister. But we know that, from the time of the Apostles, when they shot and burned them over the fire, and imprisoned them in dungeons, and tortured them in boiling lead—we know how the heathen liked to serve Christian ministers, and Moulton told this man that he would show him how he would serve *him*. [Laughter.] And perhaps Mr. Beecher has found out. You have, at any rate.

MR. BEECHER FIRST ANXIOUS TO KNOW WHAT BOWEN HAD SAID.

Now we get to the house, and the husband is before the seducer and the paramour. Now we have a narrative uninterrupted that fills about three columns, I should think, of a newspaper, and it is a full rationale of this case as propounded by Mr. Tilton, intended to introduce what he proposes to your common sense as an actual interview between himself and his wife, and an actual interview between himself and the paramour. And you will see whether you think that it will stand the test of common sense and of common decency in respect to either. But you will see now how he betrays himself. What he wanted, what was uppermost, what was the object, was to get out of the terror and the destruction of Mr. Beecher's resentment against him for that letter. And so, forgetting all his own wrongs, forgetting the tortures and disgraces, and pity for his wife, and pity for his children, and all the flood of passions, good and bad, that overflow and boil over in a man the first time he meets the adulterer that has ruined everything that is dear to him, he begins by going at what Moulton had gone at—this letter, and Bowen's accusations of Mr. Beecher. Now, he says, to begin with, and to be carried along, I suppose, with his narrative, "I cannot undertake to repeat accurately, that is to say, I will not attempt to give the words, except at certain points, because what was said was mostly said by me, and I have no special gift at recalling words." Then he goes on and gives you, I say, a narrative, three columns of a newspaper. "I can better call what he said than what I said." Well, I should think so, because he says Mr. Beecher did not say anything. No doubt, you can better remember what a man said when he said nothing than what another man said when he talked half an hour. "I began in this way—I am entirely accurate as to the first words spoken, and they were these." Now we have a start-off between an infuriated husband and a guilty paramour, each knowing the truth about the other. "I said: 'I presume, Sir, that you received from me a few days ago, through Mr. Bowen, a letter demanding your retirement from your pulpit, and from the City of Brooklyn?' He said: 'I did.' I then said to him, 'I have called you here to-night in order to say to you that you may consider that letter unwritten, unsent, blotted out, no longer in existence.'" And on Mr. Tilton's cross-examination I draw from him that that was the absolute purpose, the perfect desire to get it possible as between him and Mr. Beecher in regard to Mr. Beecher's feelings toward him, as if that wicked and impudent letter had never been written. Beecher's friendliness to him was what he was aiming at, and did aim at all through that week, and on his own showing what a strange

position, if he had the least idea of these relations between Mr. Beecher and his wife that he now parades. His position would be this: "I wanted to be sure of Mr. Beecher's feelings toward me. I knew he loved my wife, but I did n't know how he felt toward me." [Laughter.] And he meant to find out. "'I thank you,' he said. I replied: 'Your thanks should not go to me, but to Elizabeth. It is in her behalf that I hold this interview, and whatever I shall say here, or in consequence of this meeting, is, not for your sake, nor for my sake, but for her sake.' I then asked him whether Mr. Moulton had shown to him a statement which Elizabeth had written. * * * He said that Mr. Moulton had shown him no statement. I then said, 'Do you not, then, understand the object of this interview?'" Well, he ought to by this time, because Mr. Tilton had told him. "'I have called you here to-night in order to say to you that I want that letter I sent to you blotted out.' 'I do,' said he, in general terms." Those were the general terms that Moulton had expressed to him—it was about his relations to his family, and about that letter. 'I then replied, 'you should understand it more specifically.'" Now, look at the cool way in which this rhetorician opens the deepest passions and resentments of human nature. "You should understand it more specifically. I will read to you a statement which Elizabeth has made. Mr. Moulton has the original; I have a copy; I will read to you the copy."

Now, Mr. Beecher knew that he was an adulterer if there had been any adultery, and that Mrs. Tilton was the partner in his guilt, and that she had made a statement; and that this letter and the troubles in his family that Mr. Moulton had spoken of as calling for this interview with Mr. Tilton, were of that grave matter; didn't he? Didn't he know it then, if there was anything? You must judge. I tell you he did. If there was any fact, he knew it. If there had been a disclosure, he knew it. If Mrs. Tilton had accused him, he knew it. If Mr. Tilton had a charge of those facts, he knew it; and he knew if he had any charge, if those facts were true, it was of these facts. Now, see how the man meets it. He said, cool as a cucumber about this statement, while Mr. Tilton "was searching for the copy which I had made of Mrs. Tilton's paper, he said to me: 'Before reading that, Theodore, I wish you would tell me what Bowen has been saying against me.'" Well, now, between this lion of a husband and this consciously guilty man, could there be anything more infinitely ludicrous than this? "You ought to hear Elizabeth's statement; I will search for that;" and there was some delay. Mr. Beecher says: "Well, Theodore, before you read that I wish you would tell me what Bowen has been saying against me." Well, how did the husband meet it? How did he meet it? Why, he says: "I replied to him that I had not summoned him to the interview for the purpose of discussing with him Mr. Bowen's affairs, but that he should go to Mr. Bowen himself. Nevertheless, as he asked me the question, I would say that Mr. Bowen in an interview with me on the preceding day, had made a statement that—" now, we have got it as in quotation marks—that—see, Tilton wanted to get in as early as possible what Bowen had had to do with that letter, that it was Bowen's calumnies, if they were calumnies, that were at the bottom of it—"you have been guilty of adulteries with numerous members of your congregation ever since your Indianapolis pastorate, all down through these twenty-five years; that you are not a safe man to dwell in a Christian community; that he knows numerous cases where you have shipwrecked the happiness of Christian homes; that he has determined you shall no longer edit *The Christian Union*." You see Bowen, with his zeal for morality and religion, and exposing the turpitude of this Christian man that was thus ravaging the sheepfolds of Brooklyn, and had been for 25 years, to Bowen's knowledge! Well, didn't that rather make him an accessory before the fact to the ruin of all these Brooklyn people? Mr. Bowen, even, with that Christian indignation, had brought it to the point that it was determined "you shall no longer edit *The Christian Union*." That is the first thing; "that you shall no longer speak in Plymouth Church; and he says distinctly"— Now, you have the moral sentiments from Bowen; he don't mean to be mistaken—"that you are a wolf in the fold, and that you should be extirpated." Well, now, he is very bold about Bowen's feelings toward Beecher. He didn't wish to ameliorate Beecher's feelings toward Bowen; that is plain. He didn't take the means of finding out or securing friendliness on Beecher's part to Bowen. Oh, no. Truth, truth, governs this part of the conference. "Mr. Beecher said"—and whenever Mr. Beecher says anything, you will see that it is perfectly natural for an honest man that knew what his own character and conduct was, and cared not for the maligner—"Mr. Beecher said it was a matter of amazement to him that Mr. Bowen should have so spoken; 'for' said he, 'when Mr. Bowen delivered to me your letter demanding my retirement from the pulpit, he appeared to be friendly, and he offered me his friendly services in the matter.'" Well, if Tilton had had any doubt about the trick that Bowen had played him at that interview, he now had his mind disabused of that doubt.

I then said to him that I had joined with Mr. Bowen at the beginning of the week in making that demand upon him to retire; that I had written that letter at Mr. Bowen's suggestion; that Mr. Bowen had requested that such a letter should be written, and had said that the reason why he could not write it himself was that in the preceeding February—that is February, 1870—he, Bowen, had had a reconciliation with Mr. Beecher, and that Mr. Beecher had begged his pardon, and had bent himself on the floor and wept, and Mr. Bowen had freely granted him forgiveness for the crimes he had committed.

Good heavens! How came Mr. Bowen to be gifted

with the power of absolution for sin? All these adulteries which Mr. Beecher had been committing for 25 years, ravaging the flocks, and was still perpetrating, all forgiven?

That he, Bowen, had freely granted him forgiveness for the crimes he had committed, and Mr. Bowen said, in view of having granted that forgiveness, he could not initiate proceedings against Mr. Beecher, but if I would initiate them by sending such a challenge, he (Bowen) would sustain that demand, and in the interest of morality and religion expel Mr. Beecher from his pulpit and from the city. That he furthermore had said that he, Bowen, had it in his power at any time to drive Beecher out of Brooklyn within twelve hours.

Well, Mr. Beecher didn't trouble himself at all about the substance of these accusations. His reply now, as before, was of amazement that a man could talk in that fashion.

Mr. Beecher again spoke of his astonishment that Mr. Bowen should have said such things to him—or to me [Mr. Tilton corrects himself]—on Monday, and then have expressed himself in a friendly way, as Mr. Beecher described it, on the occasion of delivering the letter.

Well, these twenty-five years of adulteries, drowned out by the pardon of Bowen, then passed very much out of consideration and don't seem to have troubled anybody's mind since. It has been printed in the papers in the form of a letter from Mr. Tilton to Bowen. You don't find anything printed from Bowen—there is nothing from Bowen that does not come through Tilton. People have read it and yet the wolf goes on, not in sheep's clothing any more, of course, because the sheep's clothing has been stripped off, but he goes on, not only with absolution for the past, from Bowen, but indulgence for the future from the same great ecclesiastical authority. [Laughter.]

THE TALK ABOUT THE ALLEGED CONFESSION.

How, after this cool, quiet introduction which Mr. Tilton flattered himself was so artful for the purpose which he had, of throwing on Bowen all that letter, and inflaming Beecher against Bowen and drawing him towards himself, he then goes on and gives the reason he had come to this interview with Mr. Beecher. Now, mark how he confirms our statement and belies his own, as to what passed between him and his wife during this week.

I then told Mr. Beecher that after I had had this interview with Mr. Bowen I had narrated the substance of it to my wife; that my wife was ill, and that this intelligence filled her with profound distress; and that she had instantly said to me that it was a violation of my pledge and promise to her, made in the preceding Summer, that I would never do the Rev. Henry Ward Beecher any harm, or ever assist in any exposure of his secret to the public.

Well, I think Mr. Tilton's conduct was rather open to that criticism of his wife, if he had pledged himself that he would n't do any harm to Henry Ward Beecher. He had told you that his animating motive when he wrote that letter to Mr. Beecher was to strike him to the heart, and to drive him out of Brooklyn in twelve hours, and he thought he would do it by that letter; so it looks *a little* as if he had violated a pledge, if he had made one. So there is nothing that these people do at any step that they do not have to avow is infamous in motive and in its violation of every pledge.

She said to me: "If Mr. Bowen makes a war upon Mr. Beecher, and if you"——

Now, Bowen had not shown any disposition to make war upon Mr. Beecher except so far as Tilton would carry it on——

——"and if you join in it, and if Mr. Beecher retires from his pulpit, as he must under such an attack"—that is the poor wife's notion, if under that attack of Bowen of these adulteries of 25 years he retires, as he must—"everybody will, sooner or later, know the reason why, and that," said she to me, "will be to my shame, and to the children's shame, and I cannot endure it."

Well, now, how do you suppose that topic, thus brought up suddenly, with all its horrid meaning to a guilty soul, was received by Mr. Beecher, and how was it treated by Tilton? I am taking Mr. Tilton's story; he cannot complain of that. When he had said this, made this incidental reference, "Mr. Beecher then asked me what I meant by speaking in that way of Elizabeth and her shame." "Why, what is all this? Your wife? your children? I understand thus far: you have been talking about that letter and about Bowen's 'adulteries;' you told me that you were fumbling for a statement that you were going to read to me, but now you have said something about Elizabeth and 'her shame;' now that, that *that*, is something that I would like to hear about. What is that?"

"He asked me," says Mr. Tilton, "what I meant by speaking in that way of Elizabeth and her shame; so I then read to him a copy of Mrs. Tilton's confession, a copy which I had made in the early part of the evening; the original of which was in Mr. Moulton's possession."

Well, I objected and asked for the paper. He said the paper was destroyed. "When was it destroyed?" "It was destroyed by Mrs. Tilton's own hand." "The copy you took, I mean?" "The copy was destroyed that evening, during the interview; the original was destroyed two years later by Mrs. Tilton, in my presence." "Is that the one that Mr. Moulton speaks of in his testimony as having been destroyed?" "Yes, Sir." Then Mr. Fullerton asks, "Destroyed immediately after the 'Tripartite Agreement' was signed?" Mr. Fullerton knew when it was destroyed. "Yes, Sir; after the 'Tripartite Agreement' was signed, at Mr. Moulton's house," that paper was destroyed. Well, he read the paper, whatever it was. He says:

After I read to him, then he lifted his hand as if he were about to speak, and I said, "No, Sir; hear me through, and speak then."

A DESPERATE MOVE OF MR. TILTON'S.

And then, gentlemen, we had a most extraordinary occurrence here right under the eye of the Court, and in the face of the jury. I objected, under a well settled rule of evidence, as I supposed, to allowing parties that had destroyed this vital paper, willfully, to undertake to give evidence of its contents; and the law does not allow that. The law understands that a paper must speak for itself. and provides that people shall not be allowed to destroy it and substitute their memory or their invention. My learned friends with great ability, which, indeed, characterizes all their forensic interlocutory arguments—Mr. Fullerton and Mr. Beach both—argued that that rule could not apply, because the paper was destroyed with Mr. Beecher's concurrence, that night, with his concurrence, before his face, by Mr. Tilton, and the original afterward, with his concurrence. Well, that had not been proved. I said, "It will be time enough to put upon that ground, to get a right to give parole evidence of that paper, when you have proved Mr. Beecher's concurrence," but they argued and argued that it was not fraudulent, and that the proof was admissible, although the destruction was purposed; for their argument was that it was done as a deliberate act and upon the concurrent purpose of Mr. Tilton and Mr. Beecher then, that night, and some concurrence of Mr. Beecher afterward, two years afterward, though that, of course, they had not then given any proof of. I brought the authorities and read them, that even a destruction that was not fraudulent, if it was purposed, would not permit the introduction of secondary evidence by the person who purposely destroyed the paper, because the interests of the administration of justice could not be exposed to the question whether it was fraudulent or not; but that it was only when accident or mistake had caused the destruction of a paper, that parole evidence or secondary evidence of its contents could be given; and would you believe it, when that discussion was over and this paper had not been permitted to be detailed by his tongue, and he had heard this argument of his counsel that it had been purposely destroyed with Mr. Beecher's concurrence, and therefore the testimony ought to be allowed, and that the books did not allow that distinction, but allowed the distinction of the accidental destruction—would you believe it the next moment that he opened his mouth on the witness-stand, after this discussion, he threw his counsel bodily overboard before your eyes, crushed their argument that the destruction was purposed and with Mr. Beecher's concurrence, and said that in the heat of his presentation of this case to Mr. Beecher he had inadvertently picked this paper to pieces, and found he had destroyed this copy of the confession!

Now, gentlemen, that was done before your eyes, under the ready wit and the short reckoning of Mr. Tilton, that if he did put his counsel to the open shame of arguing, upon his previous instructions, that the paper had been destroyed purposely and with Mr. Beecher's concurrence, he at least would help his cause, as he thought, and invent an inadvertent, mistaken, unintentional destruction. Well, it did not answer the purpose. It didn't remove my objection, because the original had been destroyed; and it did not satisfy the ground of his Honor's exclusion, which was on another point. So much for that wriggling of a witness and a party out of one scrape into another.

HOW THE ALLEGED CONFESSION WAS MADE.

Now, gentlemen, we come to this plaintiff's (the husband of an adulteress) narrative to the paramour of his wife of the wife's statement to him. Mrs. Tilton's confessions are not permitted to be given in evidence and have not been given in evidence in this cause from anybody. Mr. Tilton was not allowed to give them because it would be infidelity to confidential communications from a wife. Nobody else has given them; nobody else could be allowed to give them; and yet you have a long narrative that, at first view, looks as if it was a statement by a witness of what she confessed; but you will see at once the difference, when it is *only what he told Mr. Beecher*, as what she had confessed, that has been permitted to be given in evidence, not tending to prove that it was true, not permitted to have that influence on your minds, because it would be equally a part of his statement to the paramour, whether it were true or not, wouldn't it? It would be an enginery to probe the paramour's conscience, and to alarm him into an admission, whether it was true or not. If a husband, suspecting a paramour, seizes him unawares, and invents a confession of his wife and puts it to the paramour to see how the paramour will deal with it, why, he uses a weapon the effect of which on the paramour will be the same whether his wife has confessed or not, if the paramour knows it is true. Many a case of that kind is found in the books. The force of all this permitted testimony of what passed between Mr. Beecher and Mr. Tilton is to bind Mr. Beecher by what he does; not to prove the truth of the statements that are made to him by Mr. Tilton. And you will see at once the difference. I could cross-examine Mr. Tilton as to whether or no he told Mr. Beecher all this rigmarole, if I had thought it worth my while, but I could not cross-examine him as to what passed between him and his wife. I could not explore the secrets of that interview and draw out from his unwilling mouth, perhaps, against his will, the truth of what passed between himself and his wife; because he had not been allowed to swear what passed between himself and his wife, and I could not occupy a field by cross-examination that had not been opened. The same objection to making a husband, or allowing a husband, to reveal confidential passages between himself and his wife, would have ex-

cluded my cross-examination as to the actual occurrence between them, just as much as it excluded his direct testimony. Therefore, you will see that this matter of whatever passed on that July between Mr. Tilton and his wife remains wholly unexplored; no affirmative direct evidence has been permitted to be given of it; my side of this case has been excluded from probing, from testing, from convicting of falsehood and of folly, the story of any such interview. But as a part of this interview between the husband and the paramour, this becomes a subject to be commented upon, and it is invaluable. This is the husband's reproduction of what he alleges was an interview between his guilty wife and himself on the occasion of his becoming first informed of the guilt of the wife, and when he had had no suspicion up to the moment of the interview. Now, you would suppose that a woman that had made up her mind to tell her husband of such a course of life as this woman is said to have admitted to her husband would have had some emotion; there would have been a sob or a tear; there would have been a justification, a deprecation, a subjection to his mercy on the part of the wife in her own behalf. Can you figure to yourself, in our circle of society and on the level of these people, saying nothing of the particular delicate traits of Mrs. Tilton, her severe notions about the least approach of unchastity, her severe condemnation of all immorality in others, her hatred, her abhorrence of any approach or exhibition of the fallen condition of woman, her sister, which excited such feeling in her that, while all other people were patient and courteous and embraced with kisses, Mrs. Woodhull in her presence, as Mr. Tilton tells you himself, whenever his wife and Mrs. Woodhull were in the same room their eyes flashed fire at one another—do you suppose such a woman, that had dragged her body through the prostitution of sixteen months, and through the longer indignities of the coarse approaches of three years before—to be sure one incredibility shuts out another; the whole thing is so incredible that you cannot reason upon its ever having occurred, but his theory is that it had occurred—do you suppose a woman whose eyes flashed fire whenever they lit upon Mrs. Woodhull's face, could have, under the power of conscience, made a long confession of her guilt, of the facts if it was innocent adultery, of the disreputable facts that, *unexplained*, looked a little against a woman certainly [laughter], and had the narrative begin and go on as this one does? Ah! gentlemen, a witness that is not to be contradicted, when he tells this narrative can make it match, perhaps, *in words*, but the folly of expecting to have it match human nature, in the judgment of men, in the judgment of women, in the judgment of a jury, is utterly incalculable and preposterous! The idea entering into the shallowest pate, unless it was a shallow pate inflated by self-conceit, that he could make an interview between husband and wife, that the very stones of the street would cry out against as a libel on human nature, a libel upon a woman that could say it, and a libel upon a man that could hear it! Now, see how the wife begins. Mr. Tilton says:

"I told Mr. Beecher that in the early part of July previous to that interview [that is, July previous to this December], Mrs. Tilton had come home unexpectedly from the country and had said to me that the object of her return was to communicate to me a secret that had been long resting upon her mind like a burden"—these are her words, figurative, you see, rhetorical—"which she wished to throw off"—cool, quiet—"that she had on several previous occasions come almost to the point of making such a statement to me"—*statement;* no confession, no notion that she was going to make a confession, but a statement—"and once in particular while on a sick-bed, but that she had never until then, having been restored to health"—well, she had been in health before, and the time she most thought of it was when she was sick—"she had never until then, having been restored to health, been brought quite to the point of courage—the disclosure."

Now, was there ever a cooler adulteress lying by the side of a husband in a marriage bed, and introducing the shameful narrative that burns into the soul of a woman, and she a woman whose eyes flashed fire at the presence of impurity? Ah! Mr. Tilton, you can invent speeches for Tiltons; you cannot invent them for women!

"That before she would announce to me what the secret was"—you see it was not anything of hers, nor that he suspected that she had anything to do with it—"she exacted from me a pledge that I would do no harm to the person concerning whom the secret was to be told."

A unilateral secret, obviously, for it only related to one person; no connection with this living soul and body that lay by his side, and was talking to him.

"And, furthermore, that I would not communicate to that person that she had made such a revelation to me"—no confession—"because, as she said, she wished to inform him of that revelation herself."

Ah! gentlemen, not much notion of confession to Mr. Tilton; the word didn't occur; not much notion of consciousness of guilt on her part, the sin of unchastity and pollution of body, and you remember her letters that my learned brother exposed to you with such effective demonstration as the anatomist exhibits over the torn frame of a subject. And Tilton was as cool as she.

"I had given to her this pledge," and that you might not doubt how sacred it was, and solemn:—"my word of honor that I would neither disclose her secret"—that is, the secret she was going to tell—"whatever it might be, nor would I injure the person concerning whom it was to be told."

So they keep it up, and you see, gentlemen, now we don't need to talk about these things, the impossibility of such a beginning, not in respect to the memory of words, but in the very imperishable principles of human nature and human character, puts to flight all solicitude about believing anything that comes after; and when you have a living witness and a credible man, Mr. Beecher, who

tells you that all this folly never was produced in his hearing, and gives you a perfectly rational explanation of what was said to him as coming from the wife, which is perfectly consistent with this telling of the story about a third person that didn't involve the wife's character or her conduct, to wit, a withdrawal of her affections, and, if you please, the further statement of rejected addresses —when you have a living witness that testifies along the live current of human nature and human conduct, you then can understand how this witness has fixed the real traits of any communication or statement as not being a confession on the part of the wife, but an accusation of another, of being something to be told injurious to another, and not to excite animosity on the husband's part against that other, nor even to be made the subject of communication to him, because the lady wished to be the medium of communication to him herself. Well, now, we have got some third person, about whom something is to be told which has not started a tear or a sob on the part of the wife; nor has it agitated a suspicion or a doubt on the part of the husband. And then she goes on just as coolly; and now listen·

That she then said to me that it was a secret between herself and the Rev. Henry Ward Beecher.

Well, she put in his full title, so that there might be no mistake of the person; and, then, to guard against further misconstruction, she adds, "her pastor." Well, gentlemen, Mr. and Mrs. Tilton knew Mr. Beecher, and they knew he was the pastor of Plymouth Church; and when an agonized wife, under the power of conscience, is going to tell of her seduction, of her prostitution, she would tell of it, wouldn't she? She would humble herself in the pillows of the bed and, with sobs and tears and dishevelled hair, tell the sad story of her shame. She would not put in "Rev. Henry Ward Beecher, my pastor," as the first thing she said on the subject. Now, see how she recalls to him; just see how she talked to him there that night: "That, as I was well aware," that is, that she said to him—he don't say he was aware, but she said, "Now, as you are well aware," my husband, "there had been during a long course of years a friendship between herself and her pastor." She wishes to recall to his mind the general traits and features of this business and relation, so that it won't seem improbable to him that she has committed adultery with a man in the moon.

"This friendship, contrary to my expectation, had been," she says—well, that was fair to throw that in—"had been in later years more than friendship. It had been love; that it had been more than love."

See how the climax rises with the rhetoric that belongs to the passion of the heart.

"That it had been sexual intimacy; that this sexual intimacy had begun shortly after the death of her son Paul"—well, that is a queer way of speaking of little Paul to the father—"her son Paul; that she had been in a tender frame of mind consequent upon that bereavement."

Now, you know, having got at the fact of the adultery, it is to be made reasonable by connecting it, naturally, with sentiments, and feelings, and a situation of the woman's mind that tends to adultery, of course. You must have the proximate situation to make the adultery natural; and anybody can see that a mother, having lost a child, turns her attention to adultery, of course. Of course, we all understand that. That being granted, it is in vain to reason against the rest. However, she does a little more.

That she had received much consolation during that shadow on our house from her pastor; that she had made a visit to his house while she was still suffering from that sorrow——

All in the name of the dead Paul that this adultery is justified, and there, on the 10th of October—you see we have the date; the date is important; we must get it somewhere; the law requires some particular time and place, and now we have got it. Only think of it, of a woman under the influence of conscience, and stirred by the deepest passions of her sex, or of our nature, having the precision of mind equal to that of my learned brother Morris in drawing this declaration of stating the time and place at Mr. Beecher's house on the 10th day of October, 1868. Now, it could not have been for the purpose of having a suit brought, because she had exacted a pledge, and he had given it on his honor, that he would not do or say anything about the matter she was going to tell him.

Still suffering from that sorrow, and that there, on the 10th of October, 1868, she had surrendered her body to him in sexual embrace; that she had repeated such an act on the following Saturday evening at her own residence.

A queer way of talking to her husband, and for fear there should be doubt, as they had moved from time to time from one house to another, she adds, "her own residence, 174 Livingston-st.;" [Laughter] "that she had consequent upon those two occasions"—look at the rationale of it; "consequent upon those two occasions." Not subsequent. Oh, no! There is a logic of connection. Well, as we have a very good maxim that it is only the first step that costs, I think the two steps did justify the reasoning that the rest followed.

Consequent upon those two occasions, repeated such acts at various times, at his residence and at hers, and at other places.

A FEAR OF ALIBIS.

She does not seem to have disclosed the other places. What would her friends have given for the other places? Ah! gentlemen, these other places! There were other places, mind you, or this was a lie, and the same woman that told with such precision that it was at her residence, 174 Livingston-st., would have at least given a clew that could have been followed out to find the other places. They could have proved them if they had proof, but they had not any other proof of these places, Mr. Beecher's house, or hers, any more on this

trial than they had of the other places; and, if they had not any proof of the other places, Mr. Tilton thought, on the whole, that there might be more danger of alibis if he had given equal precision to the other dates and the other places that the woman mentioned—that he said she mentioned. "Such act of sexual intercourse repeated." Repeated such acts. Now, she didn't wish to be misunderstood. Repeated such acts, she said; so she repeated such acts of sexual intercourse, continuing from the Fall of 1868 to the Spring of 1870.

"That in July, 1870, she had made"—now, this is not a part of her narrative, but it comes in here—"that in July, 1870, she made a confession to me in detail of those acts; that she had given to me also, during that recital, many of the reasonings by her pastor communicated to her to change what were her original scruples against such a sexual intimacy."

THE ARGUMENTS BEFORE WHICH IT IS ALLEGED MRS. TILTON FELL.

Only think of it. A woman 35 years old that had had six children, one of them lately dead, that speaks of a woman's feeling about chastity, a wife's feeling about chastity, a mother's feeling about chastity, and the pollution of the marriage bed in her own house, which the French law in terms says justifies the husband in slaying her on the spot—and they are not supposed to be a sensitive people on these matters—this woman speaks of that as her original scruples against sexual intercourse. Good heavens! We shall have to ask the maidens when they stand at the foot of the altar whether they have any scruples about sexual intimacy with other men than their husbands, and our wives—we want to know how they feel on this delicate question of casuistry, this domestic question, about which opinions differ, that has so much to be said on one side and the other for it, to know what their scruples were. Ah, these insidious Christian instructions of Mr. Beecher that removed her scruples about prostitution and adultery and bastardy in her family. Ah, he must have preached with a power to conscience and intelligence that he has not exhibited of late if he could reduce this nature of woman to scruples, and then puff them away with the breath of his mouth. Now, I thought that it was a little steep, to use a slang expression, when she said that she told him that her pastor, for reasons, had induced her to change her original scruples. I broke in there—I could not stand it:

Mr. Evarts—Mr. Tilton, do I understand that this is what you said to Mr. Beecher?

I began to see that I had got him in a grasp that he never could escape from, but that I must hold him by a new twist of the cord that he needn't jump from it. He answered: "Precisely, Sir." Well, pretty good for a single word. Well, now, he goes on and gives the reasons, and you see they carry conviction to every pure-minded woman:

"That she had in the early stages of their friendship"—now, the woman was not unwarned—"been greatly distressed at rumors concerning Mr. Beecher's moral integrity."

Well, now, every rumor has been traced to Mr. Tilton thus far. Mr. Tilton repeats to Mr. Bowen; Mr. Tilton writes to Mr. Bowen what he says Mr. Bowen said to him, but Mr. Bowen has never come out and said he said it, but you will see how the dreadful alternative that I put to this man of knowledge about Mr. Beecher, if there was any truth of any kind, comes out of his own figment, to be sure, but of his own necessity to make, by a figment, a story that he thinks credible."

"That she had in the early stages of their friendship"—Mr. Beecher's and her own—"been greatly distressed at rumors concerning Mr. Beecher's moral integrity."

Why should she have been distressed about a matter that, as it turned out, was only a scruple of an overscrupulous woman, and that when the vile pollution had been perpetrated and continued had not touched her yet, and for a year afterward, with the notion that she had violated her marriage vows. Ah, this is too extraordinary. "She was distressed at rumors concerning Mr. Beecher's moral integrity; that she wished to show to him"—now comes the justification—comes this shrewd, as this party thinks it, invention of his to make you swallow this adultery as not involving any want of innocence on the part of his wife. How noble her motives now, having heard and been distressed by rumors of Mr. Beecher's immoralities with women!

She wished to show to him that there was a woman who was superior to the silly flatteries with which many ladies in his congregation had courted his society.

His society! What does society mean in that connection, of his known immoralities and the silly women—the rumors of his immoralities and the silly women that had courted his society?

"That she wished to demonstrate the honor and the dignity of her sex; that she had done so in her own thought, until finally she had been persuaded by him, that as their love was proper and not wrong"—well, that seemed to be taken for granted, that the love of a married man with a married woman, the wife of another man, that that was all right, and, "therefore it followed that any expression of that love, whether by the shake of the hand, or the kiss of the lips, or even bodily intercourse, since it all was the expression of that which in itself was not wrong, therefore that bodily intercourse was not wrong."

Well, now, that involved sentence of metaphysical reasoning is almost as long and faulty as some that the newspapers impute to me in my argument. How natural for a woman lying in bed by her husband, and talking about her own adultery to a man who had never heard of it before. How interesting it must have been that, if he had got to accept the fact, at least his reason was not going to be imposed upon if he should understand how it happened.

The Court here took a recess until 2 o'clock.

AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—She proceeded with her exegesis of this adultery after saying that step by step, a shake of the hand, a kiss of the lips, or bodily intercourse, since it was the expression of that which in itself was not wrong, therefore that bodily intercourse was not wrong.

That she had said to me that Mr. Beecher had professed to her a greater love than he had ever shown to any woman in his life; that she and I both knew that for years his home had not been a happy one; that his wife had not been a satisfactory wife to him; that she wished —that he wished—[that is a correction; "she" does not belong there.]—that he wished to find in her (Elizabeth) the consolation, the help to his mind, and the solace of life which had been denied to him by the unfortunate marriage at home.

Well, what becomes of the 25 years of adultery and debauchery that had run on, from Indianapolis down? On this story, this was the first real resort to happiness in marriage which Mr. Beecher had felt at liberty to assume. Late in life, at the age of 56, after he had had nine children, and while he had some six or eight grandchildren, and had fair daughters-in-law about him, and a wife that he had been faithful to from the time they were both 17 years of age, he thought that his duty required him now to find consolation, reward for a virtuous life, help to his mind—for his mind and his soul were devoted to the service of God, and anything that could amplify the great powers for truth and Christianity that he was endowed with was of course a duty—and the solace of life which had been denied to him by the unfortunate marriage at home, a marriage now, at this date, of a continuance, I suppose, of some 30 years.

Mr. Porter—Thirty-five.

Mr. Evarts—Thirty-five years. Well, what a revelation it was to him; what a revelation to Mr. Beecher, at the age of 56, that this unprosperous, unfruitful marriage of his had been a penance and a drain upon his powers, and that now his duty required him to find that support for his future labors that should continue his beneficence in this world! Now, we have the narrative of the wife continued:

That he had made these arguments to her during the early years of their friendship.

Now, the early years of their friendship carried them back to 1863 and 1864, and 1865. He began at the beginning. But these convincing arguments, (that when she had really relished their true moral force and religious beauty, carried away all scruples—and I shall read to you from this same husband, plaintiff, witness's mouth—in the retrospect seemed to her to make it all for the glory of God) she had not taken without inspection and without resistance.

That he had made these arguments to her during the early years of their friendship, and she had steadfastly resisted; that he had many times fondled her to the degree that it required on her part almost bodily resistance to be rid of him.

Now, here was a woman that did not believe in these arguments, at this time, of the early years. She had steadfastly resisted. Her mind had not been overpowered, nor her conscience corrupted, nor her instincts of chastity deadened; but yet through this period he had fondled her, and pressed his coarse, polluted touch to the point that it required almost violence to resist. Now, this is the narrative, this is the course; and this was as coolly delivered by this chaste woman, and as coolly received by this husband, as if the narrative had been about a persistent search for any of the trinkets or gewgaws of dress, through the shops of the city. Now, gentlemen, what sort of a figure, in any rank of life, would a woman make in setting up her chastity as having been overpowered by violence in the final consummation of ruin by force, that began by telling the Court and jury that she, through a series of years, had been fondled so that it required bodily resistance to preserve her virtue? I do not think that we lawyers, or you jurymen, or the Judge or bench, would listen long to a story of violent consummation against chastity, that had been preceded by years of violent fondling; and yet this rhetorician thinks that he has put a white robe of chastity over his wife by putting such a narrative into her mouth, that he has covered Mr. Beecher with the double guilt of paramour and mistress, and made his wife a saint.

Now, gentlemen, this plaintiff was a little unlucky in his assortment of the two occasions on which this prostitution of his wife occurred, on the theory of absence of desire, and absence of consent, and absence of coöperation, or enjoyment in the guilt, in putting the first surrender, not at her own house, but at Mr. Beecher's. How did the woman get there? Was she carried in her sleep from 174 Livingston-st. to 124 Columbia Hights? She was not in the habit of going there. There is not any evidence that she was there on the 10th. There was no reason for her going; and yet this silly reasoner, her husband, has made an unconsenting, reluctant, submissive prostitution, attended by the wife's resort to the unaccustomed place of meeting. You can judge as well as I whether that comports very well with the theory upon which this prostitution of the wife is presented. But that theory is the only theory, that statement is the only form and manner and circumstance of this adultery that is pretended by the plaintiff. And now.

"That after her final surrender during the period of her sorrow,"—now this is all over again; this is what she told her husband—"during the period of her sorrow, in October, 1868, he had then many times solicited her, when she had refused; that the occasions of her yielding her body to him had not been numerous, but that his solicitations had been frequent and urgent, and sometimes almost violent."

And so we have this renewed condition of a woman who was pure of heart, utterly free from any low or degrading impulses, and that put her fault, if at all, upon being overpowered by piety and duty to the Church and to God, telling you this continued story, after the first sacrifice, that this resistance of her instincts, resistance of her conscience, resistance of her woman's nature, continued, and was constantly overcome, or nearly overcome, but sometimes triumphed; and all this goes on, and not a suggestion or a complaint of any kind, of any degree. Well, there was time for meditation, wasn't there? She was shut up in her own house with these lovely children of hers, and watching over them and their unfolding beauty and purity. She was taking care of these redeemed women of the Bethel, and saw the misery and wretchedness that this debauchery had wrought in their hearts, their families, their souls; and that religion, the Christian religion, was the only redeeming influence, and that it was adequate; and yet, without having any of the evil impulses of the heart, or any of the carnal urgency of the flesh, she carried on this concurrent stream of prostitution of her body to a hypocritical religious teacher! This is the way Mr. Tilton makes adultery easy; this is the shape in which he makes it pure; this is the verbal protection against the sin and stain and ruin of those acts which strike at the very heart of the female character.

HOW IT IS ALLEGED MRS. TILTON AWOKE TO HER SIN.

Now, where did her conscience wake up? It never waked up on the subject of adultery, not certainly for a year afterward, as I shall show you:

That she made this confession to me [and that is the first time that the word occurs] because the sense of deceitfulness in her mind was a pain to her conscience.

Well, she had a conscience, a sensitive conscience. She saw that somehow or other the thing must be wrong. She knew the seventh commandment, which forbade adultery. She knew the tenth commandment, which forbade a man to covet another man's wife; and that would seem to be plain, but that didn't touch her; no, no, nothing in that; but there was a sort of concealment about this that pained her conscience.

That she had gone away from home in the Spring [she repeated all this to her husband] parting from me under a cloud, as I knew.

That she said. He wanted all these things to be in evidence; there was no way of getting them in evidence—his own views of how he would like to have this thing displayed before the public, "and that I had written to her"—now listen to this; she tells her husband all these things, that he knew—

And that I had written to her in her absence a letter, saying that unless she told me the truth, that if she ever lied to me as she had done in reference to a few minor matters, that I never again could hold her in any respect.

Well, now, what an extraordinary thing. After the day and the night that the woman was talking to him he had never had the least suspicion of anything wrong about it—nothing; yet she was moved in conscience by a feeling that there was a little duplicity, a little double-dealing in having two bed-fellows at the same time; that to a mind sensitive to truth and openness, produced a sense of uneasiness; and besides he says:

"That I had written to her in her absence a letter, saying that unless she told me the truth, that if she ever lied to me"—this is his own language, in his own letter, to his own wife, if there is any word of truth in this, that she repeats to him—"If she ever lied to me as she had done in reference to a few minor matters, that I never could hold her in any respect."

Ah, gentlemen, what was that letter? What is this mode of an ideal happiness undisturbed up to July, when this statement was made between this man and his wife, in which he had written her a letter that if she lied to him as she had in a few minor matters, he would not hold her in respect? He thinks it a shame that the obligation of forensic duty should require us to point out falsehoods, and describe them as falsehoods, but he thinks it consistent with an ideally happy home that a husband should write to a wife: "If you ever lie to me as you have done, I won't hold you in respect." Ah, gentlemen, long stories require considerable power of reasoning as well as memory when they are all falsehoods, and every now and then there peeps out a self-conviction of the utter incongruity with the whole fabric of his case, of his own little touches of nature and woman's nature, as he thinks it, that he throws in. Now, what an admirable character for a novel this would make. How all the good people of Europe and America, how all Christendom (to use the plaintiff's favorite phrase) would admire the penetration that had seen further into human nature than the inspiration which had made the Savior say, "All these evil things come out of the heart;" that had spoken with greater authority in regard to sin than the great author of the rules of human conduct proclaimed from Mt. Sinai; who had heedlessly, rashly, foolishly undertaken to say, "Thou shalt not commit adultery," when he had made it evident that piety and duty left the heart and soul unsullied under the pollution of the body. But still lying; that, that was wrong. That letter had rankled in her thought and heart. But for that letter this poor woman never would have awakened this side of the judgment seat to a knowledge of the sin of adultery.

That had rankled in her thought that she felt that she never could look me honestly in the face again until she had made a full and free confession; that she had come down from the country on purpose to make it.

And now I suppose there is a little break, and the wife stops here, though this witness don't make any break, and he goes on, then, to describe to Mr. Beecher:

And that she had made with great modesty and delicacy and womanly feeling, without giving evidence that

the great fact which she confessed was wrong, but that the wrong which she wished to throw from her mind was mainly the necessary deceit with which she had hitherto concealed it from her husband.

Now, the husband says, referring to his statement to Mr. Beecher:

It was a long story. I told it from a little memorandum which I had made of dates and matters, extracts from letters—a little memorandum made on the back of the white envelope unaddressed in which Mrs. Tilton's statement that evening had been lodged; I had made the memorandum of dates and of letters.

Well, he don't seem to have referred to any dates or letters, and he had made that memorandum, not with any letters or facts or records before him, but in the few minutes that elapsed after Mr. Moulton left the house to go for Mr. Beecher until he got back. In other words he was going to deliver an address, an address to Mr. Henry Ward Beecher, and he reduced to the form of notes the heads and points of his argument. Well, Mr. Moulton, the sexton, was sent to bring in his audience. What a silly story! Now, look at it—this narrative of sixteen months adultery, of three years seduction, of all this fondling and resistance and final prostitution. "She had stated with great modesty and delicacy and womanly feeling." Well, there was no emotion about it; that is plain. She had played this difficult fantasia with all the skill of a practiced musician. She had told this narrative with all the delicacy of touch and sentiment that belonged to a novelist speaking of a third person, and you are to take that as a real narrative of a real occurrence, between a real wife and a real husband.

MRS. TILTON'S ALLEGED INTERCESSION FOR MR. BEECHER.

Now he goes on and fills the space between July and December with her absences from town, her visit out West at Marietta; that she had returned from the West a few weeks previous to this interview, I think, about the 1st of December; that shortly after her return, or almost the first conspicuous incident that happened to her husband since her return, was the interview "which I had had with Mr. Bowen on the 26th of December, which had resulted in my demand upon Mr. Beecher that he should retire from his pulpit." Now, you see the Bowen matter comes in. But for Bowen, but for the destruction of his pecuniary interests, this narrative, this pretension, this use of a domestic occurrence of some kind between husband and wife toward Mr. Beecher would never have been resorted to. Six months pass by. The wife never intimated to Mr. Beecher, although at her request he called and visited her in her illness in August after, and prayed with her; she had not mentioned to Mr. Beecher that she had told her husband anything. Mr. Tilton had not sought Mr. Beecher, or made any complaint against Mr. Beecher, and here he draws in affirmatively and voluntarily the trouble with Bowen as the cause, the occasion, the opportunity, the reason of this matter ever having been brought to Mr. Beecher's notice. Well, you can understand how, after his sending this notice to Mr. Beecher and finding the destruction of his relations with Mr. Bowen, it did come to be brought in, and that is a part of our case. Now he accounts for it as arising out of that fact.

"I told him that I had informed Mrs. Tilton of what I had done with Mr. Bowen, and that she received the intelligence with an expression of heartbreak and grief. I told him that in regard to the statement which she had written"—he didn't call it a "confession" which she had written—a statement that she had written; it was the one that he read; and yet they find it convenient in giving their evidence always to call it a "confession" of hers—we shall show you—you don't doubt what it was. It was an accusation—this paper. I don't mean that she had even told her husband, but this paper was an accusation against Mr. Beecher—"that in regard to the *statement* which she had written, that it had come about in this way. She had asked me, as soon as I had informed her of the letter that I had written through Mr. Bowen; she had asked me immediately to send for Mr. Beecher, and to hold an interview with him in her sick chamber, that she might hear me say to him that the letter should be withdrawn—that is the Bowen letter—that she might hear with her own ears, immediately, and before he should have any time to be troubled about it."

What an extraordinary proposition of a woman caught in adultery—desiring her husband to send for the paramour, and tell him, in her presence, that that letter must not worry him; and to do it quick, so that the paramour need not be troubled about it! Well, that did not strike Tilton as at all unsuitable, in itself, so far as the object and subject went, for that was the object of his interview—his interview with Beecher.

"That though I had joined with Mr. Bowen in demanding Mr. Beecher's retirement from the pulpit, for my wife's sake and for the word of honor which I had pledged to her to do Mr. Beecher no harm, that I should send for him, and that she should hear me, immediately and without delay, take back that letter and assure Mr. Beecher that I would not unite with Mr. Bowen in making any assault upon him or in demanding him to quit the pulpit or the city. I told Mr. Beecher furthermore that I had refused to acquiesce in Mrs. Tilton's request that such a personal interview should be held between him and me in my wife's sick chamber; I told him she had insisted four or five times on this very thing, that Mr. Beecher should be saved from being worried about this letter that had been delivered to him, until finally she begged me to be the bearer of a letter to him; that I had then declined that; that finally she asked me if I could not devise some method which would not be humiliating to my pride to have an interview with him—a friendly interview—as friendly as possible" (he corrects himself), "and, after thinking the matter over, that I had said to her that if she would agree I would request Mr. Moulton to bring about such an interview between Mr. Beecher and myself. She said she was only too happy to hear me say so, and she wrote a statement, to which I have referred, to be the basis of an in-

terview between Mr. Beecher and myself, which Mr. Moulton should bring about, and she wrote it on the 29th of December.

Mr. Evarts intervenes again:

Q. Is this what you told Mr. Beecher? A. Yes, Sir. Toward the close of the story I again reminded him of the object for which I had sent for him, which object was that though I had communicated to him through Bowen a demand for his retirement from the pulpit, yet that at my wife's earnest entreaty I revoked that demand, and for my wife's sake, and not his or my own, I pledged to him my word that I would not assist Mr. Bowen in the hostility which he had meditated against Mr. Beecher.

Mr. Beecher did not ask for his friendship, for his co-operation, for his espousal of his cause against Bowen. Mr. Beecher had not shown any fear of Bowen or the need of any fortification or protection against Mr. Bowen; and this husband, after introducing the narrative that his object was to get rid of any injurious feeling that Mr. Beecher might have by reason of his having sent that challenge of the 26th, closed it by volunteering to say, "Now the object of all this, Mr. Beecher, is to have you understand that, though I did send that challenge which I now have revoked, I am not going to coöperate with Mr. Bowen in any of his movements against you," "and I pledged to him my word, without his asking it, that I would not assist Mr. Bowen in the hostility which he had meditated against Mr. Beecher." Now, gentlemen, that about ends the narrative. This you soberly are asked to believe as a just statement of a communication between husband and wife, and of a communication between the husband and the paramour. I will venture to say that whether you regard that portion of it which undertakes to produce a woman's treatment to her husband, or a husband's treatment to the paramour; whether you undertake to weigh and estimate the manner in which a good woman is led away, or the length and breadth, the weight and value of the argument by which a woman's virtue is overcome by the tongue of man, it is the veriest trash that was ever written or printed. There is not a novelist that would not be ridiculed from Dan to Beersheba, if, wicked in purpose and willful in malice against the good principles and conduct of society, he had used his art to make adultery easy and palatable and pious. Why, gentlemen, the merest trifle of the yellow-covered literature of Paris or New-York that is made for the coarse appetites and for the coarse intelligence and for the vile morality of the evil classes has not anything as bad and vulgar and pointless as all this trash. And what is the reason of this invention? It is because on the conduct of the people, their characters, on the wife's intellectual and moral character, as still sworn to (it is impossible to be believed unless it is immaculate), because under all the conditions of external observation to which they have been subjected there could be no reliance upon the contact of the body ever having taken place, except by this fictitious presentation of it, to carry a sort of notion with you that there has been some proof of it as coming from somebody who saw and knew it. Why, gentlemen, what sort of adultery is that which is no contact of the body and no pollution of the soul? Call it unilateral adultery! Why is it adultery? It is wholly transcendental. It begins nowhere, ends nowhere, rests upon no basis. But "transcendental" is a long word, and those who use it most cannot give any very precise definition of it. Twenty-five years ago it came into great vogue under the lead of a great thinker now famous, Mr. Emerson, and got into the language of young women and of young students, and the clergymen talked about it, but still the question was what "transcendental" meant. Well, on one of the Mississippi River steamboats, when a parcel of eminent divines were returning from a general convention of the Presbyterian Church, they were in a high discussion about orthodoxy, and the old faith and transcendentalism, and a layman who enjoyed their conversation, one of the lay delegates returning with them, still felt a little puzzled about what "transcendental" and "transcendentalism" meant. So he ventured to ask the divine in whom he had the greatest confidence—"I hear you use this word "transcendental" and "transcendentalism." Now, what does it mean? "Well," says the doctor of divinity, "that is a question that is more easily asked than answered." But they were passing by a bluff on the river. Says he, "Do you see that bluff here on the river?" "Yes." "Do you see how pierced it is with swallow's holes?" "Yes, I see that." "Well, now," says he, "you take away all that bluff and leave nothing but swallow's holes, and that is transcendentalism."

MR. TILTON'S APOLOGY FOR HIS WIFE.

Now, you understand what adultery is. Take away pollution of the soul, prostitution of intellect, defilement of body, and that is transcendental adultery. [Laughter.] Nothing but the swallow's holes left; nothing of the earth, earthy; all transcendental. Now, gentlemen, let us see what invention is used here. After the cross-examination, on the redirect, my learned friends thought it would be worth while for Mr. Tilton to explain a little what he means by this notion that his wife was so pure, and never violated her marriage vows, and all that that he had been swearing to, and they asked him if he couldn't give us a little information, the same as this layman wanted of the doctor of divinity about transcendentalism. It was a pretty long question by Mr. Fullerton, and Mr. Tilton's first answer is, "Well, Sir, that is a sad question." "Well?" says his examiner, and Mr. Tilton proceeds:

I can answer only for my own judgments of her behavior, not for other people's opinions. You must remember, Sir, that I knew Elizabeth when I was ten years old; that I became her confessed lover at sixteen; that I was married to her at twenty; and that, for fifteen years of her married life, I held her in my reverence perhaps

almost to the point of making her an idol of my worship.

The idols are spoken of, you know, in the Scriptures as lying gods, and he has written to her a letter telling her that if she continued to lie he should not ideally worship her. He proceeds:

And when she came to her downfall, it was the necessity of my own heart——

That was not Elizabeth's narrative, then, that she had told him, how she had preserved her purity and merely lost her matronage——

It was the necessity of my own heart—I must find some excuse for her; other people might blame, but I must pardon her. I found that excuse in the fact that she had been wrapped up in her religious teacher and guide; she had surrendered her convictions to him; she followed his beck and lead trustingly; she would go after him like one blinded.

That is the reason, I suppose, she went up to his house.

"I think she sinned her sin as one in a trance."

So my idea that she had been carried from Livingston-st. to Columbia Hights in her sleep was not so much out of the way, after all. Her husband thought she had done it all in a trance:

I don't think she was a free agent. I think she would have done his bidding if, like the heathen priest in the Hindoo-land, he had bade her fling her child into the Ganges or cast herself under the Juggernaut. That was *my* excuse for Elizabeth.

Good Heavens! We had supposed that this was Elizabeth's narrative that she had detailed to you, and that you had repeated to Mr. Beecher. Now, gentlemen, that shows you where all this talk came from. Then, after some discussion between us, the matter comes back in this way:

Well, go on and answer the question, Mr. Tilton. In what way did she maintain her innocence in the presence of her mother?

By way of showing her guilt they introduce evidence of her innocence.

She always used to say, Sir, that she was not to be judged, either by her mother or by me, but by God. She believed God would judge her tenderly. She said she loved God, and she didn't believe that God would have permitted her to enter into those relations if they had been sinful.

So you see the last consummation of impiety coming from Mr. Tilton's lips—for we don't know that it ever came from anybody else's—is that God was responsible for this!

She didn't believe God would have permitted her to enter into those relations if they had been sinful.

She thought that God was mistaken in propounding the Seventh Commandment from Mount Sinai.

And she said particularly that neither her mother nor I had made it the business of our lives to understand what was right and wrong as Mr. Beecher did; that Mr. Beecher was a clergyman; that he was a great and holy man; that he had repeatedly assured her that their relationship was not sinful, and she didn't see how it could be sinful; that he had told her that love justified all things; that love had various expressions; that one expression was the shake of the hand, another expression was the kiss of the lips, another expression was sexual intercourse, and it made very little difference what the expression was. If that love was right, the love itself made rightful or justified by the various expressions of it, and that she believed before God that her love for Mr. Beecher was right, and his love for her was right, and therefore she didn't see how any of the various expressions of it could be sinful. She said she rested on Mr. Beecher's authority for that, that he had told her so over and over again.

Well, well, gentlemen, that is Mr. Tilton's mode of overthrowing the Decalogue and defending adultery. It is as old as any of the falsehoods of the devil; it is as shallow and contemptible as any of the silly efforts of a country clown to overcome the instinctive virtue of an honest milkmaid; and the milkmaids have slapped the clowns' faces ever since the world began, when they have approached them with any such folly as that. But it is for the conspicuous clergyman, that deals not in abstractions, not in dogmas, but in practical faith, by works of morality, of charity, of duty, of the elevation and beautification of life, it is for him to have uttered all this driveling and contemptible nonsense in the ear of a woman who, besides the instincts of chastity as great as any woman ever had, her husband says, had been educated into the very saintliness of heart, and accompanied it with practical charity for the erring and the fallen—a woman that had an intellect that made her the companion of all the literary and moral studies and pursuits and speculations of her husband, and who had the companionship of all the eminent men that made up the circle of his friendships—it is for him to utter this and for her to yield, and without a consciousness of sin or violation of conscience, to what the milkmaid throws in the face of the booby that talks to her!

Now, gentlemen, when the necessary case of this plaintiff requires that he should propitiate your understandings and obtain your verdict to a particular fact that has no external proof whatever, and that you know violates all that the intellect, the morality, the instincts of all our elevated, Christianized, as well as natural characters demand in conduct, to ask you to accept his story is to ask you to make yourselves accomplices of this frivolity, and to be as great boobies as he displays himself in your presence. Why, gentleman, from Indianapolis down Mr. Beecher has been a preacher of active and actual beneficence; has been a condemner of all the wicked passions, all the sensual indulgences, of all the coarse and vulgar sins. My learned brother, Morris, who does not lack a flow of invective and contumely, when his cause required it, could not make out a sufficient volume of imputation and of condemnation without quoting against this defendant a long and eloquent, vehement, living invective against the sin of incontinency that he had delivered years ago to young men, and that has done more to save young men through-

out this country than any utterances of any other mouth in it. Ah! gentlemen, my learned friends can gain nothing from us by the scourging that they will administer to Mr. Beecher, if they will only prove him guilty. If they ask us to go one mile with them in their invective against him, proved guilty, we will go with them twain. If they ask us to strip him of the cloak of his hypocrisy, we will tear the coat and every fragment of his clothing from him. If they ask us, and they prove him guilty, that he should be smitten on one cheek, we will turn the other to them, and deliver up his whole body to be beaten with many stripes. But we do require that, driven from external evidence, and groping in the region of moral evidence, they will at least show us that moral evidence that carries down into this severity of punishment so great and noble a character as, but for this imputation, and until it is proved, this defendant has shown to all the world.

MR. BEECHER'S VERSION OF THE INTERVIEW.

Now, gentlemen, before I proceed further it is but fair that I should lay before you Mr. Beecher's account of this interview, and you will see whether any violence is done in that to the great lines of human character, or the particular lineaments in the character of these individuals that is demanded by the plaintiff's story. I pass over everything except the interview itself. When Mr. Moulton had brought Mr. Beecher to his, Mr. Moulton's, house, Mr. Moulton said:

"Mr. Tilton is in the room above the parlor, front room, waiting for you." I said to him—wishing a witness, believing that we were going to have a business discussion—I said to him, "I would rather you would go up with me, Mr. Moulton." He said, "You had better see Mr. Tilton alone."

Now, Mr. Moulton, on his rebuttal, I believe, says that that was not said; but these incidental differences of statement come to nothing. We go for the substance of things.

He (Mr. Tilton) pointed to a chair and asked me to sit down, which I did, near the door. He drew out from his pocket a little paper, very much that shape [producing a piece of paper about [illegible] inches by three], just about that size, a little [illegible]ower, and, on sitting down, said: "I have re[illegible]ed," or "I have summoned you," I think he said, to this interview on matters of importance. I suppose that you received from me, by Mr. Bowen, a letter demanding your resignation and departure from Brooklyn." "Yes," I told him "I had received it."

So they agree that that was the topic. Mr. Beecher proceeds:

He said, "I wish now to recall that letter, and I wish you to consider it as not written. It was a grand thing to write that letter; it would have been a grander if I had not."

Now, what a happy condition a man is in when whatever he does is grand, and if he had n't done it it would have been grander. [Laughter.] I have never known such elevation in this life before. Whatever you do is sure to be grand, but if you had n't done it it would have been grander! [Laughter.]

Judge Neilson—Officer, will you step down and pay that musician to go away. [Referring to an organ-grinder outside whose work was disturbing the proceedings.]

Mr. Evarts—Perhaps if your Honor were to invite him into the court-room it might amuse him as much as he amuses us. [Laughter.] Well, Mr. Beecher says:

He then began to allude to Mr. Bowen, the bearer of that letter, and to Mr. Bowen's treatment of him, not going into it in any considerable detail, but characterizing it as very base and very treacherous. He then charged me with having an understanding with Mr. Bowen in these matters, and furthering them—I am not using his language, but only the substance of the things urged upon me by him—that I had accepted injurious stories of him, and that I had reported them again, that I had advised against him, and much more to that purport, which I cannot recall in detail. I think at this point I was disposed to make some explanation, when he warned me to be silent, and I was silent, and then he proceeded to say that I had not only injured him in his business relations and in his reputation and prospects, but that I had also insinuated myself into his family, and under a cover of friendship I had wrought him a worse mischief there. He said that I had in a sense superseded him, had taken his place, so that in matters of religious doctrine, and in matters of the bringing up his children, and of the household, his wife looked to me rather than to him; that I had caused her to transfer her affections from him to me in an inordinate measure; that in consequence of the conditions which had sprung up by reason of my conduct, his family had well nigh been destroyed; that I had suffered my wife and his mother-in-law to conspire for the separation of the family; —

And I have shown you, gentlemen, Mr. Tilton's charge that that was a conspiracy of Mrs. Beecher and Mrs. Morse——

—that I had corrupted Elizabeth, teaching her to lie, to deceive him, and hide under fair appearances her friendship to me; that he had married her one of the simplest and purest women he ever knew, and that under my influence she had become deceitful and untrustworthy. He said that I, that had tied the knot in the sanctuary of God, by which they were to be bound together in an inseparable love, had also reached out my hand to untie that knot, and to loose them one from the other. He then went on to say that not only had I done this, but that I had made overtures to her of an improper character; and again I expressed some surprise, probably by my attitude—I don't recollect that I talked—but he drew from his pocket a strip of paper about like that, [describing it] and read to me what purported to be the statement of his wife to him that Mr. Beecher had solicited her to become his wife, to all the intents and purposes which were signified by that term, or substantially that. He said the statement which he had just read—very recently; she had done it the day before, on the 29th, after the Bowen trouble needed some assistance and aid; "that he had for shame and for pride's sake burned up the original, and that now he would tear up the only copy that there was in existence, that there should never be a line or letter against the

reputation of his wife; and with that he took the fragments in his hand and stepped to the side of the room and threw them down. "And now," said he, turning toward me, "I wish you to verify these charges by going down and seeing Elizabeth yourself; she is waiting for you at my house." I said—that last blow staggered me"—reading something in his wife's name—"I said to him: 'Mr. Tilton, this is a dream. She never could have made in writing a statement so untrue.'" Said he, "It is but a few blocks off; go down to her yourself." I turned and went out of the door, and walked down stairs, meeting Mr. Moulton at the foot of the stairs. He said to me—without a word from Mr. Beecher—"he took his hat and overcoat"—at any rate, he went out.

Q. Did you in any manner invite Mr. Moulton to go with you to Mrs. Tilton's? A. No, Sir; I didn't want him.

Q. Did you in any manner inform him before he asked you whether you were going to Mrs. Tilton's, that you were going there? A. I did not.

Q. Now, he attended you to the door, did he? A. He did, and he went in.

WHO SUGGESTED MR. BEECHER'S MIDNIGHT VISIT TO MRS. TILTON.

Now, gentlemen, before I go to the interview with Mrs. Tilton at the house of Mr. Tilton, I want to bring your attention to the part of Mr. Tilton's testimony that has to do with this last matter, so that his own story may be told. Now, after Mr. Tilton's statement of what he said to Mr. Beecher, Mr. Tilton says:

At the close of the narrative Mr. Beecher sat in his chair, and I thought he was about to speak. I waited a moment. His face and his head and his neck were blood-red, and I feared for the moment that there would be some accident to him. He burst out with these words: "Theodore, I am in a dream; this is Dante's Inferno."

And that is the way Mr. Tilton tries to cover up with a classical reference what was his real statement—"This is all a dream." Ah, Mr. Tilton told Mr. Moulton that night, when Mr. Moulton came back from accompanying Mr. Beecher down to Mrs. Tilton's, that what Mr. Beecher did say was, "Theodore, this is all a dream." It was not anything about Dante's "Inferno" then. But Mr. Tilton told another man, only three days afterward, what it was Mr. Beecher said when he had got through with his, Tilton's, narrative to him, and mark how it concurs. He gave on the 2d day of January, to his friend Storrs, a narrative of how the matter went on between him and Mr. Beecher. He told him how he had sent for Mr. Beecher to Mr. Moulton's house, and that Mr. Beecher came there, and when he came there he made this charge against him of improper propositions to his wife, and he said Mr. Beecher seemed to be astonished, and said that could not be so, and Mr. Tilton made a motion as though he was taking something out of his pocket, and said—that is, he made it when he was talking with Mr. Storrs, suiting the gesture to the word—

I took out a piece of paper; I forget whether he said he read it or gave it to Mr. Beecher to read, and he said Mr. Beecher seemed surprised and said that could not be so; said Elizabeth could not have said so because it was not true.

Two days after, having said that night that all that Mr. Beecher said was, "This is all a dream," he told his friend Storrs exactly what Mr. Beecher had said, and then he goes on to tell Mr. Storrs what Tilton had said to Mr. Beecher, that he had said that Elizabeth could not have said so, because it was not true, and then Mr. Tilton says to Mr. Storrs that he said to Mr. Beecher—"Well, if you don't believe it, go and ask Elizabeth;" and he said that Mr. Beecher did go and see his wife, and got from her a retraction that there never had been any improper proposals, "and when I found it out I was very angry, and told Mr. Moulton, and he was very angry."

Well, I have no doubt that he was angry that he had got into the same position with Mr. Beecher by the result of that night's accusation, and Mr. Beecher facing it, that he had got into on the preceding Monday, the 26th, in respect to his missive sent through Mr. Bowen. Ah! gentlemen, when you undertake to assassinate a man in a dark alley, and the man is unwounded, and all that has happened is that there is evidence of that attempt to assassinate him, you have not gained much by that movement; and when this second weapon of assassination, sharpened on the 29th, had been used to pierce Mr. Beecher's breast on the night of the 30th, and all that he had said was, "Theodore, this is all a dream; Elizabeth cannot have said so, because it is not true;" and this man, thinking that he could hold his wife's heartstrings at least for a single night, says to him, "If you doubt it, go and ask her;" and he goes and asks her, and brings back the evidence that the husband has forged, through the unwilling hand of the wife, a false accusation that has been withdrawn, he don't feel, when he finds it out, that he has made any more by that second attempt at assassination than he had by the first. Now, gentlemen, we may as well fix this. He told Mr. Belcher in 1872 that he had had an interview with Mr. Beecher at Mr. Moulton's house, and that at that interview he charged Mr. Beecher with the act, and read him this letter, Mr. Tilton's letter—that is, the letter of improper solicitations.

I then asked him how Mr. Beecher acted on that occasion. He said he was astonished and confounded, and said that it was false, and that the woman must be crazy.

And now, gentlemen, I have, under the hand of this plaintiff himself, a narrative. Under Mr. Tilton's own hand, in the "True Story," he says:

As a further statement, still more unwillingly opened, yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the Summer of 1871, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*, Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher—not a confession; exactly what I have shown you on

of his own lips was the truth, that she had made him a statement, in his judgment and in hers, as she told the story to him that night, only a third person—

a communication concerning Mr. Beecher, which (to use her own words, lest I wrong him by using mine) she afterward noted down in a memorandum, as follows: "Mr. Henry Ward Beecher, my friend and pastor, solicited me to be a wife to him, together with all that this implies." I borrow the above facts from my wife's handwriting, and forbid myself from pausing at this point either to blacken it with an epithet, or to lighten it with an explanation.

Now, that was read to Mr. Beecher, and on Friday evening, as Mrs. Tilton's statement:

December 30.—I went to Mr. Moulton's house. Mr. Moulton went after Mr. Beecher and brought him. This was early in the evening, Mr. Beecher leaving his prayer meeting, usual on that evening, to go without his leadership. My interview was with Mr. Beecher alone. I read to him my wife's letter, and said to him what I shall not here repeat. He sat like a statue under my brief remarks—three columns of a newspaper we have here, and Mr. Beecher's narrative comprises it within, within one column—my brief remarks, and at the close he bowed to me and said, "this is all a dream." He affected to disbelieve that Mrs. Tilton had written the letter, and denied everything with a royal negative. I then said, "It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote the letter." He went and returned in half an hour. I did not see him.

Now, he read this note to Mr. Belcher:

Mr. Tilton came too, and read me what purported to be a note from his wife, a letter from his wife to him, in which he stated Mr. Beecher had made a proposition to her, during Mr. Tilton's absence, to become a wife to him, and all that that implied; and I said to Mr. Tilton when he read that paper, "Is that paper in Mrs. Tilton's handwriting?" and he said, "No, it is a copy." I asked where the original was, and he said that Frank Moulton had it.

Now, I want to read you, under the light of those actual statements by Mr. Tilton to witnesses, when the thing was fresh in his mind, and under his former statement, under what he characterized as a story that should put the thing right, what he now says when he wishes to put a somewhat different view of the visits of Mr. Beecher to Mrs. Tilton; he says after his saying "this is all a dream"—after Mr. Beecher saying that, that he (Tilton) said to him:

You are free to retire. He rose and walked towards the door, as if he were going out, without saying a word. Then he suddenly turned, and, looking me in the face, he said, "May I go once again, and for the last time, to see Elizabeth?" I instantly answered "No," and then "Yes."

And then he says he can tell why he did that, and he is allowed to. Then he goes on to state what he farther said, and does not give his reasons:

But in going to see Elizabeth, see to it, Sir, that you do not chide her for the confession that she has made. She is at home sick, broken-hearted. I charge you that you visit upon her no reproach for confessing to her husband; or, if you smite her with a word, I will smite you in a tenfold degree. I have hitherto spared your life when I had power to destroy it. I spare it now for Elizabeth's sake; but if you reproach her I will smite your name before all the world.

Now, on the cross-examination I got out of him a very clear concurrence with Mr. Beecher and with his own record in the "True Story," and with his own present fresh recollection, as he gave it to Mr. Storrs two days afterward. I said to him:

Now, Mr. Tilton, do you remember Mr. Beecher expressing a doubt, or intimating a doubt, as to whether Mrs. Tilton had written any such paper? A. No, Sir; he never intimated any such thing.

Q. You are quite sure of that? A. No, Sir; I am quite certain.

Q. Now, don't you remember that on an expression of doubt or surprise concerning Mrs. Tilton having written any such paper as that—and I stopped—you had no original before you? A. No, Sir.

He had not anything in her handwriting that he could show Mr. Beecher that she had written; he didn't mean to have, as I will show you when I comment upon the planned arrangement. I then said to him:

Now, don't you remember that on an expression of doubt or surprise concerning Mrs. Tilton's having written any such paper as that, you then said to him, "It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote that letter," and his answer is: "Ah, but that was my suggestion, and not his."

Gentlemen, there is some virtue in cross-examination.

In answer to an expression that you describe as surprise, did you say, "It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote that letter?" A. Well, I may, perhaps, have used some such expression as that; I don't remember, but it was not in reference to any doubt.

Q. Well, no matter, you used the expression? A. But only as to surprise.

Q. Now, thereupon, did he indicate a purpose of going?

Did anything happen that made him think he was going? Mr. Tilton had made that suggestion to him.

Q. Now, thereupon did he indicate a purpose of going? A. He went staggering down stairs.

Q. Did he indicate to you a purpose of going to your house? A. No, Sir; he did n't say anything on the subject that I remember now.

Q. Didn't you know that he was going to your house then? A. I presumed he would go; I don't remember that he said he was going.

Q. I ask you if he didn't indicate to you, so that you understood him, that he was going then and there to your house? and finally the answer is, He and Moulton went out together, and I understood they went to my house, and afterwards I learned that they did go.

It is after 4 o'clock, if your Honor please.

Judge Neilson—Get ready to retire, gentlemen. Please return to-morrow morning at 11 o'clock.

The Court thereupon adjourned until Thursday at 11 o'clock.

NINETY-SIXTH DAY'S PROCEEDINGS.

MR. EVARTS ON MRS. TILTON'S LETTER OF RETRACTION.

THE INTERVIEW AT MR. MOULTON'S HOUSE FURTHER LOOKED INTO—MRS. TILTON'S LETTER OF RETRACTION AND THE LETTER EXPLAINING IT EXAMINED—MR. MOULTON'S GETTING POSSESSION OF THE RETRACTION REVIEWED—OPPOSING TESTIMONY COLLATED.

THURSDAY, June 3, 1875.

The continuation of the argument of Mr. Evarts for the defendant in the Tilton-Beecher trial to-day covered, among its principal topics, the nature of the accusation against Mr. Beecher made by Mr. Tilton in the interview at Mr. Moulton's house, Mrs. Tilton's letter of retraction, and her subsequent letter explaining the letter of retraction, and the interviews between Mr. Beecher and Mr. Moulton when the latter obtained possession of the letter of retraction. The orator resumed the discussion of the interview of Dec. 30, 1870, between Mr. Beecher and Mr. Tilton. The character of the slip of paper which Mr. Tilton had read to Mr. Beecher was a principal subject of inquiry. The testimony of the plaintiff and the defendant on this point was collated and carefully analyzed in connection. The same process was pursued with other contradictory or varying evidence.

Mrs. Tilton's letter of retraction, and the circumstances under which it was written, were dwelt upon at considerable length. This, together with Mrs. Tilton's letter explaining the letter of retraction, formed the main topic of the day's argument. In treating these letters the orator exhibited an analytic power and keenness that attracted admiring comments from the auditors. Without excitement, or unusual force of voice or gesture, he held his hearers in a state of the most careful attention, by the mere intellectual strength and brilliancy of his address.

A portion of the argument was devoted to an explanation of certain rules and presumptions of the English and American law concerning the relation of husband and wife, and the influence of the former over the latter. Several authorities were cited on this subject, and the rule of law which prevents a wife from testifying against her husband or for her husband against others was enlarged upon.

The letter of Mrs. Tilton explaining her letter of retraction was fully elucidated according to the theory of the defendant's case. It was a letter of explanation, Mr. Evarts asserted, and not one of accusation against Mr. Beecher. It had been procured, like the first letter of accusation against Mr. Beecher, by coercion. The object of bringing about the interview between Mr. Beecher and Mrs. Tilton was defeated by the terms of the retraction, and to retrieve this misstep Mr. Tilton got the letter explaining the retraction.

Mr. Evarts frequently makes use of very apt comparisons to illustrate his argument. These he develops very fully, and they usually are much appreciated by the audience. By one of these arguments from comparison, he produced an interest that came near culminating in an outburst of applause, which was only suppressed by the warning sound of the court officers' staffs. He supposed the case of a murderer, who, to conceal his crime, should procure the fatal bullet, melt it up, and then accuse another and appear as witness against him. The suspicious anxiety to get rid of the tell-tale bullet would lead to the murderer's condemnation. "Where is the bullet?" would be the demand of the court and the jury. A mold would show that the bullet fitted the pistol of the witness, and not that of the accused. So the destroyed "confession" would convict Messrs. Tilton and Moulton of the crime of moral assassination. "We bring you the mold of it," exclaimed the orator, "in the retraction which was twined around it."

The interview of Dec. 31 between Mr. Moulton and Mr. Beecher was made another subject of consideration by the orator. The accounts of this interview as given by both of the participants in it were read in connection, and, on the basis of probability and consistency, their respective claims to belief were reviewed.

THE PROCEEDINGS—VERBATIM.

MR. EVARTS RESUMES HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts came in about 11:15.

Mr. Evarts—Have the jury been called, your Honor.

Judge Neilson—Yes.

Mr. Evarts—I have to apologize for the detention of the ferry-boat in the stream, which kept us unexpectedly.

THE CONTENTS OF MRS. TILTON'S WRITTEN ACCUSATION.

As you have no doubt, gentlemen, upon the absolute certainty, and the voluminous concurrence of the evidence, what the slip of paper that was in the

possession of Mr. Tilton that night, and from which he read to Mr. Beecher, was, I now wish to ask your attention to its character, as comporting with the interview in the version that Mr. Tilton has given of it, or in the version that Mr. Beecher has given of it. Mr. Beecher has told you what it contained; he heard it read. Mr. Tilton and Mr. Moulton, on being recalled, have not either of them given you a different statement of what it contained. Mr. Tilton is asked the negative, "Was it so?" and he says, "No, quite a different statement;" but what the different statement was he did not tell you; and Mr. Moulton had had the copy—that is, the original, for it was only the copy that Mr. Tilton had—had had the original in his possession from the 30th day of December, 1870, to immediately after the "Tripartite Agreement," in April, 1872, and he had opportunities enough, and firmness of memory enough, to reproduce that little slip of paper, in its contents, after that long period of meditation and examination of it. He could tell you word for word the speech that Mr. Tilton made when he introduced Victoria Woodhull to the good graces of a New-York audience, although he had never looked at any report of it since. He could do that. Now, it was vastly important for this prosecution to show this paper to have been something different from what Mr. Beecher's memory gave it, from what the "True Story" gave it, from what Mr. Tilton's statement to Mr. Charles Storrs, two days afterwards, gave it, from what he gave it in subsequent interviews in 1872, to Mr. Southwick, to Mr. Schultz, to Mr. Harman, and Mr. McKelway. Why didn't they do it? Did any scruples of accommodation, or invention of evidence, restrain them? It is vital to their case. Without a contradiction of this paper and its contents, without a substitution, in your acceptance, and in the truth, upon accredited evidence, that it was something else, their case is gone. Ah, gentlemen, if they had sworn to a different reading of that paper, it would have been willful, deliberate, and conscious statement, and there was too much of written and recorded evidence, as well as of the oaths of numerous witnesses, to repel the substitution; and the lips of these men have not been opened and never will be opened, to substitute new reading for that paper.

Now, gentlemen, that being the character of the wife's accusation, that Mr. Beecher had proposed to her to be a wife to him with all that that implies, you will see how utterly it is at variance with the long narrative of seduction, of adultery, of prostitution, and of justification of prostitution, that he has delivered in your hearing. Where would you put it, a wife's confirmation, that Mr. Beecher's attention even may be drawn? Would you put it as a climax after that long narrative, that in addition to all this, all this seduction, all this adultery, "Mr. Beecher has proposed to me to be everything to him that a wife is;" indecent propositions as a climax to the history of 16 months' adultery. Now, where did this slip of paper come in? Mr. Tilton, in his direct examination, would start off, as it were, in that part of his interview that took up his grievance after he had got through with the conciliation of Mr. Beecher, and with the vituperation of Mr. Bowen, as if this slip might have been—and you would perhaps naturally infer that it was—the mode in which he introduced his narrative of his wife's affairs. But on the cross-examination I called his attention to this question of stage and relation to the narrative. I ask him:

Had you this memorandum before you, made as you have now stated, when you went on with this discourse with him that you have given? A. I cannot say it was a discourse.

Q. Well, address? A. No, Sir; it was not an address; it was a statement.

Q. Well, a statement to him? A. Yes, Sir.

Q. It was interrupted by him, was it? A. I remember his making a little attempt to interrupt at one time, and I told him to hear me to the end; there was practically no interruption on his part.

Q. What form of demonstration did you recognize as an attempt to interrupt you? A. I thought he was going to speak.

Q. He made a motion as if he was going to speak? A. I don't distinctly remember it.

Q. Something you treated as a purpose of speaking? A. Yes, Sir.

Q. At what stage of your statement was that purpose interrupted; do you remember? A. I think it was at the conclusion of my reading Mrs. Tilton's confession.

Q. This little paper which you had—you call it a confession? A. Yes, Sir.

Q. It was this little paper which you had on that table? A. Yes, Sir; that is my present recollection.

Q. Did you read that at the outset of your statement to him? A. I read that; it was not the first of the interview; the first part of the interview, as I remember, was my reference to his having received a letter.

Q. Oh, well, I agree; but after you got through that, after you had got upon the matter of his relations with your wife, was the reading of that paper the first thing that was done? A. I don't remember whether that was at the very beginning, or whether it was somewhere in its proper place in the narrative; that I do not recall at the present moment. * * * * *

Q. Then how did you arrest that purpose? A. I said, "Hear me to the end." * * * * *

Q. Now, do you remember Mr. Beecher expressing a doubt, or intimating a doubt, as to whether Mrs. Tilton had written any such paper?

And then we go on with what I repeated to you yesterday, and he admits that it was a surprise, and that thereupon, on that intimation of surprise at the paper, he said to him:

It is but a few squares to my house. Go and ask Mrs. Tilton yourself whether or no she wrote that letter.

Now, gentlemen, that shows you that on his own reproduction of this interview he brought this paper in as the climax and clincher, the hight, the front of his charges, led up to by what had gone before, and this the damning proof, as well as imputation, upon which he expected to touch the conscience and humiliate the pride, by this exposure of the unlawful purposes of Mr. Beecher. Now,

what sort of a climax was that for his narrative? But see how excellently it fits into Mr. Beecher's narrative of how the charge, and course of relations with his family, was presented by Mr. Tilton to Mr. Beecher, upon that. I won't repeat the whole interview, but only its heads, after he came upon the subjects of his family:

It was about the Bowen matters; advising against him; saying that I had not only injured him in his business, in his reputation and prospects, but had insinuated myself into his family, superseded him, taken his place; in matters of religious doctrine, bringing up the children, the household, his wife looked to me rather than to him; caused her to transfer her affections in an inordinate measure; that in consequence of the differences which had sprung up by reason of my conduct, his family had been well-nigh destroyed; I had suffered my wife and his mother-in-law to conspire for the separation of the family; that I had corrupted Elizabeth, teaching her to lie, to deceive; and he went on to say that not only had I done this, but that I had made overtures to her of an improper character; and again I expressed some surprise [exactly what Tilton says]; he drew the paper and read it, and then it was, turning to me, he said, "I wish you to verify these charges by going down and seeing Elizabeth yourself; she is waiting for you at my house."

Was there ever a more conclusive test of what the course, what the measure, what the length, the breadth, the severity, of the imputations against Mr. Beecher were, when you have permanently, wholly unequivocal, and wholly indisputable evidence of what the written climax was. Proof can go no further. This fiction that I have read to you, so contemptible and frivolous in itself, is utterly knocked in the head by this firm feature of the evidence that is produced before you, and is shown to have been the climax which arrested Mr. Beecher's attention, which struck him with surprise; for all the rhetorical and inflated propositions which, on Mr. Beecher's statement, Mr. Tilton had given him, of interference with his family and conspiracy of his wife and Mrs. Morse, and all those things, produced no serious impression upon him then. He considered them the exaggerations, perhaps the honest imputations, of a man placed in a most distressing position by his own conduct toward his family; but they agree that the moment this lady's name was brought in as the sponsor for an imputation, Mr. Beecher, whose respect, whose regard, whose affection toward this lady had been the growth of many years' knowledge of her and association with her, at once produced the impression on him, "Why, this indeed is, as it were, a thunderbolt from a clear sky; this, this is something that a man well may wonder at, if such an imputation as that is made." Well, now, take the confessed answer to that: "Elizabeth cannot have said that, because it is not true," and the recognition of the justice of that impression on Mr. Beecher's part, by the husband's concession: "Go and ask her; she will tell you." No, gentlemen, there is no escaping, from your unfailing confidence in the character of this paper, that is displayed in every form of evidence, with no contradiction, no substitution, with a destruction of it by the parties that never could have faced it in Court one moment, and kept their footing before this jury.

MR. BEECHER INVITED TO GO AND SEE MRS. TILTON.

Now, gentlemen, before I advert any more fully to the magnitude of this evidence in regard to this paper and its final blow to the pretensions of an accusation of immorality beyond that, I will go with you to the interview that, on the suggestion and invitation of Mr. Tilton, took place between Mr. Beecher and his wife. Whatever criticism there may be as to there being any diversity of form and circumstance and words in which this interview was brought about, as a consequence of the interview between the husband and the paramour, there can be no doubt whatever that the interview between the adulteress and the paramour, or between the honest wife and the falsely accused, upright clergyman did take place that night, and did take place between them alone, and did take place upon the suggestion or acquiescence of the husband, and when he remained absent from his house—his own house. Now, there is a fact upon which you can repose, and whatever are the just inferences from that fact you will draw, and you will not be disturbed in your logic and your reason and your responsible deductions by any flimsy or frivolous feelings or views about these particular people. You will judge of this fixed fact and all that led to it, and what occurred during it, and what came after it, according to your knowledge of human character, of human feelings, of human conduct under these grave and pressing circumstances of external relations. Think of it; think of it on Tilton's theory—think of it on the view that your verdict is expected to sustain, that this man, Mr. Beecher, had, through years of seduction and impure solicitation and fondling, finally triumphed over the bodily chastity of this woman, and defiled and polluted the bed of this plaintiff, the husband, for sixteen months, and that the woman lay almost at the point of doom, sick, sorrowing in her bed, and the husband invites the paramour to visit her in her chamber alone. It was as few steps for him to accompany Mr. Beecher as it was for Mr. Beecher to go. He had seen some unseemliness in bringing about an interview between Mr. Beecher and his wife, this wife and himself, Mr. Tilton, where there was to be only the kindly purposes of saving Mr. Beecher from being worried about the Tilton-Bowen letter that had been sent him. And now he opens his wife's chamber to the visit of the declared, convicted adulterer; for, if there had been a charge, if there had been truth in the charge, if there had been an idea or notion on Tilton's part that there was truth in the charge, he knew the length and breadth, and he either doubted it himself as a dream, or he believed it as one of the most

horrid realities that ever confronts mortal man in his experience of life; and he says: "Go down and see Elizabeth." Now, we wont say whether "She is expecting you at the house" be or be not a part of that final arrangement in its expressions. That depends, perhaps, wholly on Mr. Beecher's statement of it, that first, that simple clause. Take it on any view, and you have an invitation to a paramour from a husband that is wholly inconsistent with human character, would have been as intolerable to the paramour as it should have been to the husband. How would the guilty man have acted under that imputation, and confronted with the confession of the wife? Would he have desired to meet the woman under those circumstances, and to furnish the final proof against himself by the result of that interview, if he had known that he was guilty, and known that the wife was guily, and known that the husband knew they both were guilty? So that, on that mere fact in dispute, you see that it is capable of conciliation with the preceding character of the interview, only by assuming the character that Mr. Beecher gives to the interview, and discarding that that Mr. Tilton now gives to the interview. Only by making it—only by its being compatible with the view of the interview that Tilton gave on the second day after to Mr. Charles Storrs—only as compatible with the statement of the interview as given in the "True Story," only with the interview as stated to Belcher, and Southwick, and Schultz, and Harman, and McKelway; only with Tilton's version as stereotyped and preserved in manifold impressions, and as now given in your hearing—with only the credit and guaranty that belongs to his spoken words, when he has determined out of the rankling irritation of his vanity that Dr. Bacon's witty references to Shakespeare had excited him to carry out what had been a baffled purpose for years, baffled by truth, a purpose to strike Mr. Beecher to the heart, and a final, deliberate weighing of these two alternatives of whether he would submit to the wounded vanity that Dr. Bacon's goads made wince, or whether he would pull down the temple of his household on the heads of his wife and his children. What abnormal, what monstrous character and nature is this that considers himself driven into a terrible balancing of alternatives whether he shall bear the jests of Dr. Bacon in his own character and sensibilities, or whether, as he expressed it, he shall smash Elizabeth and ruin the fame of his children! I have never heard of any moral construction in any history that was written to be believed, I have never heard of any narrative of real life or any philosophy of human character that pretended to present a sane mind treating these two alternatives of personal irritation and of final destruction of the happiness of those dear to a man as making a measuring cast of duty, as to which course he should pursue.

THE PROCUREMENT OF THE RETRACTION.

Well, now, gentlemen, when Mr. Beecher goes to the foot of the stairs, Mr. Moulton is there. He knows nothing of what has occurred up-stairs; that is, by having been present, or by having had it reported to him, and whatever consciousness of knowledge he then exhibits of the course of that evening as proposed and planned, he had got beforehand in laying out the scheme, and got from Mr. Tilton. And he says to Mr. Beecher, "Are you going down to Mrs. Tilton's?" before Mr. Beecher opens his mouth. How did that get into Mr. Moulton's head? And then, more extraordinary still, when Mr. Beecher answered that he was, Mr. Moulton said, "I will go with you." Well, Mr. Beecher wasn't a stranger in Brooklyn. He knew the way to Mr. Tilton's house, and he was not afraid to walk the streets of Brooklyn at 9 o'clock at night, or half-past 9, in this most reputable and orderly portion of it—on the Brooklyn Hights. And how do you account for it that Moulton wanted to accompany Beecher? Now, let me agree that Mr. Beecher is supposed, or represented, by Mr. Moulton to have said that something may have passed which let him know that Mr. Beecher was going to Mrs. Tilton's, what reason was there for Mr. Moulton's going? I will show you the plan of that night after I get through with it; but bear that in mind. They go; and when they reach the door, and the fact is known that Mr. Beecher has got there, and gone in, and gone directly, and has had no opportunity to speak with, consult with, meditate with, anybody else, Mr. Moulton has discharged his prearranged part of that concerted trepanning of Mr. Beecher; and he only asks of him that when he returns he will stop at his house, and Mr. Beecher acquiesces in the suggestion; and Moulton knew he had the word of an honest man, and that Mr. Beecher would do so, and he went there. Mr. Beecher has the door opened for him by the housekeeper, not the servant or maid that attends the door, but this housekeeper, this Miss Dennis that had taken the head of the table and put Mrs. Tilton at the side when she and Bessie Turner had returned from Marietta, and, without inquiry, Mr. Beecher is told that Mrs. Tilton is upstairs in her room and Mr. Beecher will find her there, and he goes up and knocks at the door. The nurse, the monthly nurse, Mrs. Mitchell, opens it from within, and she knows nothing, and is no party to any preconcert, but she knew Mr. Beecher very well, and she knew that a woman, a member of Mr. Beecher's church, sick and sorrowing in the domestic troubles that had been urged upon her in reference to Mr. Tilton's difficulties with Bowen, and his livelihood, was to receive a visit from her pastor, Mr. Beecher, and she needed no explanation concerning the visit of a clergyman to so sick a woman as Mrs. Tilton was, in her esteem, and if it occurred at the hour of 9 or half past 9 in the evening it was a conclusive evidence.

instinctively presenting itself to her mind, that the clergyman had been sent for from a recognition of the precarious condition of the patient, and she left the room as every nurse would leave the room, as every member even of a family would leave the room when the clergyman approaches the sick bed of a parishioner and communicant. Nor had she any fear that the mind of the patient would be ruffled or disturbed, or the duties of protection of health that were confided to her, the nurse, should interfere with this visit of the clergyman to the bedside. She was a religious woman herself, though not of Mr. Beecher's congregation, and she knew that the peace that comes from the Gospel of Christ at the hands of a pastor does not endanger the nervous system, or expose to excitement, a sick woman. And so, during that interview, lasting as it may have done half an hour or an hour, no matter what, or no matter how trustworthy the measures of time that witnesses give about matters that they do not attend to, in that regard she had no uneasiness, and she was justified by the result, for, when hearing the door close after Mr. Beecher as he left the house, she returned to her patient's bedside, she found her entirely tranquil and at ease. Nothing had occurred, gentlemen, in that interview with Mr. Beecher, to disturb the conscience or harass the feelings of Mrs. Tilton, and the nurse tells you that she went to sleep, and then the nurse retired, at her accustomed place by her side, and went to sleep herself. Ah, what volumes this testimony, acceptable to our own appreciations of what the interview would be if it were comporting with the character of Mr. Beecher and of Mrs. Tilton, and if it comports with the evidence of Mr. Beecher as to what did actually occur. We all accept the evidence of the nurse as necessarily true, as naturally true, at least, and it speaks volumes as to what the interview was, and whether its results were to quiet the uneasy feelings of a woman that had yielded under the goading pressure of a husband to mend his matters with the world, to put even into the form of a written paper a charge untrue against a man whom she had respected and revered, and how under some sort of reparation, at least some sort of purging of herself from wicked purpose in what had been done, some sort of restoration in the good opinion of this good man, had come from that interview; her mind was at ease; she had repaired her wrong; she had redressed an evil communication that was false, and well might she sleep by the side of her nurse, in that peace of conscience that had been administered to her, and that her substantially truthful nature had yielded to.

Now, there is but one witness to that interview—Mr. Beecher—and you must determine whether it is true, and it is true as coming from a man of intelligence and of truthfulness so far as all the rest of his character is concerned, and which if not true is deliberate and willful invention and perjury. You must judge, for it does not need to rest upon his evidence, whether it is not sustained by the true interpretation of all that passed before and all that followed afterward. But this is the statement. He found her lying on a bed dressed in pure white.

Mrs. Tilton was dressed in pure white, and her face as white as the bed, lying a little above a level, reclining on pillows, her hands palm to palm on her breast in a very natural way. I drew a chair; I sat down in it.

Q. Did she accost you in any way before she spoke? A. Not at all; her eyes were closed.

Now, Mr. Beecher's memory was better than Mr. Moulton's. He knew this lady was sick, and he recognized it; and he has produced a picture to you which, besides its extreme pathos and pathetic conformity to truth, shows you that this visit of Mr. Beecher was not unprepared for. The drapery of the couch and the drapery of the sick woman were all arranged in the purity of snow, at that late hour of the day, as in a woman of true feeling would be expected upon the intrusion even of a clergyman:

She was as one dead, and yet she was living. I sat down by her side, and said to her, "Elizabeth, I have just seen your husband, and had a long interview with him. He has been making many statements to me and charges, and he has sent me to you in respect to some of them that you should verify them." I then said, "He has charged me with alienating your affections from him. He has charged me that I have corrupted your simplicity and your truthfulness. He has also charged me with attempting improprieties. * * * Are these things so, Elizabeth?" She —— there was the faintest quiver, and tears trickled down her cheek, but no answer. I said to her, "He says that you have charged me, Elizabeth, with making improper advances. Have you stated all these things, and made the charges?" And she opened her eyes and said: "My friend, I could not help it." "Could n't help it, Elizabeth! Why could n't you help it? You know that these things are not true." "Oh, Mr. Beecher," said she, "I was wearied out; I have been wearied with his importunities. He made me think that if I would confess love to you it would help him to confess to me his alien affections." "But," I said to her, "Elizabeth, this is a charge of attempting improper things. You know that it is not true." "Yes, it is not true," she says, "but what can I do?" "Do! you can take it back again." She hesitated, and I did not understand her hesitation; and he proceeds: "Why can you not take it back? It is not true." She said something about she would be willing to do it, if it could be done without injury to her husband, which I did not at all understand. "But," said I, "you ought to give me a written retraction of that charge." She said she was willing to do anything if I would not use it against her husband. I said, "Give me paper." She pointed to the secretary in the other room, which stood between the windows. I went there; I knew it, and took from the secretary some note paper, pen and ink. I brought them to the bedside. She raised herself up a little and wrote the first part of the retraction. She signed it.

I will read you, gentlemen, what she wrote:

DECEMBER 30, 1870.

Wearied with importunity and weakened by sickness, I gave a letter inculpating my friend Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it, almost forced, when

I was in a weakened state of mind. I regret it and recall its statements. E. R. T.

Then we asked Mr. Beecher:

Q. During the writing, Mr. Beecher, did you in any manner dictate or suggest any of the language used? A. No. Sir; I suggested that she ought—in the beginning I suggested that she ought to make a recall of those charges that should cover them. * * * * She read it over to herself. She looked it over and then held out her pen for some more ink, which I had in my hand, and added this:

"I desire to say explicitly, Mr. Beecher has never offered any improper solicitations, but has always treated me in a manner becoming a Christian and a gentleman.

"ELIZABETH R. TILTON."

Q. Did you during this conversation, Mr. Beecher, say anything to Mrs. Tilton as to the form and manner in which injury might come to you from this charge? A. I did.

Q. What was that? A. When she spoke as objecting that it would make difficulty between her and her husband, I said to her that there should be no difficulty of that kind, so far as I was concerned, and I desired this in no sense as an offensive thing; but that some rumor of this matter might come to mischief-makers, it might get into the church, there might in the future be a call upon me, and that I wished something in my possession that in any such exigency as that would be a defense—in substance that. * * * * I said to her that it was not an injury to me that she had done, alone; that no woman could make such a statement without injuring herself, and that it would be an injury both to herself and to her children should it be brought out and believed. * * * * There was some little conversation further—I spoke some—I am afraid with severity, sometimes; and in the converse preceding, and when I went away, I felt very sorrowful; I was sorry that I had said so, and I said so to her that I hoped my visit would be for peace, and that it would not be the means of throwing her back in her sickness, and some other kind expressions.

THE RETRACTION.

Now, gentlemen, you have an immediate written paper coming from the wife spontaneously on her part, or, if you believe that Mr. Beecher aided or assisted in any degree in the form and manner of the statement, coming from his recent knowledge of the nature and form and degree of the charge, and you have here, immediately, a note that shows conclusively to the commonest understanding that the charge was of improper solicitations. Why, good heavens! gentlemen, if the charge had been the prostitution of her body and adultery, why would Mr. Beecher or this woman have had this idea in their heads that the gravamen injurious to Mr. Beecher, as involving immorality of purpose, equal, so far as intent goes, and desire, to the consummation of the wickedness, if it had not been the charge that over her name had been made at that interview. We do not need to wander far nor compare texts. Against the parties that destroyed the paper, there could be no evidence except its magical restoration from the flames, that could refute and confront their present pretension that it was anything else than a charge of improper solicitations, so absolutely, so immediately, so clearly, as this correction and retraction of the charge; and when she found that the generality of the first part that she had written did not describe the letter so, but that the letter itself would need to be read with the first part, she then saw the deficiency, and added the final words. That she had not said affirmatively before; she had withdrawn the letter but only that, and you would need the letter to know what she had withdrawn, as it then stood, and so, for she never wanted that letter that she had written to see the light, she makes the paper complete, adding:

I desire to say explicitly Mr. Beecher has never offered any improper solicitations, but has always treated me in a manner becoming a Christian and a gentleman.

Now, that paper I have read to you was put in evidence by this plaintiff, and being in evidence, his wife's statement brought by him, it reads, according to its natural import, against him by all the laws of evidence; but it was competent for him to falsify the statement of fact concerning himself that is included in this wife's letter that he produces in evidence, to wit, "Wearied with importunities I gave a letter inculpating my friend Henry Ward Beecher under assurances that that would remove all difficulties between me and my husband; I was persuaded to it, almost forced," and he has not contradicted one word of these imputations against him as to the means and the method by which the first letter was obtained. What do you think of that, gentlemen? It is not the fault of counsel, that we all know. He guides himself, and he does not always know what it is important to deny and what to confess. It stands, then, upon their own evidence as an extorted accusation against Mr. Beecher, retracted on the first remonstrance, retracted without coercive measures, retracted peacefully and with ease to conscience.

THE LAW ON A WIFE'S CONFESSIONS.

Now, gentlemen, let us see what courts think of women and their confessions (if you please to call this so, but it was an accusation of a third person, Mr. Beecher, not a confession) that are extorted. I read from the case of Derby agt. Derby in 21 New-Jersey Equity, 36:

Where from the facts in the case it was evident that the defendant, the wife, was not a resolute, strong-minded woman, but of a yielding, unresisting nature, and on the other hand, that the plaintiff, the husband, was a man of decided will, strong, resolute and violent, who knew the value of energy and violent attitude in overruling more timid minds, and where the wife was summoned into his, the husband's, room to execute a paper which contained a confession of her adultery, and which was in his handwriting, and she was urged by him to sign it, in a room locked up with him alone, *held* that such a written confession, although formally sworn to before an authorized officer, should *have no weight* as evidence of adultery.

Judge Neilson—Mr. Evarts, that was an action for divorce, I believe, was it not?

Mr. Evarts—An action for divorce. Chancellor Zabriskie, one of the most eminent Chancellors of New-Jersey, speaks of this paper that I referred to, and I read from his opinion in the case:

It is the written confession of the defendant herself, and not only signed by her but sworn to before a Master of this Court. It was written and read to her by her husband and again read by the Master before she signed it, and he testifies that he cautioned her against signing or swearing to it if the contents were not true. This confession does not admit her guilt, but it admits that she met Palmer on the Dean Richmond by appointment; that Palmer took a stateroom in the name of Mr. Derby [that is the husband], and that they both occupied it during the night.

That is, it does not say that she committed adultery, but it says that she went by appointment with a paramour on a North River boat, and that the paramour took a state-room in her husband's name and that both occupied it all night.

And these facts are sufficient to sustain the charge of adultery, and while it is possible that a man and a woman of their ages might occupy the same room for a night without guilt, yet the presumption is strong against them, and in this Court it would, unless clearly explained, be always sufficient to sustain the adultery. These facts, if the confession is believed to have been fairly obtained and understandingly made, are sufficient to support it, so that this Court may found its judgment upon it.

These are the facts of assignation, false pretenses of her husband, &c. The Court then has to take up the question of the language of the confession, and says:

The language of the confession, although it does not say, "I committed adultery," says, "I did so and so," and it was read to her and explained to her before the Master, and she signed it and swore to it.

Chancellor Zabriskie seems to understand something of the terrible subjugation of a married woman's will, for he says:

Married women, we know, constantly sign deeds against their judgment and wishes, only to gratify the requisitions of their husbands, and to avoid the discomfort and annoyance which a refusal would cause, and solemnly acknowledge before an officer, on a private examination, that it is done of their own free will. The step taken by Mrs. Derby was only one degree beyond this, and that consisted in this, that she did not only part with property, but acknowledged facts which might disgrace and ruin her for life. But if she did it under the assurances that the facts admitted did not compromise her she might have done so; yet it is an acknowledgment that few women in their senses would have made if not true, and in order to believe it in her case, it is necessary to be first convinced that she was, *by the differences in their nature*, or by circumstances, under the control of her husband. From the facts in the case, the conclusion is unavoidable that she was not a resolute, strong-minded woman, but of a yielding, unresisting nature. She never else could have borne the treatment to which for years she had been subjected by her husband. On the other hand, Derby appears to be a man of decided will, strong, resolute, and violent, and knows the value of energy and violent attitude in overruling more timid minds.

That confession did not convict the wife nor procure a release for the husband from the bonds of matrimony.

In the case of Curtis agt. Curtis, in 2 Swaby & Tristram, the wife

Made repeated confessions under no other coercion than the fear that her husband, who was unsettled in mind, would get insane if she refused. *Held* an abundant explanation, and divorce granted in favor of the wife.

Which would have been precluded if there had been any faith put in confessions thus gained from her. Ah, gentlemen, this institution of marriage, framed in our nature, built up in our civilization, studied, contemplated, understood by the jurisprudence of ages, is a solid and real institution, and for its great benefits, and as a necessary part of life, it carries not only the fact of the wife's subordination to the husband, but of the merciful intrepretation of that subordination which sensible, instructed men ever accord in practical life, and which the judges pronounced from the bench, and the juries confirm by verdicts. Now, gentlemen, you may think that in our advanced civilization, when so much of independence is assumed for women, and so entire equality is accorded to them in feeling and sentiment by their husbands and by the world, that the old rule of the common law interpreting this institution of marriage, by which a wife never was held responsible to the law, or subject to punishment, for any crime committed by her in the presence and under the influence of her husband, was one of those traits of human nature belonging to ruder ages and to past times; but, gentlemen, in our own Court of Appeals and in the highest tribunals of England, within the last few years, there is an explicit recognition of these principles. Let me read you a case. "Michael Tarpley"—this was as late as 1871, was it not, Mr. Abbott?

Mr. Abbott—Yes.

Mr. Evarts—In London, Michael Tarpley, giving the name of Terrill, applied to a jeweler, representing that he wished to make a gift to his wife, and induced the jeweler to send by a clerk a quantity of diamond ornaments to a house in a highly respectable neighborhood in London, which he (Tarpley) had rented shortly before the transaction, and immediately after the transaction vacated. The house door was opened to the shopman by Michael Tarpley, and he excused to the shopman the absence of the servant, who, it appears, had been sent on an errand to a fictitious person by Michael Tarpley's wife, Martha. When the wares had been displayed to Michael Tarpley and his wife, Michael sent his wife from the room, ostensibly to call her sister, who, however, if there really were such a person, seems not to have been in the house. The wife left the room, but presently returned, saying her sister would come, and then stepping quickly behind the shopman (that is, the wife), she placed a handkerchief saturated with something over his mouth, Michael Tarpley seizing him by the throat, and the woman, for an instant

shaken off, again applying the handkerchief to his face. The shopman, after an interval of unconsciousness, discovered himself bound with straps. Michael Terrill then stood over him, threatened him, and blindfolded his eyes. The shopman then heard Michael say, "Quick, Lucy, bring my hat," and heard him leave the room, &c. Michael escaped arrest. The woman was arrested and tried for that robbery, and she was acquitted by the judgment of the English law because what she had done she had done in the presence and presumedly under the power of her husband; and, although they had disputations afterward in the House of Lords as to whether that presumption should have that degree of force or there should be some additional evidence beyond presence, of power exercised at the moment, yet that stands as the most recent inquiry into the English law on this subject, and the Parliament of England, with that example before it, and the subject called to its attention, has not altered the law, but has refused to do so.

Now, gentlemen, you understand how it is that this law of ours, which is not a tyrant, which is not merciless, which does not delight in destruction, but protects innocence, how this law of ours appreciates the situation of a woman toward her husband. Ah, gentlemen, and you now see the wisdom of our law in not permitting even this great interest of justice to interfere with the institution of marriage by allowing wives to testify for their husbands against others, because the principles of human nature do not permit the interests of others to be exposed to the power of the husband in procuring a wife's oath. And they do not allow her to testify *against* her husband, because the law that makes marriage what it is, and refuses release from it except upon grounds incompatible with its endurance and its usefulness as an institution, does not subject wives to be overpowered, and their fidelity to truth brought into that terrible choice between fidelity to an oath and fidelity to a husband; between swearing—not with their lives in their hands, because death is nothing compared with the torments and oppressions which through the following life will crush and degrade the spirit and make wretched the life of a woman that has chosen in that sad alternative to swear to the truth against her husband; the law does not give her a divorce from that misery; the law leaves her to lie in his bosom, to sit at his table, to watch him in sickness, to adhere to him by necessity, and it does not tear asunder human nature by divided allegiance to two great institutions which society rests upon, and both of which it must sustain, and it solves the question by determining that neither shall the interests of third persons be affected by the concurring oath of the wife with the husband, nor the wife's life and the institution of marriage be disconcerted and broken by a choice between divided allegiance. Society chooses for her and says, "You are the wife, and public justice shall not place you on the witness-stand."

Now, if your Honor please, to see what our own courts say on this great question of husband and wife, I read now from the case of Cassin agt. Delaney, in the 1st of Daly's Common Pleas Reports, page 225. I necessarily revert to this report to show the facts [reading]:

The proof, on the trial before the referee, showed that the plaintiff was first arrested on the 20th of November, at the instance of the defendant, Lawrence Delaney; that he was imprisoned for that night, and in the morning, on being brought before the Police Justice, was discharged, because it appeared that the money which it was alleged the plaintiff had embezzled did not belong to the defendant Lawence, but was the property of his wife. He therefore went for her, and she came before the Justice and made her complaint for the embezzlement. The plaintiff being still in the court-room, was informed by the Justice that he could not depart until he gave bail for his appearance on the charge.

That is to say, the husband of a wife having made a complaint criminally of embezzlement of property, it turned out that is was his wife's property and not his, and she was sent for, therefore, by her oath to make that supporting contribution to the efficacy of the criminal charge. The charge turned out unfounded; at any rate, it was dismissed, and the party there accused brought his action for malicious prosecution and false imprisonment against husband and wife; and in the Court of Appeals, in the 38th of New-York Reports, page 179, the question was considered [reading]:

Where a prosecution is maliciously instituted by a husband and wife, the latter acting in the presence and by the direction of the husband, is she personally liable for damages in such action? * * * The authorities are clear that when a tort or a felony of any inferior degree is committed by the wife in the presence and by the direction of her husband, she is not personally liable. To exempt her from liability both of those concurrent circumstances must exist, to wit, the presence and the command of the husband. An offense by his direction, but not in his presence, does not exempt her from liability; nor does his presence, if unaccompanied by his direction. His presence furnishes evidence and affords a presumption of his direction; but it is not conclusive, and the truth may be established by competent evidence.

And it appeared on the proofs that the referee excluded certain evidence, and a new trial should be ordered because he excluded evidence. But the principles are laid down, so that there is nothing adequate, nothing that has been superceded by the growing civilization of our times. Indeed, although there may have been some hazardous (I think dangerous) innovation upon the defenses of marriage, yet our law in its justice has never varied in its toleration of this subjection of the wife to the husband, even to this apparent peril to the enforcement of criminal justice.

MR. BEECHER'S RETURN HOME.

Now, Mr. Beecher goes back, goes into Mr. Moulton's house, sees Mr. Moulton, and does not see Mr.

Tilton, and does not say anything to Mr. Moulton except that he has been there, and in a moment says he will go home. Well, would you believe it? Mr. Moulton says he will go home with him. Well, Mr. Beecher knew the way home. Mr. Beecher didn't ask Mr. Moulton to go home with him. How happened it that Mr. Moulton went home with him? He wasn't any friend of Mr. Beecher's, he had not any relations with him. His services that night were on the retainer of Mr. Tilton as co-operating with him in some common purpose that they had; and why should not Mr. Beecher go home to his house alone? It was then about 10 o'clock, apparently. So far as any evidence goes that was about the hour. But Mr. Moulton says, "I will go home with you;" and so he saw him home, and saw that he didn't resort to anybody else, that he didn't have the benefit of any other than "heathen" friendship, that that night at least should be got through with the impression upon Mr. Beecher's sensibility, and a presentation to his reflections of these grave, these wonderful facts that came upon the heart and the mind of this sympathetic, this simple-minded, this guileless man, indeed with astonishment and dismay, for he was a man that looked at the heart, and looked at the character, and looked at the nature of things between this husband and this wife that could have been going on, and on, and on, till this reduction of the wife's truthfulness and this subjugation to the husband's wicked will had come to that pass that she could make a false charge to help his circumstances, and to make peace between her and him, and delude herself with the foolish notion that that benefit could be accomplished and no harm ensue to others.

Now, gentlemen, a flood of light is let in upon the actual relations of this husband and wife, of the absolute and abject submissiveness of that wife in the sense of religion, in the sense of fidelity to the husband, in the sense of duty, in the love of her husband, in the faith and hope that some time and somehow, if she would cling to him and obey him, and honor him and serve him, till death them should part, there might be a hope at last that she had redeemed the soul she so much loved, and should see the fruits of her suffering and her abjectness in the salvation for the long, immortal life that should rejoice her for ever and ever, for she was a woman of an absolute piety. She believed in the realities of religion. It was a distress to her soul that her Savior should be put to an open shame before her eyes by the crucifixion and scorn that her husband had written her years before. She did believe in the divine nature of the Savior, and in the solemn—menace, shall I call it?—in the solemn effort, finally, for salvation of all, of the solemn statement: "He that doth not confess me before men, him will I not confess before my Father in Heaven," and a woman that carried through years of Christian duty and of Christian submission to a man, these realities of faith, showed what they would bring her to do, even if she should forget almost her own duties to herself, to her sex, to her human nature, to truth. I say the incidents and correspondence of those solemn interviews between her husband and herself in January and February, 1868, showed you how this woman would assume upon her innocent soul almost the unutterable sin, almost the unutterable shame, if so be that in her confessions of sentimental weakness, of emotion, she might be in some degree able to smooth the path of her husband in recovery from wickedness to virtue; and how the greatness of her soul, how the beauty of her piety and the manifestions of her wifely love did for the time being triumph over the coarse nature, turn back the vulgar appetites, and ennoble the broken, ruined frame of a once Christian character. Ah! gentlemen, those letters read to you by my learned associate show you what a wife that loves her husband, and believes in the solemnities of religion, and thinks that the sufferings of this life are but for a season, compared with that eternal weight of glory that attends salvation—what she can do to save her husband.

Now, gentlemen, we are prepared to understand, for the future, other questions than the immediate one as to the power of husbands over wives, and without much necessity of recurring to this general subject, which I have thus fortified by the solemn conclusions and the deliberate judgments of the jurisprudence that has grown up through ages, and which forms the basis of our administration of justice. Mr. Tilton saw Mr. Moulton immediately after Mr. Moulton's return to his (Moulton's) house. He had no conversation with him before Mr. Beecher, and he left the house; and he says, in answer to a question:

"Mr. Tilton told me that after he had spoken to Mr. Beecher, Mr. Beecher said: 'This is all a dream, Theodore,' something like that.' I then asked him, 'do you say that that is all the answer that Mr. Beecher made?' and he said that that was the answer that Mr. Beecher made. 'I remember that, Sir; that is all I remember.'"

MRS. TILTON'S RECANTATION.

Now, to go on with that night—that solemn night—Mr. Tilton goes home. He says, either in the letter which he procured from his wife or in his own explicit testimony, that he found her in distress, and carries through his evidence this view of the later occurrences of that evening. That returning to his home without any inquiry on his part, and without any solicitude or interest, his wife puts in his possession before retiring for the night a statement, called here a recantation of the retraction, but its real nature I shall expose to you, and that that was the course of things.

DECEMBER 30, 1870—midnight.

MY DEAR HUSBAND: I desire to leave with you before going to sleep a statement that Mr. Henry Ward Beecher called upon me this evening, asked me if I would defend

him against an accusation in a council of ministers, and I replied solemnly that I would in case the accuser was any other person than my husband. He (H. W. B.) dictated a letter, which I copied as my own, to be used by him as against any other accuser except my husband. This letter was designed to vindicate Mr. Beecher against all other persons save only yourself. I was ready to give him this letter, because he said, with pain, that my letter in your hands addressed to him, dated December 29, had struck him dead, and ended his usefulness. You and I both are pledged to do our best to avoid publicity. God grant a speedy end to all further anxieties. Affectionately, ELIZABETH.

Now, he is giving a statement of his, but I can read that just as well after I read to you Mrs. Mitchell's. She tells you the story of his approach to that sick chamber, and that sick woman. He says, in this story of his, immediately following his statement that he had sent Mr. Beecher down:

Shortly after he left I left; on reaching home I found that Mrs. Tilton, who was then seriously ill and in bed, was agitated and distressed.

And then he gives the narrative of what passed, and how she voluntarily resumed her pen and ink, and wrote the following statement. Resumed her pen and ink; she had her pen and ink to write the Beecher retraction. No doubt about that, and she resumed her pen and ink to write this recantation.

The Court here took a recess until 2 p. m.

THE GETTING OF THE RECANTATION.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—Now, we have a witness to whose credit no observations of mine need to add anything. The simple, honest character of this experienced woman, Mrs. Mitchell, attracts attention to what she says. She is uncontradicted by any testimony, and all these external facts observed by her, and rehearsed by her, must carry their impression with us. Imaginations about evidence are not to be indulged in. I have not asked you to detract one jot or tittle from the testimony of Mr. Moulton, or of Mr. Tilton, except upon the grounds that I have given you, out of their own mouths, and in the conflict that is raised between them and independent, disinterested, competent witnesses, who, whenever there comes a point of importance, that their testimony is to be compared with Mr. Moulton's or Mr. Tilton's, contradict them, as a matter of course. On the return of Mr. Tilton, he has said he found his wife agitated, and has carried the whole impression that she put voluntarily in his hands, as a reparation of some wrong she had done, what is called the recantation of the retraction, and which I have read to you. The nurse says:

Q. Did you know of his return, and how first did you know of it? A. The first I knew of it, I was awakened in my sleep.

Q. Where were you sleeping? A. With Mrs. Tilton.

Q. Before you went to sleep had Mrs. Tilton gone to sleep, or not? A. Yes, Sir.

Q. What excited your attention, or awakened you? A. A whispering or buzzing sound. Mr. Tilton was talking to his wife; I could not tell how; he was down by the side of the bed, talking and whispering very earnestly; and it awakened me, and I said to Mr. Tilton: "Mr. Tilton, this will never do; Mrs. Tilton must not be disturbed so." She seemed to be very much agitated.

Then she cautions Mrs. Tilton against the danger of her taking cold, and the result is that, upon the suggestion either of Mrs. Tilton or Mr. Tilton, the nurse left the side of Mrs. Tilton, Mr. Tilton withdrawing from the room to enable her to put on her wrapper, and went and sat down in his study, and while she was there she heard, during a period which she describes as may be an hour, the angry tones of the husband, and the entreaties of the wife, and the walking to and fro, and then he comes into the study and takes pen and ink, and goes into his wife's room, and comes out again soon after, and the nurse goes back to her patient, and she finds her in great agitation.

Q. In what condition did you find Mrs. Tilton when you returned? A. She appeared and seemed as though she had been weeping; she appeared to be very much agitated, and I stroked her head, and tried to pacify her, and I tried to calm her.

Q. How long did you thus treat her? A. For nearly an hour, as near as I can remember.

Q. Was her condition such as required this treatment? A. Yes, Sir; she was very nervous.

Q. Did she then go to sleep? A. She did, after a time.

And the nurse took her place by her side, and also sought repose. Now, gentlemen, you see how completely false is Mr. Tilton's presentation of this occurrence, not in any misrecollection of words or misrecital of conversation, but in the whole moral, natural features of the transaction his object is to throw upon the interview between his wife and Mr. Beecher the credit of agitation, of coercion, of falsification in the letter then written, and to throw upon what occurred between his wife and himself, on his return, the traits of spontaneous statement of what she had been brought to do by the overwhelming influence of Mr. Beecher, and for a special purpose, and her desire before she went to sleep—meant to carry meaning, before she could sleep, before her conscience could be quieted, before she could venture to seek protection in her sleep, from Divine guardianship, she wished to put in his hands the truthful restatement of the matter. Well, gentlemen, these attendant circumstances that give force and character to the act itself, we none of us underestimate. We want to know what the truth is on that subject. I have given you the truth from Mrs. Mitchell as to the calm composure in which she found Mrs. Tilton when she returned to her chamber after Mr. Beecher had left it; that there was no nervous agitation, no need of the soothing of the nerves then; and now I have shown you that so far from Mrs. Tilton's having the spontaneous movement to make any new statement, give any new

letter, redress any injury, correct any falsehood, she was calmly sleeping, with a quiet conscience, and her nurse beside her also asleep, with no solicitudes for her condition, in the peaceful frame of mind in which she found her after Mr. Beecher was there. Then we have there the first blow to your belief in the character, in the spontaneity, in the freedom from the husband's coercion of this third paper, from the wife, obtained—the second that night, the third in the series. If you believe the nurse you believe that Mr. Tilton, anxious to learn what had been the result of the interview that he had invited between his wife and Mr. Beecher, and from which he expected an adherence to the terms of the imputation of improper advances, wakens her and learns that she has retracted it, and that she has put the giving of it on the grounds, the truth of which was so well known to him, that she had been wearied by importunity, and weakened by sickness, and yielded to persuasion, almost to force. And then, alas! he found, much to his consternation, no doubt, that he was precisely in the same position in regard to Mr. Beecher, from this new movement toward him, in his wife's name, that he had been placed the preceding Christmas Day in, by undertaking to carry upon Bowen's responsibility the missive, which Bowen had seen had no power against Mr. Beecher, and had merely placed him in the possession of the fact that he, Tilton, had desired to strike a blow—the malice without the power. But here was a more terrible situation for Mr. Tilton than that. The influence upon the sympathies, the heart, the compunction of Mr. Beecher, which he had sought to produce, and which should have that degree, too, of personal alarm in Mr. Beecher's mind, not from the truth of the charge, but from the fact of the charge being made to proceed from an honest woman, and therefore to be explained only by such degradation of mental condition, such abasement of moral control, as made the fact itself, actually occurring in Mr. Tilton's mind, of being brought to making false charge at once the evidence of the actual ruin that had been wrought in that family, and so of deep reproach, that a jealous man out of the sympathy, and the intimacy that had grown up under his own eyes between Mrs. Tilton and the clergyman, and under the unfortunate break in his family by his own (Mr. Tilton's) misconduct, and the desertion of the wife, and the resort for advice, and the drawing into that terrible domestic disorder of the active interference of Mr. Beecher and his wife, brought about a condition of things that made the falsehood of the charge no protection to Mr. Beecher's compunctions on the ruin and evil that had been brought into that family that made falsity of charge possible to a good woman. Now, Mr. Tilton found that all this arrangement to affect Mr. Beecher, lost the support that he had invited and counted upon from the interview with the wife. The interview with the wife had placed in Mr. Beecher's hands her own statement of the falsity of the imputation of improper advances, and of the motives and influences that had attended its framing and its presentation, and, alas, that simple and necessary treatment of the subject by the retraction, although not designed in the wife's will, nor needed or wished for on Mr. Beecher's part, to prove a weapon against Mr. Tilton, or to be used against him, nevertheless was now a wife's confession indeed, of wrong on her part, of the false charge drawn out of her by her husband's malice to Beecher, or the sordidness of his needs in respect to his business affairs, that made him clutch at even an unlawful weapon to save himself from ruin.

Now, gentlemen, do you believe that story that the nurse tells, or don't you? There has been no contradiction of Mrs. Mitchell by either Mr. Moulton or Mr. Tilton, in any respect, on their return to the stand—not in any respect. We have not been told that he did not find his wife asleep; we have not been told anything to the contrary of Mrs. Mitchell's statements, except that in the preceding week he did not say he was a ruined man; so they have not left Mrs. Mitchell out of their minds; they had conned her testimony, and culled one point that they could contradict her, and that was in his direct examination, was it [to Mr. Abbott], or did he repeat it in his rebuttal? And that was quite unnecessary to be brought into his rebuttal, because he had said he had not said he was a ruined man, in his direct; but he could have said that his wife was not asleep when he got home; he could have said that this private interview with her did not occur, and that the nurse was not waiting out in the study, and that he did not go in there and get pen, ink, and paper, and take them into the wife's room, after angry tones on his part, and entreaty on hers; and we have heard not a word on that subject from this witness, this plaintiff. We must therefore accept it as absolute truth. Therefore you see how this letter of midnight of the 30th was got by direct, proved coercion of her husband's power over a sick, a nervous, an afflicted woman, abject in spirit, and in the extremity of disaster and fear for the livelihood of herself and her children. Now, in a letter that Mr. Tilton carried to Dr. Storrs, written for the purpose:

Late the same evening Mr. B. came to me [that is Mr. Beecher] (lying very sick at the time) and filling me with distress, saying I had ruined him, and wanting to know if I meant to appear against him. This I certainly did not mean to do, and the thought was agonizing to me. I then signed a paper which he wrote, to clear him in case of a trial. In this instance, as in most others, when absorbed by one great interest or feeling, the harmony of my mind is entirely disturbed, and I found on reflection that this paper was so drawn as to place me most unjustly against my husband and on the side of Mr. Beecher. So in order to repair so cruel a blow to my long-suffering husband, I wrote an explanation of the first paper and my signature.

THE RECANTATION NOTHING MORE THAN AN EXPLANATION.

Now, gentlemen, I have no hesitation in reading to you letters that Mr. Tilton gets from his wife, and carries for his purposes to other people as being his acts, and but the tunes that he plays upon the nature and compliance of his wife. I take it, then, that you understand fully the occurrences of that night, and I have only to ask you to carry back from the proof, from the exact character of coercion under which the last letter, of midnight of the 30th, was extorted from Mrs. Tilton, to the period on the 28th and 29th in which Moulton and Tilton were storming in her sick chamber, arguing, representing, influencing, coercing that woman, under which they obtained the first paper of charge to be used to get an interview with Mr. Beecher, and as the basis of the interview with Mr. Beecher to show him that the wife had this responsibility. You will observe, too, that when you have a course of action, and its result proved, on the 30th, between this husband and the wife, and you have a similar situation, a similar effort, a similar presence, a similar persistency and importunity carried through three times, you know that the same coercion, producing the same results, was applied to get the charge of the 29th that was to get the explanation of the retraction of the charge on the 30th. You see then that when Mr. Beecher in astonishment, asks this woman as she lay there, "How could you do this?—not because it would injure me, Mr. Beecher, not for this or that reason, but on the simple and direct appeal twice or thrice repeated—how could you do this, Elizabeth, when it was not true?" That was the awful state of things in Mr. Beecher's mind, of the moral ruin, or of the mental weakness that had made a woman that he respected, and admired, and loved—in the sense that he has described to you, and which he does not seek to disparage or conceal—how she could have done it when it was not true; and then she tells him, not that she thought it was true, not that there had been anything between them that could be of equivocal import, and that she believed was true for the moment—nothing of the kind; but "How could I help it? The importunity, weariness, sickness, disaster, and my relations to the husband"—which she did not need to repeat to Mr. Beecher, because he had been let into a full knowledge of them during her resort to him and his wife in the preceding weeks of the same month—"and the assurance that this temporary contrivance for immediate use would put an end to all trouble between me and my husband; that was the reason—not to hurt you but to aid him, and me, as his subject and submissive wife." Now, gentlemen, you will see that as Mr. Tilton makes his wife say—and say, I have no doubt, truly—in this letter to Dr. Storrs, when her attention is drawn to one point she is absorbed in it, and thinks of nothing else. "When," she says, "my husband importuned me for something to be used usefully for him, I gave it, and not to injure you. Now, you say it will injure you, why, I take it back. The truth is there is nothing in it, as you know, and I put the matter as it should be." Alas! if it could have been so, and only so, but when Mr. Tilton returns, he says, "Why, that is all very well, if you please, but there is more than that in what you have said. You have disclosed to Mr. Beecher that I have got from you by force, by persuasion, and by fraud, a false charge against him, and that puts in his hands a true charge against me." "Well, that is not my desire or my purpose, and so I give you an explanation, not a retraction of what I have given Mr. Beecher, not a falsification, but an explanation of it, that I only mean it as an extinction of my charge that I gave you against him, and not as a source and origin of any charge against you. It is to protect him against you; this is to cover Mr. Beecher against this poisoned arrow of falsehood that I gave to you, by giving him the shield of truth against all the world; but I did not mean that it should be a weapon against you, nor to be used against you." Well, there wasn't any danger of its being used against Mr. Tilton by Mr. Beecher, if you can believe Mr. Tilton that the last thing that he desired was to have this controversy between Mr. Beecher and himself, concerning anything that touched his wife's character or honor. Now, the explanation, you will observe, does not deny the statement in the retraction. It only says:

I wish to give a statement that Mr. Beecher called upon me, and asked me if I would defend him against any accusation in a council of ministers, and I replied solemnly that I would, in case the accuser was any other person than my husband. Mr. Beecher dictated a letter, which I copied as my own, to be used by him as against my husband. This letter was designed to vindicate Mr. Beecher against all other persons, save only yourself.

Now, it does not say that she had given him a false vindication, a false defense, only that if there came to be an issue between Mr. Tilton as accuser—her husband as accuser—she did not intend in advance to espouse hostility to her husband, to disarm, disable him in advance: in other words, she did not intend to take the attitude of a wife betraying, reviling, disgracing her husband. Well, we all know how foreign to any traits of this woman's character, putting herself in willful opposition to the interests or feelings of her husband was. Now, we have very clear evidence that it was this second element of the retraction, of antagonism to him, that created Mr. Tilton's hostility. I read now from his statement to Mr. Beecher:

After speaking of his resentment against Mr. Belcher for getting this paper did he state any reason why that was so? A. That it made him appear, made the husband appear as in antagonism with his wife, and made Mr. Tilton appear as though he had been making a false charge.

And Mr. Moulton gave the same reason to Mr. Tracy when Mr. Tracy and Mr. Moulton were talking together

in November or December, 1872, and Mr. Tracy could not see why a man should not be allowed to get a retraction from a false charge. Mr. Moulton pointed out to him;

The retraction is something more than a mere retraction. It implies that Mr. Tilton coerced the letter from his wife, and that was what gave great offense to Mr. Tilton.

Now, gentlemen, I have read to you the language of that slip of paper as produced by Mr. Tilton in the narrative that he gives, as repeated by himself two days after it was first read to Mr. Beecher when Mr. Tilton told Charles Storrs what it was, and I have corroborated and re-enforced that view by every form and degree of supporting evidence from numerous witnesses that the requirements of full satisfaction in your minds could demand. We are right always in understanding that it is what is proved that is to carry down the presumed innocence of a defendant; and I ask you now whether that being so, that the charge then was of improper advances and nothing else, untrue as that was, you don't at once see that all possibility of the interview having carried an imputation of actual guilt of this immense area and heinousness that is charged, and which is the measure, if there be any measure at all—wholly incompatible with it? Now, gentlemen, if that is not the true view; if this retraction, written by the woman who made the charge, doesn't prove it; if this solemn, formal statement, called the "True Story," in which the words are given, and which he says he copies as his wife's statement, and neither adds to, nor takes from, by any comment of his own—if that is not the charge, and the whole charge, why don't you prove something else? Why don't you show it? Why did you destroy the paper as soon as you had a chance?

SIGNIFICANCE OF THE DESTRUCTION OF THE ACCUSATION.

Now, gentlemen, the responsibility of this suppression of truth, if the truth be not fully disclosed, this destruction of evidence, is perfectly well understood. Here is the paper which, if preserved, would maintain its identity, and for that point, at least, in the interview would be before your eyes and mine exactly as it was then, and there were two copies of it. One Tilton destroyed, and the other, after having been kept and studied, promised to be tied faithfully to the retraction, and never parted with without Mr. Beecher's consent, was destroyed. Well, now, will they say, "Why, the retraction was the paper that you were interested in having preserved?" Indeed? That is so, is it? The retraction and the charge measure each other, and both together didn't admit of difference of construction or argument, of invention, of falsehood, of treacherous memory and misrepresentation. Ah! gentlemen, we understand in courts of justice the spoliation of evidence; we understand the destruction, the concealment of decisive and important instruments of conviction. We have frequent occasions to apply this in regard to crimes, of violence committed by weapons. We want the weapons, and if there is a pistol and a bullet, a pistol found in the accused's hands, and a bullet found in the victim's heart, we want to see the two things, and, whether they fit or not, before we will charge the accused with having sent that bullet to the death of the victim from his pistol. Now, suppose three men leave common haunts of dissipation or of gambling, friends, if you please, of the friendship that belongs to such companions at least, companions in immorality, companions in revelries, companions in the knowledge of each other's guilt, and they leave their common haunt, go and by a quarrel one of them is slain by a pistol shot, and the question is which of those companions, if either, dealt the blow. And fleeing, as they well may, one returns by crafty provision to give succor to the wounded man, takes the role of proclaiming the murder, and the precaution of extracting the bullet and keeping it. And now, when the fleeing companion, under the attraction of pursuit and suspicious from his fleeing, is put upon trial, and the witness comes and swears that the deadly assault came from the accused, and not from himself, and that he extracted the bullet, and it was too large for his pistol, and fitted the pistol of the accused, then will the accused's defenders ask, "Where is the bullet? It was last in your hands. Where is the bullet?" "Oh! but I measured the bullet, and tried the bullet. It would not go into my pistol; you see it could not have come out of it; but it would go into his, and just fitted it." "Yes, but where is the bullet?" "Ah!" says he, "I kept it; I kept it, and after a while, being satisfied, and having kept the measurement and tried it, I melted it up." "You melted it up?" And then the Judge says to the prosecution, "Where is the bullet?" and the jury say, "Where is the bullet?" "Oh! I melted it up. I have several witnesses that will prove the dimensions of it;" and the answer is, "You cannot use your mouth for a bullet-mold to take away the life of the accused. Who killed the man—that we don't know; but that bullet would have told, and that bullet was in your possession and was destroyed by you." And then another witness says after he has left the stand: "We made a plaster mold of that bullet while it was in this man's possession, and if the bullet has been melted up the mold is here, and now we will see which of the pistols the bullet matches, and which of the doubtful authors of the crime that bullet is now to slay." And then this mold, proved and proved over and over again as being the measure of the bullet, is made to reproduce it in its leaden form, cast in the mold, and it fits the pistol of the witness and saves the life of the accused.

Ah, gentlemen, you want the missile of that night. You have had the solemn pledge of Moulton that it never

should be destroyed while anything else remained to be the method, the occasion, the instrument of doubt, or imputation, or of fear, and it has been destroyed, and until that missile is proved to have been of the nature, of the form, of the effect, that is to convict, or aid in convicting Mr. Beecher—until that is produced you refuse to the spoliators of evidence the ability to make their mouths reproduce it. But when, besides, we bring you the very mold that was taken of it on the very night that it was used, in the retraction which was framed around it, and when we produce the measure and the impression of the bullet, of the missile as given by the witness now seeking to slay, two days afterwards, to his bosom friend Storrs, and when we read it under his own hand in the narrative of the story that he framed, and bind it and clamp it and clinch it by the testimony of five witnesses to whom the same dimensions have been given, and no witness has pretended that any other dimensions have ever been given for it, and at this trial no other dimensions have been given for it, you have not any doubt any more than in the case of open violence that I proposed to you that the witness should change places with the prisoner at the bar, and receive the punishment that belongs to the crime, the crime now of moral assassination as meditated and attempted. I repose with entire confidence upon the proposition that I laid down to you in advance of my examination of the occurrences of the 30th of December, that if a charge of this guilt was not made then, and a confession of this guilt was not made then, never was the charge made, and never the confession made. There is no dispute that there was no confession on Mr. Beecher's part. There is no dispute of what his conduct was; that he denied it, that he pronounced it wholly untrue and impossible of having proceeded out of the mouth of Elizabeth Tilton; that he faced the alleged authority, procured the retraction, went about his own business, and, though attended by Moulton to his house that night, had no occasion to depart from the position which he had forced—a concession from them—and which they repeated over and over again afterward in their dealings with others: that the charge, whatever it was, was no longer insisted upon by Mrs. Tilton, and the test that Mr. Tilton had proposed to him, of reference to her, had failed. Now, they asked Mr. Moulton—"Let me ask you was anything said as to the substance"—this is as between Moulton and Beecher when Moulton was attending him to Beecher's own house.

Q. Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present? That is, the interview that he was talking of. A. Why, he told me that Tilton had told him of the confession of his wife to him.

Q. Repeat what he said. A. Mr. Beecher told me that Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession or a copy of a confession by Elizabeth, of sexual intercourse between them, and he told me that Theodore had told him of the reasons for sending to him the letter through Mr. Bowen.

Well, now, Mr. Moulton had that very letter, that had been read by a copy that night to Mr. Beecher, in his own pocket at that moment. And, see how he puts it; he don't put it upon any notion that Mr. Beecher had repeated the language of the letter. He makes him call it, as they call it always themselves after the organization of the plan to prosecute Mr. Beecher, a "confession." But that is his account of the matter, and that is the only account of it. If there had been any truth in it, he could have been asked to give you the words of that letter, because he had the original at the very moment that he says this conversation was had, and why didn't they ask him that?

Q. What conversation did you have, if any, on the way to his house? A. Well, it was nothing but a repetition of the other conversation about Bowen, and he asked me to be friendly to him. I said I would be.

Q. Repeat as near as you can. A. He said he wanted me to be a friend to him in this terrible business.

Q. And did you part with him at his own house? A. Yes, Sir.

So that is the end of that interview.

Now, gentlemen, when this paper was sought to be proved on their side, I objected, on the ground that having destroyed a paper, they had no right themselves to manufacture it over again. The learned Judge did not sustain that proposition, or did not rule upon it, but rejected it, from Mr. Tilton's mouth, as a confidential communication from the wife to the husband.

Judge Neilson—I think I put it on both grounds.

Mr. Evarts—Well, I didn't understand that your Honor necessarily passed upon the other ground. We gave, then, the contents of the paper, and that gave them the right to give the contents; and the disposition of the confidential communication between the husband and wife did not apply to a letter put in Moulton's hands and kept in his hands nearly two years. No; not a bit of it. The reason they did not give it was that they must give it as Mr. Beecher gave it, as the "True Story" gave it, as the statements to Charles Storrs, to Belcher, to Schultz, to Southwick, to Harman, and to McKelway gave it, or face the charge of perjury on the central fact, proved on them by their handwriting and by a cloud of witnesses. It was not so much conscience that made cowards of them about this missive—this missile—as the fear of men's judgments; and as I have indicated to you, you will find a tortuous path followed by either of these witnesses to avoid, on a material fact, an issue with two upright witnesses against them.

THE INTERVIEW OF DEC. 31.

Now, gentlemen, the next interview in the history of this case (and we are getting rapidly through all that seems to me very important in it) is that on the

31st of December, which occurred between Mr. Moulton and Mr. Beecher at the house of the latter. One element of confusion, of misrepresentation, as to the situation of Mr. Tilton and his affairs as presented by himself, to wit, his secure possession of fortune, of employment, and of livelihood up to and until after that interview of the 31st of December, as described upon the evidence of their own witnesses, Mr. Bowen, who tells you that at 10 o'clock of that morning of Saturday he had presently terminated all relations between Mr. Tilton and his employments, and that that ended Mr. Tilton's presence at the office of either of those papers. He has told you that on the 26th he told him that would be the result, and that he had made up his mind, so that what Mr. Beecher said could not have had any influence in settling what had already been determined. The fact, then, is that that is out of the way. Now, the object of the interview of the 31st of December was to retrieve the false step that had been taken in the false use of the wife's pliant disposition, and its discovery, and the confusion of face into which Mr. Tilton was thrown by it. The interview of the 30th, as is abundantly proved by their own evidence, was to get the sympathy, cooperation, commiseration, the compunction of Mr. Beecher; but alas! the final test had ended, not in any effacing of the impression of the injury and ruin to that family that had fallen upon it, but in the withdrawal of the wife's support to the false charge; but yet, yet, with no assurance that the same waxen nature could not at any time be molded, under the same cruel pressure, to renew the charge. Nevertheless it was of grave importance to Mr. Tilton, and was so appreciated by the crafty and shrewd agent, attendant, that he had secured to hunt Mr. Beecher in couple with him, that this false step should be retrieved, if possible; and so Mr. Moulton goes to Mr. Beecher's house to get back that retraction. He went there for nothing else. He went there, and he succeeded in getting it back—not back as surrendered, and given up, and going into the custody or the control of either Mr. or Mrs. Tilton, but as deposited for safe-keeping in Moulton's hands, and with the common guarantee, to Mr. Tilton, that Mr. Beecher should not use it against him—that Mr. Beecher should not use against Mr. Tilton the retraction, and that Mr. Tilton should not use the charge against Mr. Beecher—without both being coupled and controlled by an impartial and friendly production, by an inseparable union of the two. And how was Mr. Beecher to be influenced to that? Why, it was necessarily by impressing upon him that this proceeding, while it was reasonable and justifiable as a protection to himself, was not suitable, was not in accordance with a just and charitable and merciful dealing with this family, in whose misery he felt some complicity, and for whom he felt unmeasured sympathy, and that it did not conduce to the reparation of the domestic peace of that family that Mr. Beecher should possess and control evidence of the husband's authority over the wife, exerted to obtain a false charge, which the wife had confessed to be false. Well, there is a great deal in that; any one can see that. Then came Mr. Beecher's plea: "Well, but supposing hereafter—not Mr. Tilton—for he disclaims all desire to make trouble; he had a whole long interview with me to find out how I felt toward him, and how he could be sure that nothing would be brought into discussion that would injure him, his feelings, or his wife's—but supposing in the future other occasions and exigencies arise, and other malicious or honest purposes shall seize hold of the fact that this woman has held up my relations to her as the subject of complaint and aspersion, what shall I do for my family?" Nay, he might have had, and doubtless did have, in mind what I have no doubt was in the mind of Mr. Moulton and of Mr. Tilton also—if this sick woman should die and should leave a written charge without a written refutation, what would then happen? Her life certainly was precarious, and, as Mr. Beecher has testified, she struck him almost as dead, as not destined long to live. Then it is that Moulton, pressing these considerations and these alone, that Mr. Beecher must not think of himself, that he must think of the restoration of this family, that he must think of their misfortune, their calamity, and that all he can properly desire or ever require is that this paper should be safely preserved so that if the current circumstances ever should bring, from malign or casual influences, the publication or the circulation or the insinuation, of any such suggestion, of his relation to this family, this direct and complete refutation and retraction of it may be at hand in safe hands and ready for production when and as it shall be required.

Accordingly, you will find in Mr. Moulton's narrative of this that the whole object of this interview was to retrieve that false step; just as the object of the interview of the 30th was to get out of the false position he had got into by his action with Bowen against Mr. Beecher on the 26th. Now, Mr. Moulton says: "Do you remember that I asked you last night if anybody had seen the letter that Mr. Tilton sent to you through Mr. Bowen, and your answer was, 'Nobody save myself had seen it?' He remembered that." You see, gentlemen, none of these people could come to Mr. Beecher that week without beginning the matter about the Bowen letter, about its suppression, and now we have a direct (though from a collateral point of view) confirmation of the great point being to get rid of the effect of that Bowen letter, and restore the sympathy and regard of Mr. Beecher, if possible. And therefore Moulton wanted to know whether anybody else had ever seen that letter, or knew anything about it, and he was reassured by Mr. Beecher's telling him. He had not remembered this, you know, when he was giving the ac-

count of the 30th. Mr. Moulton said: "Do you remember that I asked you last night if anybody had seen the letter that Mr. Tilton sent to you through Mr. Bowen, and your answer was that 'Nobody save myself had seen it.' He remembered that. I said, 'Mr. Beecher, I want to read you a letter from Elizabeth Tilton asking for the return of the paper which I have, and the paper which she gave you last night at your dictation. I will read also to you another letter in which Mrs. Tilton has informed her husband——.'" Well, he read the letter of explanation of the retraction which I have just read to you. Now, what reply did Mr. Beecher make to that? For that was Mr. Beecher's first notion that Mrs. Tilton had done anything in the way of explanation, or contradiction of, or subtraction, or detraction from, the force of her letter which she had given him. "He said he was surprised." Well, I should think he would be. Moulton says, "I said to him, 'Mr. Beecher, I think you have been guilty of a great meanness in getting the permission of a husband to visit his house, and then going there to his wife and procuring from her what you know to be a lie.'" Well, on the cross-examination he says it was "in procuring from her what I am justified in calling a lie," doesn't he? [addressing Mr. Abbott.]

Mr. Abbott—"What I must term a lie."

Mr. Evarts—"What I must term a lie." Well, we get rid, then, of the appeal to Mr. Beecher's consciousness.

I said to him, That won't save you. I said, I didn't see this morning much of the guidance of God in what you did.

Well, I have never been able to understand what this "guidance of God" referred to, for it is introduced here out of the whole cloth, and there had been no interview between Beecher and Moulton, and none between Beecher and Tilton, so that it must be Mr. Moulton's reflections in the morning as to the guidance of God in Mr. Beecher's conduct; it was not a phrase of Mr. Beecher's.

But perhaps it will all turn out for the best (that is, your having got this retraction), for I hold the confession of Elizabeth Tilton, and if you will return that retraction to me I will burn both in your presence, or I will preserve both; and he said to me, "In case of my death this would be the only defense that my family would have against such a charge," and I said to him, "Mr. Beecher, I don't think that now you ought to take merely selfish counsel of yourself; the truth is the truth; you have got to abide by that. Where is the retraction?" I said to him, "I want it." He went to the closet and brought it and handed it to me. I told him I would protect the confession—I would not give that up to Tilton, and I would protect this paper that he gave me with my life; and sitting there, Sir, I felt my pistol, and I said, "to this extent, with my life."

The pistol was brought for emphasis. Well, now, this man that had told you this was shameless enough to tell you that he gave the confession to Mr. Tilton, and that Mr. Tilton gave it to his wife, and his wife, in his presence, destroyed it; and yet this whole interview was on the proposition that charge and retraction are to be kept together; and then, before this infamy of the destruction of the paper was brought to their notice in the way of argument, meeting a present and lesser necessity, to wit, to show that there was not any blackmail in the $7,000 operation, they ignored utterly and protested that there was not any agreement or instruction or license whatever to destroy any paper growing out of that.

MR. MOULTON GRIEVED AT MR. BEECHER'S WICKEDNESS.

Ah, gentlemen, you wish more and more that you had that paper, or at least the production of it, if you need it more than you have got it from those that could give its contents. Well, then, he goes on to say, according to this witness, about what his defense would be if Theodore should make a charge; that he should deny it, of course; and then, with that abandonment of securing him in his denials which seems to characterize this gentleman, according to this man's stories, he said:

But I will throw myself on your friendship and what I believe to be your desire to save me.

And so, at an interview that had not anything to do with confession, that had no object on Mr. Moulton's part to get a confession, no possible motive on Mr. Beecher's part to give a confession; and when they passed through the ordeal of the night before on the testimony of everybody, with an absolute denial of there being a word of truth in the charges, and had in his hand besides the woman's statement that there was not a word of truth in the charge, if you believe Mr. Moulton as making out words for Mr. Beecher, he voluntarily says:

And he told me—he said to me, in addition—he considered his sexual intercourse with Mrs. Tilton was the natural expression of his love for her, are the words he used. He said he felt justified in his own account of the love he held for her, and which he knew she held for him, and said at the close of the conversation: "My life is ended. When to me there should now come honor and rest, I find myself on the brink of a moral Niagara, with no power to save myself, and I call upon you to save me."

Now, here is the point where he said that his intercourse with Mrs. Tilton was a natural expression of his love, and then corrected himself and put the word "sexual" in, and he did it several times; and when his attention was called, in a cross-examination, to how it happened that whenever he undertook to tell the story about Mr. Beecher speaking of his expressions of love he said "expressions" first, and then interpolated "sexual;" he said it was a mere slip of the tongue. Well, well, gentlemen, it won't do to break down character and destroy life and happiness of many families on the question of whether there is not a slip of the tongue in the witness. His tongue slipped—"dropped a word," he said. It is exactly the word that makes the difference.

But that is, after all, very unimportant when the absolute absurdity of the whole proposition of the originating, spontaneous, unextracted confession of Mr. Beecher to Mr. Moulton that night, when Mr. Moulton was there to get back a retraction, and which Mr. Beecher said he wanted for his protection. But it is of a piece with several other items of testimony that we shall find, as we go on, in this statement.

Now, there was a very curious other passage of this very interview on a cross-examination about this matter, which I have never been able to read without amusement. Now, the cross-examining counsel asked him what he said:

"I am giving his language as nearly as I recollect it, Sir: That that paper would be the only defense of his family in case he was attacked." Now, let us hear what Mr. Moulton says: "And I said to him, 'Mr. Beecher, I don't see how you have erred as you have; I don't understand it; you have had criminal connection with Mrs. Tilton, and you go down and you get this paper; I don't see how you could have performed two such acts.'"

Only think of it. Two such acts! Mr. Moulton, the moralist, talking to Mr. Beecher, and piercing his conscience with the accumulated horrors of two such acts—one of seduction of three years, and adultery of sixteen months, and the other going to see Mrs. Tilton, on the invitation of her husband, and telling her that the charge she had made was untrue, and taking from her a statement that it was not true. Those are the two such acts that puzzled the mind of Mr. Moulton, how a man could have such an accumulation of guilt. Either one alone would not have amounted to much; but two such acts was too much for Mr. Moulton. [Laughter.] He was in the position of Lord Dundreary, that no fellow can understand. [Laughter.] But that is not all:

Tilton's disposition last night when I went home, or when I saw him after going home, was peaceful. He said that no matter what might come to himself he would protect his wife and family, intended to do that, and Mr. Beecher then said to me with great sorrow, weeping, that he had loved Elizabeth Tilton very much, and through his love for her, if he had fallen at all, he had fallen.

Mr. Beecher was in doubt, you know; Mr. Beecher was in doubt whether he had had those three years of seduction, and these 16 months of adultery.

Now, if I have fallen at all—if I have got into that guilt at all——

Now, see how good his reasoning is. He had fallen through love; "that the expression"—now, we have got the same stumbling which is called dropping a word—'that the expression, the sexual expression of that love was just as natural, in his opinion, he had thought so," is the language that he used to her, "that if he had fallen at all, he had fallen in that way, through love and not through lust, or words to that effect." Well, gentlemen, truth shows itself against the most malignant efforts to suppress it. "The expression"—"sexual expression"—'if he had fallen"—"if he had fallen at all"—twice over—"he had fallen"—"if he had gone into adultery it had been through love and not through lust." That is a proposition that proves itself. Now, see how it comports with the truth. Mr. Beecher tells you in his testimony, tells you in his statement read to you, as made to the church, as the statement prepared to stand the examination of the Judgment Day, how he had been drawn into admiration, affection, intimacy with this lady of the nature that he describes, and how he, heedless of the impressions upon her nature, and her sympathy, and her affections, was blind and deaf to any suspicion that there was to come out of this withdrawal of affection from the husband, or confusion of her duties to him and her children, and the discord and injury and calamity to the family was now displayed before him as the evil that had happened from some cause, and Mr. Tilton had accused him the night before, the 30th, as having been the cause of this subtraction of the wife's affection and this attraction to himself of the woman's worship. Now, Mr. Beecher, if he talks, talks on that, and, oh! it was a surprise to him, and he takes woe to himself for his blindness, and yet cannot understand how it should be that all this should arise without his present, concurrent consciousness and observation—talks to this man, Moulton on the very topic that Mr. Moulton is pressing upon him.

You are introducing new mischief between this wife and husband by holding on to this accusation of the husband by the wife of having forced a false charge out of her against you. That is not the way. You must not consult for your own safety and your own selfish interests and protection. You must restore this family.

And, finally yielding to that, he surrenders the paper, and then he says, speaking of what he was conscious of, and what he felt compunction for on this sudden revelation of the mischief that had come—he says, "Well,"—— this is the nature of the observation, if anything to support it ever arose, and I think even false witnesses like to have some shelter of conscience.

Well, if I have, in my intimacy and my blindness and my enjoyment of the society and of the traits of purity and piety of this woman, drawn her affections, warped them toward me, centered them too much in me, and produced this estrangement, thank God my visits, my intimacy, my sympathy, and my fall into the mischief of injury to her—if it be true, as you now charge, that this calamity is ascribable to me—I have fallen into it only in the intercourse of chastity and affection, and not with any purposes or desires of lust.

Thus explained, comporting with all the truth, you can understand why Mr. Beecher might reason in that way; but if you put it upon the fact of a sexual, abominable, and gross immorality, and adultery, what can explain this idea, twice repeated, that if he had fallen at all, he had fallen through love and not through lust? Now, Mrs. Tilton had not denied her undue affection, nor had there ever been displaced from the ground of Mr. Tilton's complaint, urged I think in no very measured or

honest terms on his part, but for a purpose, as I shall show you hereafter, against Mr. Beecher, that he had been actually and practically the means of breaking up what should be the relations between husband and wife, the entire unity of feeling and of regard.

Now, Mr. Beecher gives an account of this interview, and you will judge, first, of the respective credit of the two witnesses, and secondly, that whether this view does not comport with the probabilities, nay, the necessities of the occurrence, and refute the opposite view given by Mr. Moulton:

After he came in he made some introductory remarks, which I now cannot give, but he drew a letter from out of his pocket from Theodore Tilton, purporting to be, in which Mr. Tilton stated that after going home last night he found that I had taken advantage of my interview to procure from his wife a retraction of the charges that had been made against me. That was the substance of it. There was some little more which I do not remember. He then proceeded to say in substance that he presumed that that was so. I said it certainly—that I had. He said that he thought I had acted a very indiscreet part—a dishonorable one; that I had no right to take advantage of such a situation, and to obtain such a retraction; and I claimed the right of self-defense. He then said that such a course was indiscreet and inexpedient on my part, no matter what my reasons were; that it tended to increase the difficulty between Mr. Tilton and his wife and between Mr. Tilton and me, and that instead of leading to peace and quiet, it tended exactly the other way, and I ought to give up her retraction. I argued with him on that matter, and for some little time there was an interchange backward and forward of thought. He then drew from his pocket a letter purporting to be from Mrs. Tilton.

Which was read:

SATURDAY MORNING.

MY DEAR FRIEND FRANK: I want you to do me the greatest possible favor. My letter which you have, and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed. Please bring both to me and I will burn them. Show this note to Theodore and Mr. Beecher. They will see the propriety of this request.

Yours truly, E. R. TILTON.

Q. What succeeded? A. Well, I was perplexed a little at the existence of that letter, for Mr. Tilton had told me that the letter was destroyed—[Mr. Tilton, you remember, told him on the 30th that he tore up the only copy, and that the original was destroyed]—and Mr. Moulton and Mrs. Tilton's note, implied the existence of that letter containing charges.

Q. The accusation? A. The accusation.

Q. Yes. A. However, that was a mere transient thought in my mind, and then, the end of the conversation being what would tend to peace and reconciliation.

Q. Go on with the conversation, please? A. There was considerable said; I said to Mr. Moulton that my objection to giving up that retraction was that I should be left open, without defense, if I were in any way brought to account on such a charge as that. He said in substance that he would stand between me and any such renewal of the accusation, that he would defend the documents, that he would burn them both in my presence, if I wished——

Q. If you wished? A. If I wished, or he would keep them.

That is the substance of the matter. There is nothing more except the great distinctness with which it was determined that the two papers were to be kept inseparable, as indeed Mr. Moulton plainly stated in his cross-examination.

Q. Was anything said by you at the interview on the 31st about Mr. Tilton having invited you on the 30th to go down and see his wife? A. Mr. Moulton introduced it that Mr. Tilton had sent him down to see his wife; there was no difference of opinion about it; if there is any it is of later origin.

Then he stated how Mr. Moulton urged the idea that it was not gentlemanly in him to keep a paper, and

I should give it up, and that would tend to peace. He thought, he said, it would be a work of conciliation, and that it would tend very strongly to it. He represented that Mr. Tilton was under the impression that I was an active enemy, and that any course on my part that was a course of self-defense, aggressively in any way, was holding a defense of myself in such a way as would be a rod over him—would strengthen that impression, and that every conciliation that I could make would weaken that impression, and help him (Moulton) to hold Tilton to kindly thought and feeling about me.

He contradicts entirely the idea that anything was said that night about his having procured a lie or anything that Mr. Moulton was justified in calling a lie. Now, when they returned to the stand Mr. Moulton didn't contradict any of these parts that I have read to you. You see what stands as an enormous anomaly, if this great central fact of injury to Mr. Tilton by Mr. Beecher, and of power of Mr. Tilton over Mr. Beecher from that fact—if that had been in the consciousness of Mr. Beecher or Mr. Tilton, or the knowledge of Mr. Tilton, the least idea that there was any substantive fact, you see the enormous anomaly of all the operations of that week to secure friendly feelings on Mr. Beecher's part toward Mr. Tilton. And here we have a repetition of it. Mr. Tilton thought he was an active enemy, and wanted to be sure that he (Mr. Beecher) would not injure him. He needed friendship. He was in a calamity, and getting these new facts of his (Tilton's) treachery, and of his abuse of his wife's compliance to make a false charge, and the evidence of all that into his (Mr. Beecher's) hands against him, made him think still more that he must have some security that Mr. Beecher did not intend to pursue him (Tilton) as an active enemy. Now, did you ever hear of such an absurdity as that? And, yet, it runs all through, and when we come to the 1st of January you will find it impregnates that interview from end to end, and when you come to later matters, which I shall run through rapidly, you will see that the whole purpose is to keep kindness in Mr. Beecher's heart and fidelity in Mr. Beecher's feelings, so as that Mr. Beecher needn't injure, persecute, destroy Mr. Tilton. Now, in respect to any casual impression or notion that any of these, as I regard them, frivolous and self-convicted falsehoods in Mr. Moulton's statement, stand as if they were his evidence,

to be credited as his evidence, and without contradicting I have only to suggest to you that throughout, with solemnity, with distinctness, with completeness, Mr. Beecher has denounced them all as false, so far as having occurred, and you must judge, at your charitable judgments, whether they are not false in the consciousness and purpose of the witness that speaks against him.

The Court here adjourned until Friday at 11 o'clock.

NINETY-SEVENTH DAY'S PROCEEDINGS.

CONTINUED SUMMING UP FOR THE DEFENSE.

ANALYSIS OF LETTERS RELIED UPON BY THE PLAINTIFF — EXPRESSIONS IN THE CATHERINE GAUNT LETTER AND OTHER COMMUNICATIONS EXPLAINED—TESTIMONY FROM MR. MOULTON, MR. WILKESON, AND OTHERS TAKEN UP—MR. TILTON'S STATEMENTS AS TO PHOTOGRAPHS OF HIS WIFE AND DAUGHTER REVIEWED — UNSUCCESSFUL ATTEMPT OF JUDGE NEILSON TO HAVE A SATURDAY SESSION—MR. BEACH DESIRES TO HAVE THE SUMMING UP FOR THE DEFENSE LIMITED.

FRIDAY, June 4, 1875.

To-day was the sixth day of the argument of William M. Evarts in summing up for Mr. Beecher. At the end of the afternoon session Judge Neilson told the jurors that he should have to appeal to them to consent to the court's sitting on Saturday, because there was such a large amount of other business waiting to be disposed of by him that it was imperatively necessary to hasten the completion of this trial. Mr. Evarts objected to a Saturday session on the ground that it would be a hardship for him to continue speaking another day after talking continuously the previous four days. Mr. Beach sustained Mr. Evarts in his request that there should be no Saturday session, and Judge Neilson consented to adjourn until Monday morning as usual. Mr. Beach then insisted upon knowing definitely when the summing-up for the defendant would close, and appealed to the Court to fix some limit to it. Judge Neilson referred him to Mr. Evarts, who said that he had no thought of speaking longer than next Tuesday night, and he was strongly desirous of closing before recess on that day. Mr. Beach said that his argument would be comparatively brief, and he privately stated that he had no idea of exceeding three days. The defendant's counsel have already taken 11 days for their summing up, and if Mr. Evarts closes when he says he will the whole time consumed by them will have been 13 days. Mr. Evarts says that he has now covered the main points of his argument, and what he will have to say hereafter will be of somewhat minor importance, although necessary to the full treatment of his client's case.

The argument to-day was confined principally to some of the famous letters in the case. Among these were the "Catherine Gaunt Letter," the "Nest-Hiding Letter," and some others. The alleged equivocal expressions in these letters, some of which were analyzed by Judge Porter in his address, were explained by Mr. Evarts with great care, and with a clearness of argument that excited the admiration of many in the audience. Some of Mr. Moulton's testimony was considered, as well as the testimony of Mr. Wilkeson, and other evidence that had been brought forward on both sides. Several of the minor interviews between Mr. Beecher and Messrs. Tilton and Moulton came under consideration, and the relations of Messrs. Bowen and Tilton were subjected to a further analysis in new relations.

Almost the only peculiarly striking passage in the address was in reference to Mr. Tilton's contradiction of some of Mr. Wilkeson's evidence about the interview between the two in Washington. Mr. Wilkeson said that Mr. Tilton had shown him a photograph of his wife. This Mr. Tilton denied, saying that he had shown photographs of his daughters, Florence and Alice, and that Mr. Wilkeson, supposing Florence to be Mrs. Tilton, apostrophized her picture over a glass of wine. "And," said Mr. Evarts, humorously, after reading this portion of the plaintiff's testimony, "Florence was a little girl 6 years old. I think it would take more than one glass of wine, gentlemen, to confuse as clear a head as Samuel Wilkeson's into the notion that a girl 6 years old was the wife of this Apollo." As he said this the orator half turned toward Mr. Tilton with an ironical smile, while a burst of laughter from the audience appeared to deepen the color in the flushed face of the plaintiff.

THE PROCEEDINGS—VERBATIM.

THE CATHERINE GAUNT LETTER.

The Court met at 11 a. m. pursuant to adjournment.

Mr. Evarts—I need now to consider a few matters touching the relations of Mrs. Tilton and Mr. Beecher, brought out, no doubt, in the letters I shall ask your at-

tention to at a later period than the dates that I am now discussing, but coming as they do in the earlier part of the year 1871 they throw a reflex and confirmatory light upon the real nature of the indiscretions, the misfortunes, the errors of whatever degree they may have been, that attended the intimacy between Mr. Beecher and Mrs. Tilton. You will remember that we put in evidence a letter which had been published by her husband in the newspapers, bearing date on the 29th of June in the year 1871, and written to him by her during a temporary absence from the city, at a place of Summer resort. It has become famous as the Catherine Gaunt letter, and was before the Committee of the Church in their investigations, and has been much in the public mind, and much doubtless in yours since this trial began. It has but one meaning, and it is an absolute refutation of all pretenses of carnal intercourse, or bodily impurity of any kind on the part of this woman. Not only does the letter itself, but the whole story, and plot and *morale* of the work of fiction which it introduces to notice, and on which it builds certain conclusions in the mind of this woman, is, and is known to every one to be, an exposition of how there may come to be unsuitable disturbances of domestic peace, unsuitable exaggerations of grounds of religious discord between husband and wife, by the entirely innocent, the entirely pure and religious relation between a clergyman and a penitent, or a devotee. This letter reads as follows:

JUNE 29, 1871.

MY DEAR THEODORE: To-day, through the ministry of Catherine Gaunt, a character of fiction, my eyes have been opened, for the first time in my experience, so that I see clearly my sin. It was when I knew that I was loved, to suffer it to grow to a passion. A virtuous woman should check instantly an absorbing love. But it appeared to me in such false light. That the love I felt and received could harm no one, not even you, I have believed unfalteringly until 4 o'clock this afternoon, when the heavenly vision dawned upon me. I see now, as never before, the wrong I have done you, and hasten immediately to ask your pardon, with a penitence so sincere that henceforth (if reason remains) you may trust me implicitly. Oh! my dear Theo., though your opinions are not restful or congenial to my soul, yet my own integrity and purity are a sacred and holy thing to me. Bless God, with me, for Catherine Gaunt, and for all the sure leadings of an all-wise and loving Providence. Yes; now I feel quite prepared to renew my marriage vow with you, to keep it as the Savior requireth, who looketh at the eye and the heart. Never before could I say this. I know not that you are yet able, or ever will be, to say this to *me*. Still, with what profound thankfulness that I am come to this sure foundation, and that my feet are planted on the rock of this great truth you cannot at all realize.

When you yearn toward me with any true feeling, be assured of the tried, purified, and restored love of

ELIZABETH.

Written from Schoharie.

Now, gentlemen, you see exactly how Mr. Tilton, in the confused relations of the affections and the appetites that he himself had displayed in his connection with the loose theories and the careless speculations that he had allowed to intrude themselves even into the columns of a professedly religious and Christian newspaper, *The Independent;* how the wife, having before her, and always insisting upon in the strongest manner, that the preservation of the purity of the marriage relation on the part of the husband and of the wife, was at the very bottom of the dignity, the morality of the nature and character of Christian men and women; and how, urging her husband in 1868 to beware of these moral confusions and these bodily contaminations, and pointing out to him in a letter, the burning force of which he could not bear to publish till he had mutilated it and presented it as a confession, or a hint of her impurity, instead of an expostulation with him for his willful gratification of his desires; how in that state of things Mr. Tilton finds it easy to say she did not for a year afterward, after she had made the communication to him in July, 1870, understand or feel that she had violated her marriage vow to him, that on her part there had been any injury to the marriage relation or any just cause of complaint by him; that whatever she had stated to him concerning this entanglement or subtraction of affection rested there and only there, and he knew it and she knew it, and she had used this form of self-reproach and self-abasement in the degree of having allowed affections to disturb the unity of subordination to him in all affairs as a means of renewing upon him the impressions that had been so powerfully produced by the solemn interview of the 26th of January, 1868, and had then worn away. And it was only when she read Catherine Gaunt, that novel to which her husband had referred, in her letters to him, during the earlier periods, in 1867 or 1868, that she perceived that under the powerful exposition of this writer of fiction a relation between a clergyman and a married woman, that had no pretense of impurity in it, had yet come to be a ground of discord in the family, of controversy in the divided allegiance of the wife to the church, in which her husband did not believe, and of an estrangement, and of the consequences of driving the husband into actual adultery, of which he late repented, and for which he was pardoned by the wife. Now, you see how this work of fiction played into the inmost heart of this woman, Mrs. Tilton, on both of these points, that purity, unity, absolute subjection to the husband, must discard even the attraction of the affections, through the influence of a pious clergyman; and then she saw, as under the burning light of the sun, how it could be carried into the sad impressions upon the husband and his conduct, of plunging him in actual guilt; and then was reproduced before her all that situation whereby, by her own abasement, her own self-reproach, her own taking on herself of sin, in not being so acceptable to him and so compliant to him as to satisfy, and attract, and absorb all the passions and attractions of

the sex for him—she really made herself think that she was responsible for the overflowing appetites and indulgences of this husband. And then she saw how this woman, Catherine Gaunt, had under this exposition of the powerful writer, furnished a lesson to her that, for a wife, the first tendency to allow an image, even, to intervene in competition with the husband's portrait engraved upon her heart is an error; and that out of that grow, without bodily impurity and without any sin in the sense of the loss of chastity on one side, or proposition of dishonor on the other, mischiefs that cannot be measured and the results of which may be deplorable.

CATHERINE GAUNT'S FAULT.

The first two sentences of this book of Mr. Reade's, "Griffith Gaunt," show you at once what the nature of this lesson taught by this fiction was. The husband says to the wife at a certain stage of passion, excited against the intimacy between the priest and the wife—the husband says: "Then, I say, once for all, that priest shall never darken my doors again;" and the wife replies: "Then, I say, they are my doors, and not yours; and that holy man shall brighten them whenever he will." And there you have the declaration of the resistance, of the controversy that may spring up in an entirely pure and pious woman's mind, when the circumstances bring her into that form of contrariety with her husband. Catherine Peyton, become Catherine Gaunt, was a Catholic, and her husband was a member of the Established Church of England. She was pious and devoted, an earnest and honest believer in the Christian faith, a worker in all the good ways of the Church, a supporter of all its great teachings, and a lover of all its great helps to the conscience and the soul. The husband, well-meaning enough, and moral, if you please, but careless and indifferent to religion, having no sympathy, not with the Catholic opinions but no sympathy with the piety and the orthodoxy of the wife, and the confessor, the Father Confessor in whose company, and in whose purposes, and in whose faithful labors, the wife sympathized; whose intellect she admired, whose rapt devotion she worshiped, and whose purity and power as a servant of God she sat above the husband and his indifference and his coarse conduct; came into such relations of mutual regard, mutual esteem, mutual appreciation, that this husband was led into controversy, and, being like a great many people, that, if they are not good Christians are yet good Protestants, or good Catholics, or good Episcopalians, or good Methodists, or good Congregationalists, as the case may be, into the antagonism between the churches and the faiths, and having his feelings inflamed (not, to be sure, by the studied art of an *Iago*, not by the close attendance of some modern English Sir Philip Sydney, but under the impulses, natural to the heart of man in seeing the greater intellect, and the greater piety, and the greater aspirations, and the greater labors, filling the wife's imagination and subtracting her by degrees from the earthly and vulgar sympathies that belong to every-day life—gets finally into that heat of jealous passion which swears that the priest shall never darken the doors again; and she, replying, not very politely, that the property was hers, and the holy man should brighten the doors as often as he chose, began the course of discord and separation and destruction, which finally ended in the profligacy of the husband, in the exposure of the actual purity and fidelity of the wife, and in the restoration of the husband to her affections, himself redeemed from the stains of sin. And yet, with a literary appreciation of that novel, and of all the sentiments at the bottom of it, Mr. Tilton has not hesitated to make this a ground of imputing carnal pollution in the place of what he knew was nothing but some withdrawal of affection from him and some submission and devotion of it in the relations of the clergyman and the communicant, of the same general nature as that between Catherine Gaunt and the priest. Now, this is where Father Francis comes in. Father Francis had been the first confessor, or spiritual director, of this pious lady, and he was a man apparently of that large practical knowledge of human nature which, though it did not interfere with his piety and his devotion to his church, and his duty as a priest to penitents and communicants, yet understood better the line of division so as to avoid the possibility of any confusion between the duties of the wife to a husband—any sentiment, I mean—and those to the priest, And when Father Leonard, the man of genius, and of fire and of rapt devotion, with whom this disturbance of the wifely relations to the husband had grown up, had withdrawn, and Father Francis had returned, he thus talks with the woman:

"My daughter," said Father Francis, "and you, who are her husband, and my friend, I am here to do justice between you both, with God's help, and to show you both your faults. Catherine Gaunt, you began the mischief by encouraging another man to interfere between you and your husband in things secular." "But, Father, he was my director, my priest." "My daughter, do you believe, with the Protestants, that marriage is a mere civil contract, or do you hold with us that it is one of the holy sacraments?" "Can you ask me?" murmured Kate, reproachfully. "Well, then," continued Father Francis, "well, then, those whom God and the whole Church have in holy sacrament united, what right hath a single priest to disunite in heart, and make the wife false in any part whatever of that most holy vow? I hear, and not from you, that Leonard did set you against your husband's friends, withdrew you from society, and sent him abroad alone; in one word, he robbed your husband of his companion and his friend. The sin was Leonard's, but the fault was yours."

WHAT MR. TILTON OMITTED FROM THE PUBLISHED LETTER.

You see, now, as in a mirror, the heart of this woman, the life of this woman, and you see this plaintiff's knowledge of that heart and of that life; and you see, now, how, under this letter, she can say, "I see, now, how there must be no toleration nor hospitality to possible affections that may interfere with the whole moral, the whole spiritual, the whole practical adhesion of the wife to the husband in all things, small and great, taking her fate with him, using her ministry with him, submitting even to a vicarious sacrifice of her own life, so that she may keep those vows that attend the union and are to preserve the unity of their souls." And thus she says:

"Now, although your opinions are not restful or congenial to my soul"—that is, his religious opinions, his social opinions, his notions about family, and about faith—"yet my own integrity and purity are a sacred and holy thing to me. I now feel quite prepared to renew my marriage vow with you—I have always kept it in the other sense—and to keep it as the Savior requireth who looketh at the eye and the heart. I know not that you are yet able, or ever will be, to say this to me."

And this is the part of the letter that Mr. Tilton omitted when he published it, and put in no asterisks to show that there was a gap made:

Still, with what profound thankfulness that I am come to this assured foundation, and that my feet are planted on the rock of this great truth, you cannot at all realize.

Down to this word "realize" all was left out of the letter as Mr. Tilton published it. Now, what do you gather from the mutilation of a wife's letters? It was bad enough, base enough to publish them, and that this plaintiff has found out, in the estimates of his fellow men and the women of his country, long before this. But it was a baseness to put a misconstruction upon a wife's letters by this mutilation, and to murder her fame by falsifying her communications to himself. But this is not the first or the only instance of that nature. The inferences are terrible, they are inevitable, they are conclusive.

THE BEARING OF THE LETTER ON THE CASE.

And now, another letter introduced by the plaintiff, following this one by only five or six days' interval, written from the same place, and being, no doubt, the first communication after this Catherine Gaunt Letter. [Reading.]

MY DEAR THEODORE: I had expected you all day yesterday and to-day. But now your letter was put into my hand instead. I feel the bitterest disappointment. But we are both in God's hands, and I now hear Him say, by my heart's intense yearnings, "Return to the love of your youth." Oh! my dear husband, may you not need the further discipline of being misled by a good woman, as I have been by a good man. I rejoice in your happy face and peaceful mind, though I am not in any wise the cause. It will be God's gift alone if ever your face illumines, or heart throbs, with thoughts of me. "As for me, I will wait on the Lord." I thank you for the sufferings of the last year.

Turning, now, to the conclusions produced in her mind and expressed in the Catherine Gaunt letter:

You have been my deliverer. Destroy my letters, nor show them to our mutual friends. The fear of this would prevent me writing my inmost self.

So that Moulton had come to be the mutual friend of Elizabeth and Theodore, as well as of Theodore and Mr. Beecher! Now, gentlemen, it is undoubtedly very hard that Mr. Beecher should be judged at all, either by the Catherine Gaunt letter, or by this letter, which were letters in which he had no act, in which he was not passive as the recipient, of which he had no knowledge, and which simply constituted a portion of the manner in which this husband and this wife deal with their own relations, and with the best manner of pleasing one another by their forms and manners of stating them. I have shown you enough of the plasticity of this woman's heart under the touch of this man's dominion. I have shown you enough of the strangeness of its own operations when caught in currents of impression and of action unsuitable to the quiet, devotional spirit, disturbing to the practical charitable labors of a pious woman, in the ordinary conditions of life, and with a measure of intelligence no doubt considerable, and of education, no doubt adequate, and of practical knowledge which belongs to quiet and pious families in Brooklyn, not so extensive as that that is gained in other and larger experiences of the world. I say it is hard that this kind of evidence should be brought to bear upon Mr. Beecher. The first letter we introduced no doubt for its exhibition, but we do not thereby indorse it as being a correct expression, or a sincere feeling even, or a just and honest view of what on intimate inspection would be shown to be the relations of the husband and the wife. Enough for us—that letter purges at once all possible suggestion of there having been any improper relations between Mr. Beecher and the wife beyond this confusion of affections, and this division and disturbance of allegiance. Now, I drew from Mr. Tilton, on the cross-examination, that when he was using this letter, when he was publishing it, he knew perfectly well that there was no adultery on the part of the wife Catherine in "Griffith Gaunt;" he knew there was an abundance on the part of Griffith, the husband. And yet he published that letter, mutilated it, falsified it, and produced an impression throughout this land in the newspapers that that was a confession of adultery, and that it was only from the morality of this writer of fiction that his wife had found out that adultery was an impurity and an impropriety. It is a good thing to have a husband, especially to have him represent you to the rest of the world; and that is the way this husband has represented his wife throughout this land, with the perfect consciousness that he had mutilated her letter, and that he had deceived the unreading

public into an impression that Catherine Gaunt had opened to her the sin of carnal pollution, which had not seemed to her to be a sin before.

Now, let us see how any of these other letters of the wife naturally and honestly carry any impression against her in respect of the relations between herself and Mr. Beecher. These are the letters that passed on her part from the 8th of March, 1871, the second on the 21st of April, and the third on the 3d of May of that year. During this period of the effort and the success at restored relations between Mr. Beecher and Mr. Tilton and Mrs. Tilton, so far as the husband's wishes were concerned, and so far as it was possible that there should be any renewal going beyond, as it was not, going beyond sympathy, regard, and pity on the part of Mr. Beecher, and something in the nature of compunction, regret, and suffering on the part of the woman. The reason these letters—for they were brought to Moulton—the reason these letters have been used, either by this husband or by his faithful friend, Mr. Moulton, or any advisers of theirs, has been in the hope of inspiring some vile and filthy suspicion of *equivoque*, or a double meaning. I have denounced that once in the course of the observations I have had the honor to submit to you, and I don't think that any renewal of that construction will be presented to you here, if indeed during this trial there has been no disposition to take that view. Now, the letter of the 8th of March is just a month after the three letters of the 7th of February which passed between these three parties in the nature of a written restoration, and which will be brought to your attention, however, very briefly, as they are sufficiently in your minds. Waiting a month, the wife writes to Mr. Beecher:

MY DEAR FRIEND: Does your heart bound towards all as it used?

That seems to be a quotation made in previous letters from Hannah More, and nobody ever suspected Hannah More of pruriency.

So does mine. I am myself again [underscored.] I did not dare to tell you until I was sure. But the bird has sung in my heart these four weeks, and he has covenanted with me never again to leave. "Spring" [with quotations] "has come." Because I thought it would gladden you to know this and not to trouble or embarrass you in any way, I now write. Of course I should like to share with you my joy, but can wait for the Beyond [with a capital B] the future life. When dear Frank says I may once again go to old Plymouth I will thank the dear father.

Now, gentlemen, I have nothing to explain about that letter. It needs no explanation. There was no consciousness of any need of concealment on Mr. Beecher's part, for he brought it to Mr. Moulton and the husband saw it. There never was any idea that there was any wrong in it till somebody's foul imagination seized upon it, and, by imputing filthy *doubles entendres* read it before the land envenomed—envenomed by those juices that were bred in the head of the toads that gave it this meaning which never came out of the pure heart of this woman. I think you need have nothing more about that. Obviously plain. This woman was suffering—why shouldn't she suffer under the discordant parts she had played in the written accusation, the retraction, the explanation, the efforts to undo the mischief in the production of which she had so large a share? And, when these letters of the 7th of February came to her and they showed her husband's disposition and Mr. Beecher's disposition toward her, and Mr. Beecher's disposition of friendliness, and wish for the welfare of her husband, she meditated upon them during the month, and she watched and perceived and received evidence on her husband's part, in his demeanor, of how much there was really of restoration of the broken peace of the family, and at last, at last, when Mr. Tilton had weaned a little from his trouble by the hopeful dream of *The Golden Age*, then just established, and looking out for prosperity and strength, she found his face brighten, his troubles lighten, his domestic attitudes less cruel, less moody, less vengeful in regard to and in condemnation or accusation of Mr. Beecher, and everything was restored on the surface, and everything would have remained restored and undisturbed in the future if the external prosperity of Mr. Tilton, if his restoration toward good opinion and good work and good position and good income and respectable relations to society had been built up as was the effort, and the wish, and the prayer of Mr. Beecher; and if that hopeful scheme founded upon a change of morals, of conduct, of sentiment, and of action in Mr. Tilton had gone on in its legitimate and expected strength and amplitude and not been overthrown by the foolish wickedness or the wicked folly of his relations to the doctrines and his admiration of the character, and his implication of himself before the country in sympathy with Victoria Woodhull, her life, her character, her teachings. Well, now, on the 21st of April another letter is written, and it sheds great light upon the situation then.

MRS. TILTON WANTS THE LETTERS DESTROYED.

Everything was over then; the errors and faults, the misunderstandings on all sides had been explained, understood; they were all measurable; they were all pardonable; they had all been made the subject of consideration, of explanation and of pardon, wherever the faults were. And this poor lady, assuming that openness and straightforwardness was the real character, the real and honest traits of this conciliation, writes this simple note to Mr. Beecher:

FRIDAY, April 21, 1872.

MR. BEECHER: As Mr. Moulton has returned [that is from his visit South] will you use your influence to have the papers in his possession destroyed. My heart bleeds night and day at the injustice of their existence.

Those papers were, as she apprehended, her accusation

of improper advances, her retraction (that had also made an accusation against her husband of forcing her to a false charge), and her explanation of this retraction which, of course, when read one after the other, presented a pitiable record to have come from one mind or one hand, and they were craftily put by Mr. Tilton as coming presumably from the mind and the hand of his wife, for they had her signatures, and their text was traced by her pen. And she says:

Now that Mr. Moulton is back, let me ask you to use your influence to have the papers in his possession destroyed. My heart bleeds night and day at the injustice of their existence.

And this was handed by Mr. Beecher to Mr. Moulton and came to Mr. Tilton's knowledge, and if the piteous pleading of this woman to her husband, and her husband's friends in this, her language could not produce the response of destroying the papers which seemed to her in their continued existence so great an injustice, and for which her heart bled night and day, what selfish argument of Mr. Beecher could have availed? He made none. He feared nothing. His solicitude was always for the pain and suffering of others. But why was not this wish of the wife attended to? Why, on this 21st day of April, when that prayer came to the husband and the husband's friend that, now that peace had been made, that explanations had been given, that her retraction had withdrawn the charge, and her explanation had withdrawn the evil and injury towards her husband that was embodied in the retraction; when they were in peace, and when Mr. Beecher was restored to intimacy with the family, so far as he regarded it suitable, by the express action of the husband, why shouldn't they be destroyed? Who had purposes against their destruction? Who had hopes and plans and schemes of further insidious, secret use of them?

DEDUCTIONS FROM "THE POLICY OF SILENCE."

Under what is called the policy of silence—and, like so many other things in this cause, turns out to be unilateral silence—silence on one side—"Don't speak except through us; we are going to be silent under motives of the strongest guarantee for our silence. All we want is some security that you, Mr. Beecher, won't tell of these things, of this disorder, of this disaster, this disgrace in Mr. Tilton's family." Did they think that Mr. Beecher was in danger of telling of it if it was adultery—if it was to destroy his life, wreck his home, break up his hold upon this city, this country, this world? No! "We want you to keep silent, now, about this matter, this charge that has been made against you, that has been retracted, and accompanied in the retraction with a charge that it was false on the part of the husband and procured by force, this evidence that I have tried for my purpose to entrap you into a notion that my wife believes that you have been impure in your purposes and your proposals to her, which she has rejected. We don't want anybody to know of the existence of that turpitude and that disgrace." It was the same feeling that led Mr. Moulton to be so solicitous on the 31st of December to know whether Mr. Beecher had shown anybody Mr. Tilton's letter of the 26th of December, and in regard to which Mr. Beecher's answer that nobody but him, Moulton, had seen it, relieved any fear that Mr. Tilton was to be cudgeled with public opprobrium and public denunciation for such a bold and braggart letter as that. So here *unilateral* silence is imposed upon Mr. Beecher, for Mr. Tilton does not hesitate to tell you that all through those months he told whom he pleased, and just as much as he pleased, of his version, and accompanied it with just as much of the garbled exhibition, and, of course, the partial inspection, of those to whom he showed this, or with speck or scrap of writing, separated from the rest. There is but one other letter:

BROOKLYN, May 3, 1871.

MR. BEECHER: My future, either for life or death, would be happier could I but feel that you *forgave* while you forget me.

Well, now, that is a very extraordinary letter for a woman that had been ruined by confidence in a man towards whom confidence was almost an absolute duty, that had been involved in the final sacrifice of personal purity, for which she had, I will not say a morbid reverence—for no worship of chastity by a woman can ever be deemed morbid; it is the very health of her as a woman—but that was as exacting as universal, as clear-sighted as ever was proposed by priest or poet as the rule and the guide and the safeguard of woman's life—it certainly is very extraordinary that she, with those relations, should write to Mr. Beecher:

My future either for life or death would be happier could I but feel that you *forgave* while you forget me. In all the sad complications of the past year ——

Oh! how sad they must have been between her and her husband when such a wreck came at the close of it, as this submission to his will in falsehood and in calumny!

In all the sad complications of the past year my endeavor was to entirely keep from *you* all suffering; to bear myself alone, leaving you forever ignorant of it. My weapons were love, a large untiring generosity, and *nest hiding!* [Underscored and with an admiration mark.] That I failed utterly we both know. But now I ask forgiveness.

THE TERM "NEST-HIDING" INTERPRETED.

Now, this letter handed to Moulton has been made the subject of publication and of comment in "statements" not within the limits of this trial, and the world must consult them if it wishes to know how vile an imputation, from *some* man's mind and heart, has been put upon that word "nest-hiding." My learned brother Porter has shown you how utterly monstrous and how

shallow and frivolous this interpretation is, giving an in decent meaning to the word "nest-hiding," to wit: the meaning, as by a slang term, of the adulterous enjoyments that had passed between paramour and mistress. Now, separated from the paramour, with all connections of any kind terminated, with these impure connections, if they ever existed, confessedly terminated more than a year before, she writes to him that, *during the time and period of the present troubles,* "my weapons have been love, a large, untiring generosity, and"—adulterous enjoyments! Pray, with whom a mode of solace so delightful? Well, gentlemen, husbands and husbands' friends and husbands' advisers are hard pressed when they jump into such another bramble-bush as this is. When the bramble-bush of the first accusation has scratched out both their eyes, is this to scratch them in again? They certainly are "wondrous wise" in the attempt. Ah, gentlemen, what is the "nest-hiding" that has been the solace and the weapon against the wickedness of others and the pains of the doubts and suspicions and accusations that have been circulated? You have all heard of the embodied scorn with which men have, in a proverb, denounced the "evil bird that fouls his own nest," and you have all heard of that symbol of devotion and self-sacrifice, the wounded mother bird, which, while her life is ebbing, hides from the pursuing fowler the young in her nest by smothering the groans of a dying bird lest they should betray the nest; and that is the weapon by which a pious woman and a loving mother seeks to protect her young, even the nest that the evil bird has sought to foul! So much for the letters!

MR. BEECHER'S REMORSE.

We now come to the interview on the day after that, which I exposed by, I think, a just criticism to your attention yesterday, I mean the interview of Sunday the first day of January, at Mr. Beecher's house, between Mr. Moulton and himself. Now, gentlemen, what was the purpose, what the tone, what the temper of that interview? Mr. Moulton seems to have stuck pretty close to Mr. Beecher from the time that he commenced operations on the 30th. He followed him all that night around the streets and did not let him get out of his sight; he followed him up on Saturday, certainly with an interview that was not sought by Mr. Beecher, that was wholly unexpected, and that had a very definite object, to reprieve certain errors and impose upon the feelings of Mr. Beecher and induce him not to do anything that should make Mr. Tilton think that he, Beecher, had an ill disposition toward him; and then he comes to another interview that occupies all Sunday afternoon. Mr. Beecher, it is said, at the close of that interview, on Saturday, had suggested that Mr. Moulton should let him know whether this notion of his, that giving up the retraction to the custody of Mr. Moulton would tend to harmony and peace, was correct, and whether it was likely to be productive of those results.

Now, Mr. Moulton comes to Mr. Beecher's in the afternoon of Sunday, and I will read you from Moulton's testimony what plainly was the whole object of that interview:

"How did it happen that you went there?" He says it was by his invitation; and then he began: "I told Mr. Beecher that I had taken the retraction to Mr. Tilton, and that I had told Mr. Tilton that it would have been very foolish for him to have carried his threat of the morning into execution. I told him that Mr. Tilton was pleased with my having procured the retraction; and I told Mr. Beecher that Mr. Tilton seemed to me to be—I told him that I thought that I told him that Tilton told me—[that is the only way the law allowed him to give it, to tell it]—that he had made up his mind that, no matter what came to himself, he would undertake to protect the reputation of his wife at all hazards. Then Mr. Beecher said to me that he was in misery on account of the crime that he had committed against Theodore Tilton, and his wife and family; he said that he would be willing to make any reparation that was within his power; he said that Mr. Tilton, he thought, would have been a better man under the circumstances in which he had been placed than he had been; that he felt that he had done a great wrong."

Now, see Mr. Beecher's reasoning:

He felt he had done a great wrong, *because he was Theodore Tilton's friend, he was his wife's friend and pastor,* and he wept bitterly.

Now, look at it. They never can tell a story about the emotions and an elevated mind or a purified heart—they never can tell a story about a crime or an iniquity, without missing the whole point of its guilt or its wickedness. Oh, no, Mr. Beecher was not troubled at his having, while a clergyman, a man professing faith in God and love to man, and ministering at the altar of religion, himself the husband of his own wife and the father and grandfather of his own family—there was not a notion in his mind that committing adultery with the wife of another person had in it any touch of sin, for which a man should feel remorse and acknowledge misery; but he felt this misery for the wrong he had done "*because he was Theodore's friend and pastor, and his wife's friend and pastor,* and he wept bitterly!" Now, see how that fits entirely the area and character and nature of the offense for which Mr. Beecher then, and ever since, and now—so far as the situation be truthfully supposed, under the evidence, to exist as it existed in his mind under the representations of others at that period—has felt, feels, and will always feel that, if indeed he, the friend of Mr. Tilton, the pastor of Mr Tilton and his family (whether Mr. Tilton was a faithful and devout worshiper or not at his church), and the friend and the pastor of Mrs. Tilton, had heedlessly and blindly allowed an intimacy that began and proceeded on the footing of pastor and parishioner to come to a point where it led to the wrong that is portrayed in this "Griffith Gaunt" so pointedly by Father Francis in commenting upon the

conduct of Father Leonard and the wife, Catherine Gaunt, that if this were so he was indeed greatly to blame. You see it here, just as before in the interview of Saturday night, when Mr. Beecher says, "If I have fallen at all, if I have fallen into this mischievous situation at all, if it is true what he told me about the wife's affections, thank God I have not fallen except by errors of a course of respectful attention and affection, and not under any pursuit of carnal sin or under the impulse of any carnal passion." But, now, we have it on Mr. Moulton's own showing that the whole point, the whole weight, the whole fact of error and proportionate suffering on Mr. Beecher's part is, not that he has committed a mortal sin that is a mortal sin in everybody, but that he has, through his pastorate and under the guise and covering of his friendship, created an intimacy that has produced this mischief.

Well, Mr. Moulton sees the working of the heart of this large-hearted man; he sees how Mr. Beecher feels for this suffering and this wrong, and how he puts reproaches on himself that he has had this unconscious and yet, as he now sees and feels, not innocent share in it; and what does he say then? Why, he says:

Mr. Beecher, why don't you say that to Mr. Tilton? Why don't you express to him the grief you feel and the contrition for it? You can do nothing more than that; and I think I know Theodore Tilton well enough to know that he would be satisfied with that, for I know he loves his wife; and Mr. Beecher told me to take pen and paper and to write at his dictation.

And then he wrote, Moulton says, this letter. Now, what was this threat that Mr. Moulton told Mr. Beecher that Mr. Tilton had made and that he, Moulton, had told him, Tilton, that he was wise in not carrying out? When Mr. Tilton had discovered and, if you believe him, denounced the adultery of his wife to Mr. Beecher, the guilty paramour, he had not shown any emotion or any purpose of smiting Mr. Beecher—no touch of resentment or of threat about that; but when Mr. Beecher, after telling him it was all a dream, his accusation, and that Elizabeth could not have said so because it was not true, had gone to Elizabeth, upon the invitation of the husband, and got her admission that it was not true, and so Mr. Tilton had been got into that new awkwardness, then Tilton began to threaten, and what was the threat?

I told Mr. Beecher that Mr. Tilton had said that for the offense of having gone to his wife and procured that retraction he would smite him.

And after Moulton had had his interview and obtained the surrender of the retraction he had told Mr. Tilton it would have been foolish, and he told Mr. Beecher that he had told him that. Now, this affair of January 1 I call your attention to, in a manner not connected with the main interest and purpose of it, or with this written letter, as it is called, or memorandum, but there came to be, on January 1, somehow or at some time in the interview, something of this kind.

Q. Up to this time had Mr. Beecher told you when those relations existing between himself and Mrs. Tilton ceased? A. He told me that, Sir, on January 1.

Q. What was said upon that subject? A. He said that Elizabeth Tilton had sent for him to come to her house, and told him that she believed that their relations were wrong, and he told me that he said to her, "If you believe these relations wrong, then they shall be terminated;" and he told me that he prayed with her—prayed to God with her, for help to discontinue their sexual relations.

Well, but I thought that on the husband's theory Elizabeth didn't think it was wrong at all; that it had never entered into her head that there was anything wrong in it except under the inspiration of Catherine Gaunt, a year after, and that she thought she never had violated her marriage vows; but now we see that as soon as the idea is introduced to Mr. Beecher's mind that anybody could think there was anything wrong in it [laughter], why, of course, he would not wish to do anything that anybody in the world would think was wrong, and then, with that piety and devotion which should characterize a clergyman even when an adulterer [laughter], he proposes that they shall seek Divine aid in terminating their sexual relations. I tried to get from Mr. Moulton, on a cross-examination, whether this specific phrase "sexual relations," was in the body of the prayer, or whether it was only sufficiently referred to to an all-seeing and all-knowing God to have it understood [laughter], but I did not succeed. That termination by prayer, he thinks, occurred in July, 1870. Well, now, that shows the confusion of mind. Why, this affair between the wife and the husband, this communication, or whatever it was, about the priestly interference in their household, was made in July, and in the very terms of his story it appears that all these relations had been terminated a considerable time before that. But see the confusion.

THE GETTING OF THE CONTRITION LETTER.

Mr. Beecher had said to Tilton, or Moulton, or somebody, at some time or other, that it was very extraordinary that there should be this story, or this feeling, or this trouble between the wife and the husband, about this estrangement and about his interference with the family, and the bringing up of the children, and all that, and that that should have been in July, and that he should have been sent for by Mrs. Tilton to visit her in her illness in August when he had visited her and given her such advice and aid as the suffering of her mind as disclosed to him required, and that he then should have prayed with her, as he did, as her pastor, and that, if there had been any such rupture between husband and wife, or occasion of complaint in regard to his relations and influence in the family, she never should have mentioned it; and out of that slender state of facts Mr. Moulton concludes to put his construction, and his ab-

surd and mixed and blasphemous representation of the dealing of this preacher and of this pious woman on the subject of adultery. On cross-examination Mr. Moulton says:

I said, "Mr. Beecher, if you feel in this way toward Mr. Tilton, it seems to me that if you would so express yourself to him it would make an end of all this trouble [Trouble!]; it seems to me that it would be the best thing that you could do to so state to him."

Now, what is Mr. Beecher's account of it?

Mr. Moulton said that Mr. Tilton was set against me; that he felt that I was his enemy, and that I had done wrong to him, both in his business relations and that I had sought to undermine his influence in the community. It was the harder because the implication was, or the statement that I had made use of my acquired reputation, and my position as the head of a great church, and my relation to the community—that all those, aside from my mere personal action, had gone to overshadow and injure him. I protested against any such idea. That he had occasion to think that I had done him wrong in the matters of Mr. Bowen, I was ashamed to be obliged to admit. That I had done him intentional wrong in his family, I denied; but that had wronged him there, it was very evident, it seemed to me, from the present condition and action of Mrs. Tilton. Well, we went over the same ground a good many times * * * * On the whole, I—— Mr. Moulton was far less severe with me than I was with myself, and at times, as it were, deprecated my own strong language against myself, and said, as the interview drew toward a close, that if Tilton could only hear what he had heard, he was satisfied that it would remove from his mind animosity, and the conviction that he had that I was seeking his ruin. "Well," said I—I said to him, "state what you see and hear; I have opened my heart to you." Said he, "Write—write these statements, or some of them, to Mr. Tilton." * * * * "Well," said he, "let me write it," or something to that effect, and I said, "I have no objection to your writing it," and he sat down at the table, but the conversation didn't stop. I amplified and went on, and finally he said to me, "Well, I will say so and so."

And then he went on with the memorandum, which I will for the moment omit, in either of the modes of stating it; but before we come to the memorandum I called Mr. Beecher's attention to what Mr. Moulton said in that conversation in regard to the condition of misfortune and disaster in which Mr. Tilton and his affairs were placed. The answer was:

He spoke of Mr. Tilton as being a man of great ability and of great reputation, standing among the highest in the land, and that he had suddenly, by the ill-will or the misconduct of Mr. Bowen, been precipitated from, perhaps, the proudest position a literary man could aspire to; that he had not simply lost that place, but lost it under circumstances that damaged his reputation, and that not only had it, the means of his reputation, or, rather, not only had the means and influence gone with his reputation, but that, suddenly, with a large family on his hands, or expensive family—some word to that effect—his means were cut off, and he had no prospect in life except to rebuild, but all the accustomed channels were suddenly shut up to him. He then said that the man had no home to which he could fall back; that there was discord there and alienation, and that he had not only thus lost all public position, but his domestic position was also stormed. He described the condition of his family and of the little children piteously.

Q. During this interview, was anything said by Mr. Moulton as to your blaming yourself more than you ought—anything of that kind? A. Yes, Sir; on several occasions he said he thought I was putting it too strongly; that the matter was not so severe as I had laid it upon myself. He thought that the family relationship might with kindly care be repaired.

Q. Did he, while you were stating to him what you understood to be the fault or misfortune from your connection with his family affairs, say that it was anything different or other than what you stated it? A. No, Sir; no, Sir; he did not. It was not a condemnatory interview; it was a sympathetic and most friendly interview between him and me. There was nothing in his tone, nothing in his manner, nor in his language or charges, that savored of it.

Q. How did he express himself as regards any object, or the result of the interview? A. He was laboring to bring to pass such a reconciliation between Mr. Tilton and me—such a better understanding, each of the other, as should avail for the peace of that family and the restoration of Mr. Tilton to prosperity and to good name.

MR. TILTON'S THREAT TO MR. WILKESON.

Now, compare with this light thrown upon this interview, and upon this situation, and upon the nature of Mr. Tilton's feelings in measuring his own grievance, his own disaster, and the relief he needed, and the resort to Mr. Beecher, and whatever complaint he had to make in regard to that resort, as given in the testimony of Mr. Wilkeson, and you see at once how the moment you get outside of testimony that comes from Mr. Moulton and Mr. Tilton, you get at confirmation in a manner that does not touch discrepancies of language, but determines which is the true basis upon which you are to pass as a fact in determining whether or no there ever was any fact of guilt between Mrs. Tilton and Mr. Beecher, or any grievance on the part of Mr. Tilton as toward Mr. Beecher of the grave, distinct, unequivocal nature of the ruin of a wife, and the husband's and children's honor. You may remember that Mr. Tilton strolled into Mr. Wilkeson's, and proposed to publish an article, to wit, *The Golden Age* slip article.

I asked him if he really intended to publish that article. He said he did, unless justice was done him by Mr. Beecher. He wanted $7,000 from Bowen. I remonstrated with him against the publication of that article. I told him that it would be enormously mischievous; that it would produce a scandal that would extend throughout Christendom; I told him it would do infinite wrong and work infinite mischief.

Well, there is no doubt that Wilkeson was right in his forecast:

He said that it was his purpose to publish it unless justice was done him.

Look at the nature of the man. Unless he got $7,000 out of Bowen, he was going to publish to the world what he did not deny would be an infinite mischief, what he did not deny would involve conflicting opinions, conflicting comments, conflicting views, divisions in society,

arguments against religion and morality, triumph of the wicked, predominance, for the time being, of the evil influences of society, and hanging the head and shame on the part of the good that believed in the elevation of human nature and in its future hopes. "Well, I don't care for all that. I am going to do it unless justice is done to me." And you will find throughout that to Mr. Tilton Mr. Tilton is the central figure in the universe, and interests that are bounded only by Christendom—in Mr. Wilkeson's phrase—and feelings and sentiment that touch the heart-strings of his wife and the happiness of the children, have nothing to do with it. "I am going to publish it unless justice, in the matter of $7,000, is done to me." That is what he is going to do. "Justice shall be done although the Heavens fall." That is, justice to Tilton shall be done, although all manner of injustice and injury come to all the rest of the world. And yet he has told you that at the outset his whole object in going to Mr. Beecher was to be secure that in the inflammation of the calumnies of Bowen against him, and the publicity and discussion of them, there might come some side wind, and he was determined to protect his wife and children that even a side wind should not visit them too roughly. And yet he says, "I will inflame that fight between Bowen and Beecher; I will put it in every newspaper: I will make the war, if I don't get $7,000."

"Then he went on to speak of Mr. Bowen; he said that Mr. Bowen had dismissed him from his employment on *The Independent*, and on *The Christian* —— and on *The Brooklyn Union*, and that he had violated his contracts with him to render editorial services for certain salaries on each paper; that he had—that Mr. Bowen had deprived him of his income; that his dismissal from those papers had ruined his reputation, and had destroyed him; and he went on growing in excitement, and he said"—now this is the share Beecher had in it—"that Mr. Beecher had not come to his help; that he was a man of such power that he could with his little finger have lifted him up in his troubles; but that as he laid on the sidewalk in Brooklyn, crushed and ruined by Bowen's treatment of him, and by the consequences of his loss of employment on those two papers, and the injury done to his reputation, that Mr. Beecher, who with his little finger had the power to lift him up and reinstate him, had passed him by indifferent, and had not helped him, had left him lying there; and moving across the room back and forth, in great excitement, he said he would pursue Mr. Beecher into the grave."

—for that. Now, what a flood of light that sheds back on the grievance, on the purposes of these interviews, in the last week of December, on the truth that breaks out from Moulton, that Tilton wanted to be sure that Beecher did not hate and abhor, and did not mean to visit upon him, Tilton, the consequences of the injuries that Tilton had done to him. Schultz says the same thing. He says:

His statements [that is, Tilton's] then were that Bowen had committed a great wrong to him, and that Mr. Beecher had failed to reach out his hand to save him, as he could have done; that he failed to manifest that interest in him which he had a right to expect.

That was the substance of his statement. And Mr. Moulton told Mr. Charles Storrs about this business, and this situation, at this date:

Mr. Moulton stated it was all wrong, his being discharged, and that it was a mistake, and that he, Tilton, should be reinstated; he said that Mr. Tilton was the same to *The Independent* as Mr. Greeley was to THE NEW-YORK TRIBUNE, and that he should see Mr. Bowen, to have him reinstated.

Now, gentlemen, Mr. Tilton was brought back to the stand after Mr. Wilkeson had told all this story, and he didn't contradict it. Did he overlook Mr. Wilkeson's testimony, or his counsel overlook it? Oh, no! He was asked to contradict one passage in it, and if he contradicted it at all, he meant to contradict it in a way that would carry conviction to your minds that Wilkeson lied, and that he, Tilton, spoke the truth, because the fact was at the bottom that would show which spoke the truth; the same as about the gray hairs, and about the portrait at Moulton's house, when Moulton wanted to give evidence that he spoke the truth and Mr. Beecher did not. He is asked about a conversation that Wilkeson had given as occurring about the year 1865, I think, at Washington, in which Mr. Wilkeson had described a conversation between Mr. Tilton and himself at a dinner table at a hotel at Washington, when they were both there, and when Mr. Tilton came over and exhibited to Mr. Wilkeson the portraits of his wife—Tilton's wife—and some of his children, such as he had, I suppose, at that date, and that he made some not very polite comments, Tilton did, about his wife; that Wilkeson would be disappointed about her; that she was of a mean appearance, and had not been developed as he had been since their marriage; but still he spoke of her as his wife, and, of course, in a suitable manner. Now, Mr. Tilton wants to deny all that, and he says that he had an interview, that if he should state it exactly as it occurred, it would be a personal injury to Mr. Wilkeson. We have had a great many suggestions of what infinite mischief would come from telling the truth. Well, he was not tender about Mr. Wilkeson; because in his first examination, before Mr. Wilkeson come on the stand, he said Wilkeson was a liar. He did not measure his words. He propitiated your attention to Mr. Wilkeson's testimony, if he should happen to be called as a witness, by giving you his, Tilton's, opinion that Wilkeson was a liar. So this delicacy about Wilkeson's feelings—Wilkeson since that had given this testimony, that went right into the heart of this conspiracy, and exposed the whole, through and through; and he has done it purposely, too, as he avowed, that he was determined that this scheme of unilateral silence should not be kept up for ever; that a man of honor and of conscience scrupulously keeping silent, and harrowed in his feelings lest harm should

come to others, should not be continuously kept in that position, while Moulton and Tilton were going around, telling Victoria Woodhull, or anybody else, and having statements in the newspapers. "No," he says, "I will have a stop to that; I will have the policy of silence broken up." Now, what is the only point in Wilkeson's evidence that Mr. Tilton corrects?

Q. Did you say that about your wife? A. No.

Q. Did you show him a photograph of your wife? A. No, Sir. I showed him a photograph of two of my children, one of whom he mistook for my wife, and he made it the opportunity to make some incoherent——

Q. Which of your daughters? A. It was my daughters Florence and Alice. And he apostrophized the card of Florence, supposing it to be a card of my wife, over a glass of my wine.

And Florence was a little girl of six years old! [Laughter.] I think it would take more than a glass of wine, gentlemen, to confuse as clear a head as Samuel Wilkeson's into a notion that a girl six years old was the wife of this Apollo. [Laughter.]

The Court here took a recess until 2 p. m.

THE AFTERNOON SESSION.

Judge Neilson—Mr. Evarts, Mr. Beach has sent word that he is not quite well enough to be here promptly, and may not be able to come at all; and he desires you to proceed without him.

Mr. Evarts—I regret extremely, if your Honor please, that my learned friend should suffer any inconvenience in regard to health, and am obliged to him for not desiring the protraction of the cause on that account.

We are now in a position, gentlemen of the jury, to judge of the value, the proper interpretation and the import of certain papers imputed to Mr. Beecher as argumentative confession of guilt. I never attached much importance, as a lawyer, to any of the looser reasonings by which mean minds have been turned or affected by a contemplation in that light of expressions of grief, self-reproach, compunction, or remorse, for it is confessedly only within the region of moral reasoning that any inferences, thus remote and far-fetched, can be adduced. When the law has said that of so grave a crime, there must be that positive evidence that leaves no hypothesis of innocence consistent with the proved facts: when the law has said that confessions reported, or confessions produced in writing, are ever to be scrutinized and doubted, and if there be any contradiction, anything that saves them from being substantially evidence of confession before the Court and the jury, in the absence of the proof of the adultery as an occurrence noticed in its proximate steps, in its betrayed vicious purposes, in its opportunities, in its occasions, as equivalent to the proof of the act, such an occasion as you had your attention called to incidentally in a case that I cited of a confession where, on board a steamboat of the North River a state-room had been taken by the alleged paramour in the name of the husband, and the paramour and the wife had occupied it; that kind of fact—something of that kind—unless you have that confirmation you withhold your verdict. But, then, when, without the confessions, you have a situation of divided opinions and views as to what the facts are, and in the absence of controlling evidence that brings facts and conduct to your notice, you are turned over to produce a measure, and form, and circumstance, and date of guilt out of emotional aspirations of regret, and pain, and mortification, and pity, why you have at once all the region upon which the Court and jury can proceed abandoned, and you are led at once into moral reasoning to supply the place, either of external evidence or of explicit confessions. And the moral reasoning proceeds upon this most uncertain and untrustworthy of all grounds, of imputing the measure and form of actual guilt, according to your moral estimate of what is the moral result of a man's emotional nature and his emotional expression. Where before, since the administration of justice began, was there ever the notion that you could tell whether a man had set fire to a barn or a dwelling-house, or had robbed a bank, or had committed murder, by the strength of his feelings at some mischief or other that he had done, without the body of the crime being proved otherwise, without the evidence that he had said it was a burglary, or an embezzlement, or an arson, or a robbery that you are to measure, out of grief, mortification, concealment, distress, the proof that the crime was committed, that he referred to that crime, and that he committed it? But yet, such is the nature of irresponsible reasoning, such is the inattention to the necessary safeguard of practical judgment, and definite and important consequences of punishment, when these matters are dealt with in the piece-meal discussions (however intelligent) of men that are not brought down to feeling that within the walls of evidence and under the rules of law there must ever be some notion that there may have been this or that degree of guilt, or that there must be a definite conclusion excluding any opposite conclusion; and when you come to that, all this loose region, in clouds, of moral reasoning ceases to affect men's judgments. No man in his senses wishes when the verdict strikes to the heart a woman and her children, and destroys their fame, strikes to the heart an honorable repute of the alleged paramour and involves his family in ruin and disgrace—discarding, for the moment, any of the graver responsibilities that grow out of the public and the important character and relations of this defendant and the particularly pure character of this alleged adulteress—leaving all that out, no man wishes to put a verdict, and when he is appealed to to know by what he justifies it—"Did anybody ever see them in a lewd connection, or treading a devious path from the proprieties of society for a single instant?" "No." "Did anybody bring you a confession of the fact?" "No. But they brought

in the handwriting, if you please, or under the report written under dictation of this or that expression of emotion of self-reproach, of self-compunction, and there must have been something behind it, and we thought that this was behind it." And then, when suddenly by the admission of falsehood, or by the discovery of fact, all this ruin that has been wrought by hasty judgment is shown to have been through a departure from legal evidence and legal reasoning into this wild and illimitable region of moral inference, how does the conscience—however innocent at the time—feel at the recklessness with which they have rushed out of the region that requires proof into the region that really acts upon suspicion.

THE SOURCE OF MR. BEECHER'S REMORSE.

Now, I have introduced a consideration of this paper of the 1st of January, and of some other papers that I may need to call attention to, not because in them I find, nor that I suppose you will find, any reason of distrust for what seems to me, upon the facts as you understand them, and certainly upon the theory of these facts and the testimony concerning them, as given by this defendant and supported by our witnesses as well as the plaintiff's a sufficient reason and support for every expression to which is imputed a just inference of guilt in the sense of an adulterous connection between those parties. But yet, as is the nature of all judicial proceedings, when the plaintiff, selecting his evidence and producing it with that attention to it and its effect and concentration upon a result that he desires, proceeds through long weeks of his evidence, and the defendant is not heard and the qualifying shades, the cross lights, the falsification, the perjuries that have been practiced and the corrections of the treacherous memories that have been introduced before you—when they all have been made, and the defendant's case and view of each situation is put in your power for comparison with the plaintiff's, then you are in a position, for the first time, to judge upon this remote, this unsubstantial, and, as I think, frivolous argument to produce anything like a substantial conclusion of guilt, even against a character of an unknown or of a suspicious complexion, much less against a man in regard to whom it must be admitted, that if there be truth in the charge it is at variance with every repute concerning him that either those who knew him well or knew him slightly ever entertained. What then—before we take what professes to be a record of Mr. Beecher's emotions and their expression—what was the situation in his own mind and upon the facts as he understood them, as he has sworn to them now, and as constitutes the basis upon which, as we agree, he was expressing himself, if you can only get accurately at his expression? A great struggle was made by our learned opponents, in which they had every aid from their witnesses, Mr. Tilton and Mr. Moulton, to displace from the scene and area of fact, as obtaining at this interview on the 1st of January, all ground for any feeling or any expression from Mr. Beecher as towards Mr. Tilton and his family, or in respect of Mr. Beecher's conduct, except the injury to that family from his relation to Mrs. Tilton. That left, to be sure, the undisturbed, the entire, and sufficient basis, in our judgment, and I have no doubt in yours, of almost any degree of severity, of self-reproach, and of commensurate expression of grief and of pity from the admitted situation of chagrin and sorrow and self-mortification on Mr. Beecher's part, if these relations between him and Mrs. Tilton in the sense and view that was presented to him of the estrangement of affection and nothing more, and of the family discord and the break and ruin of the unity of that household had been the real view of his relations. But, gentlemen, we have wholly overpowered, on the proofs of this case, this great effort of the plaintiff. We have shown you that the resort of the wife in her flight from the cruelty of her husband and from the broken home to Mr. Beecher and his wife's intervention, was a real fact, the gravity, the sincerity, the force of which is as great as it is possible to conceive of as a ground for resentment of a husband against such interference, and as a ground for self-reproach on the part of Mr. Beecher if he had rashly been led into that by slanderous and unsupported representations, if he had trusted in his simplicity to the necessary truth and accuracy of the representations of the mother-in-law, and of the wife, and of Bessie Turner, that had been brought to him. So, too, the other principal fact of whether Mr. Beecher had intervened, had espoused, had acted upon and in reference to the situation between Mr. Bowen and Mr. Tilton that they struggled against, and strove to represent to you in that record of the true relation between Mr. Tilton and Mr. Bowen to have been, up to the end of this interview between Mr. Moulton and Mr. Beecher on the 31st of December which I have gone through with, up to that time of sure possession of his power, his authority, his income, his credit, his prospects, his expectation—all that has disappeared, and we have proved, not only that Mr. Beecher and Mr. Bowen, early in that week, did act, did talk, did confer, and that Mr. Beecher's influence and representations all went to the destruction of Mr. Tilton's prospects in confirmation of Mr. Bowen's purposes. We have shown all that, and we have shown, too, that this intervention of Mr. Beecher had to do, not merely with the displacement of Mr. Tilton, not merely with the break of his then employments and the then expected support of his family, but went on a ground, to wit, his broken character and his profligate conduc that in respect to both, to family, and to his relations to society and his employments, were a final break; that the family could not be restored without a rebuilt character

in domestic affairs on Mr. Tilton's part, and that his relations to society, to the public, to his vocation as an editor never could be renewed except by the obliteration or correction in point of fact of the charges against him or a reconsideration of its downward course, and a reconstruction of his moral character in these relations. Now, then, what had happened in reference to these very grave acts and very grave responsibilities of Mr. Beecher toward Mr. Tilton before and at the end of this interview on Sunday, the 1st of January? Why, Mr. Beecher had been attended by Mr. Moulton as the friend of Mr. Tilton to call his attention to these evil surmises, these evil stories, both touching the question between the wife and the husband, and the maintenance of the family unity in which Mr. Beecher had acted so decisively, and, as well, in regard to the imputations of Bowen and the basis of them, which had been laid before Mr. Beecher, and which he had reënforced in turn, himself, by bringing in the scandals of the household and the stories of Bessie Turner. And that friend had said to Mr. Beecher, "Why did you accept these stories so rashly, and act so definitely and yet so precipitately? Why didn't you ask Mr. Tilton's attention to these things before you acted? Why did you suffer Bowen's malignity against you, that had brought you that letter of the 26th of December, to close your heart, and shut up your sympathies, and turn you into a coöperative animosity in persecution, with Bowen, against Tilton? Why did you assume that Mrs. Morse and Mrs. Tilton and Bessie Turner, in the domestic narrative of disaster and grievance, and of fault, were necessarily correct? I tell you that I know Mr. Tilton as a familiar friend, as a man of the world, as his companion and his confidant, and I tell you that all these stories of his immorality are unfounded, and, in respect of Mr. Bowen's basis of complaint against Mr. Tilton, look at the catalogue of Mr. Bowen's charges against you, Mr. Beecher, which he made on the forenoon of the 26th of December to Mr. Tilton, and which inflamed Mr. Tilton into his espousal of Mr. Bowen's animosity to you, and which urged and supported him in sending that missive of the 26th to you to be backed up by Bowen. What do you think of your hasty credit to Bowen's stories about Mrs. Tilton, when there is a so much longer and more grievous catalogue of imputations made by him, Bowen, to Tilton, against you, Beecher, in the early part of the same day? And, in regard to what Mrs. Tilton has said about her husband and her resort to her half-crazed mother-in-law" (which was Moulton's representation of that combination) "and then Mrs. Beecher's well known and recognized aversion to Mr. Tilton and reprobation of him—how do you justify that when Mr. Tilton has brought to you, under his wife's signature, a charge against you of immoralities in design and in invitation and in temptation inside of her family of the grossest character?"—a charge, you will see at once, gentlemen, that, in respect of the depravity imputed to Mr. Beecher, of the enormity of his meditated guilt, his perversion of his trust as pastor, and of his fidelity as friend, in respect to his purpose of corrupting a virtuous woman, a design to commit this grievous injury towards Mr. Tilton, and this grievous sin on his part, had all the moral qualities of a consummated guilt. And, to a man who, like Mr. Beecher, deals in moral reasoning and believes that the view and tone of the Scripture is right in ascribing to wickedness of heart the guilt, and not making it depend upon the opportunities or facilities, or prosperity of external fact, you see, at once, that that imputation carried to his conscience, if it were true, and alarmed his fears if it were false, just as much as if it had been of the crime itself and not of the frustrated purpose. "And now," says Mr. Moulton, "see what you have done upon the credit of a combination between this wife and her mother-in-law who has maligned Tilton for years. You have allowed Mrs. Beecher's judgment of Tilton to carry you into a rash and sudden maintenance of his domestic situation (a publication, so far as you are concerned), as being such that his wife cannot properly remain with him an hour, and that continuance with him is more likely to breed increased hatred on his part than to tend to restoration. You have permitted yourself, as toward Mr. Bowen, to pour into his ears against Tilton, and urged his purposes declared to you by him against Mr. Tilton to their absolute and rapid execution. And now, look at the misery in which this family is placed. Tilton, who stood a week ago in a position which, if you take his own estimate of it, as declared by him by Mrs. Putnam (and testified to you by her) was a prouder position than that of a Senator at Washington, or an officer in the Government, of the highest grade, is tumbled from that throne, and trampled in the dust. Tilton, who has the expensive tastes and careless habits which have made him run through his income, however liberal, and left him without accumulation or support, that supposed himself secure in new arrangement that gave him an ample assurance of independence, and of luxury even, struck with one blow penniless, and in regard to his family and his wife in this disordered state by which this woman fled from him and has obtained your vindication of her course, your power, your credit, your assurance that he is an unfit inmate of the same house in which she should live. And now that family lies not only absolutely destroyed for the moment, but destroyed on grounds, on reasons which forbid the hope that there can be any restoration, so long as those grounds remain unchanged. It is not a Winter that has withered the leaves and stripped the limbs, but it is the fatal thrust that has killed the root, and stopped forever the flow of the sap."

Well, now, when Mr. Beecher, confessedly a man of

just sympathies, of the most exaggerated sentiments of duty and fidelity, finds such a situation displayed before him, and then finds the ground of his reliance for his hasty action cut from under him by these two principal facts, "that if you believe Bowen against Tilton, by the same rule you must believe Bowen against Beecher; and if you believe Mrs. Tilton against her husband, by the same rule you must believe Mrs. Tilton against yourself," you see at once that he is necessarily in a situation where he must reproach himself, for execution has taken place upon this man Tilton and his family, and nothing but the slow business of restoration to life and happiness can be hoped for. But look, then, at the bewilderment now of what must have happened through some fault of his, if it be true that this woman whom he respected and admired as the very embodiment of truth and Christian virtue and grace, has come to a situation in which she has thus charged him falsely. And, it has not relieved that, at all, for him to have discovered that it is false, and that she has retracted it. The misery, the overthrow of character of the woman that has come about through some unhappy influences of his intercourse, and the unguarded expressions of his familiarity, is thereby made a positive fact. That a woman should have such relations to her husband, and that her husband should have such power over her, and that the result should be such an accusation, seems to me a most sad and a most deplorable exhibition,—I mean not to say to a deeply or exquisitely sensitive mind, but to a mind of correct moral training, and a heart of just moral sensibility, one of the most extraordinary situations that could possibly be produced.

MR. TILTON'S DISTRESS.

And now when a man who, by every rule of his character, whether as known and understood and displayed through his whole life to everybody, or as depicted upon this evidence, and as assured and described out of the mouth of Mr. Tilton as being all heart, all magnanimity, all self-compunction, all self-reproach, if you can once touch him with the feeling that he has been in complicity with, or has been the innocent occasion, even, of injury or ruin to another—when you come to see how a man will act and talk with these impressions upon him, you must, of course, as you will desire, and as the commonest principles of justice require, judge him in *his* emotions, and in *his* expression of them, and in *his* estimate of the situation, according to his character, moral and intellectual—sensitive, devotional, open, frank, unmeasured in his words. You have then before you only to determine whether upon these facts, and this estimate in Mr. Beecher's mind of the mischief and the evil that existed, this expression of feeling was natural to him.

And was there ever a more deplorable situation of a man and his family than that of Mr. Tilton as that last day of the year 1871, or one more sudden in its culmination, although the moral causes that led to it had been long and inevitably at work? What more pitiable? Why, take his own description of it, that he was thrown down and trampled upon the sidewalk, and Mr. Beecher, as he represented, did not come to his aid, when, with his enormous power and influence, he could have lifted him with his little finger. Don't you think that Mr. Beecher is a man that would feel that? Why, you must think so, or you must disbelieve all that has been said by these witnesses, and especially by Mr. Tilton, about him, that the way to make him an unmeasured coöperative agency in repairing the disaster was to make him feel that he had some measure of responsibility for its occurrence. Now it seems to me the merest folly in the world, when you approach this in the light in which the facts have been laid now open before you, to feel the least difficulty in treating this memorandum of expressions, even if you accord to it the full trust that would belong to a paper written in his own name, and in his own hand—even if you accord to it that, it seems to me the merest absurdity in the world to say that you need to infer backward from these expressions any more grave occasions of pity, of lamentation, of compunction, of self-reproach, than upon Mr. Beecher's own testimony and upon the facts in this case, as is conceded to have been the light of things as then bearing upon his mind. For you will observe that Mrs. Tilton had not, in that interview at her bed-side, denied the entanglement of affections, and the alienation of true conformity to her husband, and his, the husband's, resentments on that account. And the representations that were pressed upon Mr. Beecher by Moulton, that Mrs. Tilton loved his little finger more than she did the whole body of her husband, remained on his mind when this occurred, for it was at that interview that Moulton said it; and they remained, as Mr. Beecher has told you, for no intercourse between him and Mrs. Tilton ever was renewed to any extent, or in any sense of formality, or confidential conferences, or writing of any kind, until Mrs. Tilton's statement to the Church Committee showed that this, too, had been an imposition practiced upon Mr. Beecher's intelligence in introducing this as an element (and it was the gravest element) in procuring his magnanimous devotion to Mr. Tilton's restoration, and the reparation of the evil he had done him. That statement corrected the idea in Mr. Beecher's mind and assured him that it was an imposition upon him, and that there had been no real subtraction of the wife's affections, however much she, to please her husband, and under her strange system of self-sacrifice and self-depreciation, as shown in her letters, had professed.

NO NEED FOR A CONFESSION BY MR. BEECHER.

Now, gentlemen, you will see at once that on this first day of January there was not the least occasion for making a confession of any kind. There was not the least occasion for conveying the least information to Mr. Tilton, or Mr. Moulton, for they had gone through all their interviews of the 30th and the 31st of December; there was not any occasion for making any record of the disaster, or the injury, or the disgrace, of this family of Tilton's, whatever might have been its form and its measure, for the whole effort and purpose of all that had passed during the previous interview had been to secure the impossibility of anybody's ever knowing that there had been any such disgraceful conduct, whether you treat the disgraceful conduct as having been the pollution of the wife, or as being the husband's false accusation, in the wife's name, of this eminent preacher, Mr. Beecher. So there was not any need, or motive, or possibility, of a rational impulse to convey, information in the way of confession, or record in the way of proof. What was there, and what has Mr. Moulton himself stated there was? Having displaced the feeling in Mr. Tilton's mind that Mr. Beecher had possession of the evidence of the false charge and would use it for his, Tilton's, injury, by the great concession that Mr. Beecher made of placing it in deposit with Mr. Moulton for the common interest of all concerned, Mr. Moulton then renews his object, which is carried out afterwards through a series of months, to satisfy Mr. Tilton that Mr. Beecher will coöperate in repairing the disasters that have overtaken him, and that he does not harbor resentment for the missive of the 26th of December, or the false accusation of the 30th of December; and thus, when they find that Mr. Beecher's magnanimity and his simplicity have not been overestimated by Tilton, and he has yielded to this impulse of his nature, then they want to have some evidence that will be definite, that Mr. Beecher feels that the situation in which he is placed as a matter of fact, requires him by the necessary impulse of duty, to repair what he feels to have been wrongs rashly committed by himself.

THE ORIGINAL PURPOSE IN GETTING THE CONTRITION LETTER.

That is the object of the interview, and the only way, on Mr. Moulton's own statement, that there comes to be in existence this memorandum at all, and now you are asked to believe that it is not a memorandum of expression in that design, recorded and reported to that end and for that purpose, but that it is to be treated by you as a disguised, argumentative, remote moral persuasion, that the view of the difficulty imputed to him by these coarse charges, and not the estimate which he himself felt, was the occasion of. Mr. Moulton tells you himself that he said, "Why won't you write this to Tilton, to satisfy him that you are not his enemy?" Good heavens!—how often shall I repeat it?—an injured husband, bringing himself into relations with the paramour, wants to feel that the paramour won't pursue him, the husband! Nobody can understand that. No. He wanted to know, to be assured, that what was enough to inflame, inspire, inflate all sentiments in an ordinary mind of animosity and of punishment, by reason of his having dared to send that foolish missive of the 25th of December, and then to use this wretched accusation wrung from the wife's compliance on the 30th, had not soured the last drop of the milk of human kindness in the breast of Henry Ward Beecher toward him, and made it hopeless for him, Tilton, to expect aid from that quarter, in the absolute ruin of his affairs, domestic and other, and the hopeless destruction of his character which threatened him, unless some help from the charitable consideration of Mr. Beecher could be gained. Well, Mr. Beecher says: "Why write this? You tell Tilton. I have unbosomed my feelings to you—my heart; you tell him." "Well, it would be better if you should write him." Well, I think it *would* have been better that Mr. Beecher had written him, if Moulton was to be trusted to make, and continue, and preserve a report—not stenographic—the work of an inexperienced reporter—of his language and his ideas.

THE CONTRITION LETTER ANALYZED.

But yet, it was only by reducing you and the truth down to the point that there was no fact on which Mr. Beecher's mind could have been working when he thus talked, except the fact of the imputed adultery—nothing but that, for which they had so long labored in a series of falsifications, that could have ever made their argument that this paper carried any weight or force worthy the attention even of an irresponsible public, much less of a responsible jury.

I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God.

Well, Mr. Beecher has given you his view of that sentence, which he does not recognize as to his own at all. He says that he did say that he humbled himself before God for the error that he had committed, and he was willing to humble himself before Mr. Tilton. or to ask his forgiveness, or some such phrase. And he was—he felt it. He says:

He would have been a better man in my circumstances than I have been.

What did he mean by that? for he says he did say so—substantially that. He says that he remembered, and it brought tears to his eyes, how even in a slight, but which Mrs. Beecher's exaggerated style of emotion made a grave matter, in his son's misfortune, trivial and temporary, and that would have been wiped out by President

Lincoln and all his Cabinet at a moment's suggestion of anxiety to this great prop and supporter of the policy and the principles of the then current politics of the country—that when Mr. Tilton heard of it he dropped his business, went to Washington and intervened, and brought back promptly to him, the father, agitated by these feelings, information that the pranks of his son had been overlooked, and he was restored to his position in the army. He remembered that—and I don't think he ever forgot a favor done him in the world, or ever failed, in his exaggeration of it, to make it an occasion of unending gratitude, of unmeasured affection. He remembered that, and he said to himself: Well, now, I have not returned that good with anything but evil; when they came to me with these stories, whether of the domestic difficulties and from a domestic source, or of the business ruin that was to follow from loose imputations, I did not send for Tilton; I did not say, "Now, what can I do, what shall I do? How can you give me the means of helping you, of aiding you, and explaining these things?" But I assumed that all was right, and true; and, unhappily, I acted, in the last case of my interference, under the irritation of what should not have irritated me, this demand of the 26th of December. I believe Theodore Tilton would not have acted toward me as I have acted toward him in this respect. Well, I think it was a charitable view of Mr. Tilton; it was Mr. Beecher's, but it was a view that he would never have taken if he had been present at all the private consultations between Mr. Bowen and Mr. Tilton which we have had disclosed to us. But how ludicrous it seems, if you are to impute the application of this proposition to the condition of Mr. Beecher's interference with the purity of a wife by seduction and adultery—"I think, now, in reference to the seduction of a wife and prolonged adultery with a married woman, Mr. Tilton would have acted better toward me than I have acted toward him!" The absurdity of a man of common sense being supposed to have framed any of these compunctions or comparisons upon this heinous offense as it is now imputed! What is natural and easy (although it may be extravagant, and although there may have been considerable imposition to have induced it) in reference to the conduct for which Mr. Beecher supposed himself to be actually responsible, is apparent upon the reading. Well, the rest is very general.

I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself; I even wish that I were dead; but others must live and suffer. I will die before any one but myself shall be inculpated. All my thoughts are running toward my friends, toward the poor child lying there and praying with her folded hands.

Now, you will perceive, Mr. Beecher has given you (and I shall refer to it) his views of how much of this, in form or in substance, in respect to emotion, or in regard to fact, is justly imputable to him. All I ask of you is to understand that it is confessedly a report by Mr Moulton of emotional expressions *intended, on Moulton's own showing, to convince Mr. Tilton that Mr. Beecher did not hate him and would like to aid him.* That is the point, and that we have out of their own mouths. Well, well, gentlemen, has not Mr. Beecher all through this shown (as I shall demonstrate to you at the various stages where he has resisted this policy of silence) that he has been ready to meet the charge at any time, if others could endure it? Has he not always shown that he saw that an investigation and exposure of the state of things in that family, and in regard to that family, that had been laid before him during that week and during the preceding weeks of December, and on the wife's flight and complaint to him—that an exposure of that would produce a great degree of suffering, and injury, and mischief to the Tilton circle and family? and was he not wise in his forecast of the results that must follow if it should be made to appear that a woman of repute and of piety, in his congregation, of his church, had, under any circumstances that women's minds and men's minds, women's tongues and men's tongues, would differ about, made a charge against a Christian teacher that he had made improper proposals to corrupt a wife—a charge of that atrocious quality that, while it involves every degree of guilt, if it be true, on the part of the person charged, furnishes none of those guarantees against its being falsely charged, either in respect of the husband or of the wife, and of the scrutiny of fact and truth, that would belong to a charge of actual adultery? Actual adultery charged carries the guilt and shame of the wife and the family and the disgrace of the husband, and deals with a fact concerning which external proof can be given and will be required; but how can you strike at the heart of a clergyman so conclusively as by charging, not a fact that is capable of scrutiny and of being turned over and over so as to find out whether it is true or not, but a charge that in heart, in word, in wicked suggestion, in corrupting, infamous intent, the clergyman has made the approach, while the wife's honor has been saved and the husband's disgrace does not exist and the children are not involved? Well may a clergyman feel dismayed if that is the form in which he has to meet imputation. It is not a ground for an action for damages, it cannot lead to a judicial inquiry, and it cannot lead to a judicial refutation. It is the most terrible form within the region of malicious imputation, impossible of refutation, except by the generalities of opinion whether it is possibly compatible with his character, and then they say, "Well, it is not possibly compatible with the character of a good woman that she would change the charge;" and so you have, all through Christendom, the minds and the tongues of men and women loosened upon the cunning malice of such an imputation. Well might Mr. Beecher feel and say, how many hearts will suffer.

what immense interests will be imperiled, if this strange inexplicable emanation from this ruined household is made the subject of public discussion! And then Mr. Beecher was under the impression, doubtingly, as he has told you, yet not rejecting the idea, that Mr. Tilton thought that the wife's charge was honest, and that he might believe it himself. That has long ago been abandoned; but Mr. Beecher has told you, "I didn't know what to believe; sometimes I thought that Mr. Tilton was honest in the notion, and wondered how the wife could have thus originated it herself, and sometimes I thought that he did not believe it." And the fact that the wife disclaimed it, didn't make any difference; the same woman that disclaimed was the woman that had made the charge. So they went on and on.

She is guiltless, sinned against, bearing the transgressions of another.

How is she guiltless if it was not the situation that Mr. Beecher recognized, that he should take upon himself all the blame, because his superior age and experience should have foreseen the disaster of an injury to the husband's supremacy in the wife's affections, from the enjoyment of this intercourse between a clergyman and a parishioner, chaste, honest, religious, and of the highest and the holiest affections? In that sense he was right in taking all the blame upon himself, and that satisfies it; but in any other view how, how, can anybody be guiltless of such a heinous offense—married woman of mature years, and with a family around her—unless you accept the balderdash of "innocent adultery?"

"Her forgiveness I have."

How had he her forgiveness? How had she forgiven him? Nothing had passed between them of that kind; nothing whatever. The question was in that interview which he had with her, of accusation to her, of inquiry how she came to have made a charge against him when it was not true, and of her withdrawal of it, and of his final leave-taking, that he hoped nothing that he said (which he then felt might have been severe) would disturb or interfere with her peace, and, as I have read to you from her letter, written only three months afterward, she wrote to him expressing the hope that he forgave her while he forgot her, and closed her note with a new prayer for his forgiveness. This expression Mr. Beecher denies, of course. There was no fact to support it.

I humbly pray to God that He may put it in the heart of her husband to forgive me.

Well, that is entirely consistent, no matter whether it was stated in those words or in that sense or not, with the situation in which Mr. Beecher confessed himself in fault, in sorrow and in chagrin, mortification, and grief.

THE ALIASES OF THE CONTRITION LETTER.

Now, gentlemen, how was this paper characterized? Nobody ever called it a confession. Lately it has been spoken of as a "Letter of Contrition." Well, contrition for what? That is the question. You must draw out of it, as retroactive evidence, some definite guilt its contrition proves—some definite crime. Its contrition proves only what I have stated to you, its own existence upon the support and reasons that I have exposed, but the whole tone of the testimony on this subject has shown that it never was treated as a confession. Mr. Tracy testifies that Mr. Moulton said the paper was a memorandum or notes of a conversation he had with Mr. Beecher.

Mr. Belcher, Mr. Wilkeson, Mr. Storrs, and Mr. Claflin testified to its being always spoken of by Tilton and Moulton as an "apology." And the letter of Mr. Tilton to Dr. Bacon characterizes it throughout and repeatedly as an "apology."

The pastor communicated to me in writing an apology signed by his name.

And he says, as a justification for the publicity that he now gives:

Had the fair spirit which I had a right to expect from Plymouth Church, at least for its pastor's sake, been shown toward me, I would have continued to rest in silence on Mr. Beecher's apology, and never during the remainder of my life would I have permitted any public word of mine to allude to the offense or the offender.

And another phrase in which this Bacon letter refers to this memorandum as an "apology" is this:

But my duty to continue this forbearance ceased when the spirit of that apology was violated to my injury by its author or his agents.

Well, the spirit of an apology for an adultery, if you can apply in the first instance, without contemptuous derision to him who uses it, the phrase of an "apology for an adultery," and that enables a husband and paramour to walk down the street afterward together, and to be friends because an unintended insult or injury has been met by a suitable apology—you cannot understand how the spirit of apology for adultery is violated by some depreciatory remarks to the prejudice of the injured party, that have been made by an apologizing person or his friends. So, too, in Mr. Tilton's proposed verdict for the Church Committee:

The Committee further find that Mr. Tilton, in his relations with the pastor, had a just cause of offense, and had received a voluntary apology, and he gives as one of his reasons for not going more particularly into it, that the apology was designed to cover a complicated transaction, its details difficult of exact or just statement.

Well, now, adultery is not a complicated transaction. It is very simple and intelligent in its features; but on the view of what this paper called an apology was to meet you see at once the truthfulness, the unconscious truth-

fulness of Mr. Tilton's characterization of it, as an apology for a complicated transaction which there is no use of going more fully into.

A NEW YEAR'S GIFT FOR MR. BOWEN.

Now, at this very time that Mr. Tilton was so anxious to remove any grounds of offense or animosity on Mr. Beecher's part toward him absolutely, do you suppose that there is any sense in that proposition, if he had the power of compelling Mr. Beecher to be his friend? But at the very time he was trying to stir up the emotions of Mr. Beecher's heart in his favor and to displace the ground of enmity which he knew Mr. Beecher might rightfully feel toward him, he was himself writing a letter to Bowen setting forth in detail all the imputations against Mr. Beecher that Mr. Bowen had made, according to Mr. Tilton, or that he had not made, if you cannot believe Mr. Tilton, in permanent form, with a view—for it is a strange history that that letter has—with a view of having in possession and for use not Mr. Tilton's charge against Mr. Beecher, not Mr. Bowen's charges against Mr. Beecher, but Mr. Tilton's statements of Mr. Bowen's charges, and not in the form of a communication to the public, not in the form of a communication to Mr. Beecher, but in the form of a letter to Mr. Bowen. And he did make good use of it afterward for definite purposes and with definite results.

But what happened to that letter in those early days nobody can tell. Bowen says it was not shown to him. Beecher says it was not shown to him, though its contents and its preparation, and the purpose of making it included a record of the Bowen charges, and the purpose in reducing it to writing to use with Bowen to make him pay, for fear that he, Bowen, should be exposed as having made these charges against Beecher. Beecher did not care anything about the charges. Of course he did not want them published against him, but he told these people in regard to Bowen, "I have no fear of him." And Mr. Tilton says in his slip—his *Golden Age* slip that he had put in type and then broke up the type because three copies was all he wanted to use—he says that Mr. Beecher denied every one of those charges; and the testimony here shows that he never cared a straw, in any of his conversations with Mr. Moulton or with Mr. Tilton, about those charges of Mr. Bowen, which Mr. Tilton represented Bowen as having made. They did make a sort of stumbling effort to revive the enormous wickedness of the Proctor scandal, that has been exploded in a neighboring court, and like whipped dogs have submitted to the vengeance of public reprobation, and the judgment and the payment of the judgment for that enormous injury of the fair fame of a woman; but Mr. Beecher denies even these lame and stumbling propositions, these new instances of "I dare not" waiting upon "I would." And pray, pray, what was this letter which Mr. Tilton has so jauntily characterized in his "True Story" as a New Year's gift that he prepared for Bowen, as he had made a Christmas gift for Beecher? It was to put in the form of writing, under his (Tilton's) name, a recital to Bowen of what he (Tilton) said Bowen had said, and thus make Mr. Beecher feel that Bowen had been the author of these enormous slanders, which Beecher knew had no foundation, and which Bowen knew had no foundation, and which had been faced down by Mr. Beecher so far as they ever did come from Mr. Bowen; for, unluckily, Mr. Bowen has not been brought here by Mr. Tilton to correct his, Mr. Tilton's, view of Mr. Bowen's character and conduct—unluckily for Mr. Bowen. And yet this malicious paper is brought into existence in order to affect Beecher's mind, and in order to affect Bowen's mind. Bowen says: "It was not shown to me until somewhere near this arbitration"—as I understand the evidence. Beecher says: "I did not see it at that time; they talked about it; it was afterward shown to me." Moulton, to be sure, and Mr. Tilton both, I think, speak of the text itself of the letter as having been laid before Mr. Beecher some time that Winter. Now, you see that the effort was completely disclosed on this evidence, to bring Mr. Beecher back to feeling that Bowen was the injurious and malicious contriver of Tilton's downfall, as he had been the injurious and malicious contriver of what turned out to be sure to be a very harmless assault upon Mr. Beecher, and attempting his downfall. And so you will find all through these interviews, that run along on the 3d and 4th of January, and then, somewhere between the 7th and 10th of January, all along, the effort and the purpose to enlist and confirm Mr. Beecher in coöperative means to help Mr. Tilton, and in a constant state of animosity and animadversion against Mr. Bowen! And Mr. Moulton tells you, according to Mr. Beecher's version, and the truth is equally discoverable in his own statements, that all through that period of those interviews the purpose was not only of getting this money, if that should be proper, but of reinstatement in Mr. Bowen's employment, and in his former contracts, of Mr. Tilton; and it was the adherence to this higher and more beneficial purpose that led to Mr. Moulton's rejection of Mr. Bowen's desire for arbitration and desire for peace, an arbitration that as Moulton repeats, and as Tilton repeats at this early stage, was desired by Mr. Bowen to cover his relations with Mr. Beecher, and get out of that difficulty and make peace all round, though they afterward deny that these facts had anything to do with the arbitration. And when Mr. Moulton uses what Mr. Beecher had given him, showing his, Beecher's, defiance of Bowen, he says: "Why, everything has been settled; it is business, and nothing else. Here are the heads. There is Bowen's own memorandum of any difficulties, or any complaints, and they have all been settled." And then

Moulton says, "I will use it with Bowen," and then having drawn from Mr. Beecher a narrative of how Bowen, after having made the peace, had, within a very short time, professed to have some great secret that would destroy Plymouth Church, and drive him away, and how he had been brought to account, and how that had been ended, Moulton says—at least Mr. Beecher says Mr. Moulton reported to him that Mr. Moulton got Mr. Bowen up there into his (Moulton's) house, into his parlor, and there attacked and accused him, exposed his treachery to Beecher, his malignity, and shook the paper in his hands that Beecher had given to him, and made Bowen turn white, and Bowen says, "Oh! how can I ever look that man (glancing at the portrait) in the face again?" He then came back to Beecher and reported the interview, and Beecher said, "Why didn't you nail him on the spot, and make him pay the money?" "Oh," says Moulton, "the time has not come for that; the point is to get him to take Tilton back; not pay damages for removing him, but get him back and pay him the salary and reinstate him." And then Mr. Moulton is brought back to the stand, and all this statement of Mr. Beecher concerning his action with Mr. Bowen and his report of it to Mr. Beecher, involving the interviews in which Mr. Bowen had laid out this apology to Mr. Beecher, and drawn the facts from him to use with Bowen, and this actual interview with Bowen, and his report to Beecher—Mr. Moulton is brought back to contradict it, and he contradicts it in respect to the point of whether Mr. Beecher looked at the portrait and said he could never look that man in the face again.

Mr. Shearman—Mr. Bowen.

Mr. Evarts—Mr. Bowen—in the point that Mr. Bowen looked at the portrait of Mr. Beecher and said, "Oh! how can I ever look that man in the face again?" and he puts that on the fact that there was not any portrait there.

That shows how the memory reposes not upon what was the thing to be remembered, but upon the question of whether it was accurately stated in mode and form, and then a conclusion that as the portrait was not there that mode and form could not have been the statement. That is another instance of an attempt to substitute unknown facts concerning which the witness supposes his word will be the say-so, and not understanding that if facts exist there is very probably some mode of proving them; and we have proved by the landlord that he saw it there in that Winter, and by Mr. Caldwell that when he watched by the flickering life of Mr. Moulton for 15 hours in that Winter of his sickness, in 1871, he saw it there; and by the testimony of Mr. Moulton that that portrait was sent there in the Summer or Autumn of 1870; and the evidence is clear that they did not go to Remsen-st. until May, 1871; that there is no dispute about. Now, where was the portrait, and why did *not* Mr. Bowen say, "I never can look upon that man's face again?" If he did not say it it was not because that portrait was not there.

THE PUTTING OFF OF THE PEW RENTING.

The 2d of January, gentlemen, is spoken of as an occasion of an interview, but it was not of very much importance. Mr. Beecher says there was none; he was occupied with his callers; and Mr. Moulton makes it an occasion of some talk about whether the pew-renting should be put off, "whether," as Mr. Beecher said "it would be safe for me to go on and rent my pews." Well, this is for argumentative confession. Of course when you get the diverging line of facts set, between these two opposite theories, why whatever is consistent with Mr. Beecher's view, whatever is consistent with his either self-reproaches or his alarm at there being a danger of an explosion, of the nature which he understood is just as ready and just as successful a mode of accounting for any solicitudes of his, provided those solicitudes comport with his theory, as any other notion of their views. All that happened then on the 2d, further, was that Mr. Bowen called and mentioned to Mr. Beecher the fact that he had finally and absolutely disposed of Mr. Tilton's connection with *The Independent*, and therefore Mr. Beecher's letter to Mr. Bowen, written on the 2d day of January, and sent and promptly received by Mr. Bowen, and here produced by him, to endeavor to avert the blow or correct any impressions toward the blow that he, Mr. Beecher, had given, came too late.

THE SECOND MEETING AT MR. MOULTON'S.

Now on the 3d of January—on the 3d or 4th of January, for there is some difference perhaps, or doubt, as to which day it was—and it is not at all important—there occurred at Mr. Moulton's house what is spoken of as a casual meeting between Mr. Beecher and Mr. Tilton. Well, Mr. Beecher was at Mr. Moulton's house, and in his sick room, and was conversing with him always in this interest which Mr. Moulton was pursuing of the restoration of Mr. Tilton's fortunes, when Mr. Tilton came in, and whether it was casual or whether it was prearranged that Mr. Tilton should come there is probably a matter that we never shall know except from the statement of Mr. Tilton or Mr. Moulton, but at any rate it is an interview professed to be of some importance. It was an interview that came immediately after the "Letter of Contrition," as they call it, the memorandum or notes of Mr. Moulton, as we describe the paper which I have just descanted upon, and there went on between Mr. Tilton and Mr. Beecher, under the conservative guidance of Mr. Moulton, of reconciliation in form and feeling according to what Mr. Moulton thought was the necessary and proper gentlemanly conduct on the part of Mr. Tilton towards Mr. Beecher, which Mr. Beecher's attitude, as described by his

feelings and their expression during the interview of Sunday afternoon, as Mr. Moulton had conveyed it to Mr. Tilton, was suitable and proper. Mr. Moulton's account of that interview confirms Mr. Beecher's much more than it does Mr. Tilton's. Mr. Tilton makes, undoubtedly, this interview a vehicle of some confessions, as they are called, but all of them are entirely denied by Mr. Beecher, and the concurrent evidence of the conduct of all the parties shows that all that occurred at that interview was that Mr. Beecher, meeting Mr. Tilton, readily and gladly expressed to him in person the feelings, the dispositions, the regrets, the grief, the commiseration of his affairs which he had expressed to Mr. Moulton on the Sunday preceding, and which Mr. Moulton had undertaken to convey to Mr. Tilton in the form of this written memorandum, and which he tells you he had shown Mr. Tilton on that very Sunday night after he had gained possession of that memorandum. And then thereafter everything was of accord between this injured husband and this guilty defendant, if he were guilty, and Mr. Tilton accepted and desired, through his agent and friend Mr. Moulton, coöperation and aid in respect to his reinstatement, in respect to the collection of what was due, and what was denied to be due by Bowen, and every degree of favor and aid that one man would accept from a friend was accepted by Mr. Tilton thereafter from Mr. Beecher and from Mr. Beecher's friends down to the time when, as Mr. Tilton says, "these friendly relations ended by Plymouth Church undertaking to seize me (Tilton) by the throat," a period that certainly carries us to 1873, if not to 1874.

JUDGE NEILSON WANTS A SPEEDY END OF THE CASE.

Judge Neilson—Gentlemen of the jury, I find occasion to appeal to you. You will remember that heretofore when I suggested that you should work on Saturday, I assented readily to your suggestions that it was not desirable to work on Saturday; but now there are very pressing reasons which I feel very strongly. Some of you have been jurors in this court heretofore. You know that on the first Monday of every month, except July and August, we have a calendar of 250 or 300 causes to be tried, and that two of the judges act upon those trials, two courts going on with the calendar until exhausted, and we have such a calendar for next Monday morning, and I feel a strong desire to be back to my ordinary duties, inasmuch as my associates have been burdened these last five months, not only with the work appropriate to them, but with the work which I should have been performing with them. I wish to get back to my customary labors as soon as possible and relieve them from the extra burden. And, beyond that, gentlemen, in all cases of appeal where the appeal is from an order or judgment of mine, my associates can sit, but in those cases where the appeal is from a judgment or order made by one of them, the appeal at our General Term awaits the time when I can act with one of the other two, and we have a large mass of those cases lying in arrears, although we have occasionally heard a case. We did so this morning, or rather Judge Reynolds and myself heard an argument this morning in a case of that kind, but the attorneys need a week or two notice to get ready, and there is a large amount of General Term business lying in a neglected state, and these considerations, as well as the general desire of all of us, make it imperative that I must ask you to attend to-morrow, and probably you will cheerfully do so.

Mr. Evarts—I might, if your Honor please, be allowed to say a word on that subject myself. I am willing to submit to any necessary instructions of your Honor, and shall feel the greatest desire both to oblige your Honor in these interests of the public, and the jury in their wishes, which I have no doubt are very considerable, that the argument should be protracted in time no longer than is necessary. But I confess that I am not disposed to feel entirely indifferent upon the question of whether after four days of full measure of oral argument and the pressure of preparation each night for it, when I have come to the accustomed period of adjournment, I should feel that I could retain the strength for the argument to-morrow, and then submit to the necessity of going on without the ordinary intervals of rest. I have asked very few favors, I think, on my own account in respect of strength or health, and I have gladly, cheerfully, and spontaneously met any suggestion of that kind from our opponents. I shall submit to your Honor's direction and the conclusion of the jury.

Mr. Beach—If I understand from the intimation of my learned friend, he thinks it would be oppressive to him to continue his argument to-morrow, and that his preparations have not been fully made and cannot be fully made without imposing upon him unusual labor for that service upon to-morrow. I am excessively anxious, Sir, and it is imperative with me that this case, so far as I am connected with it, should be speedily closed. At the commencement of this argument it was intimated by our learned friends that they would require five days to submit what they proposed to say to your Honor and to the jury It was said that Mr. Porter would probably occupy two days and Mr. Evarts three, or the converse, I don't know which, and when it was found that Mr. Porter was taking all the time which was assigned or intimated for the whole argument of the defense, we were assured that it would not lengthen the aggregate period which they would occupy, and we have now been eleven days, Sir, in this argument, all occupied by the counsel for the defense. Your Honor knows, and they know, that there is to be

but an answer from one counsel upon the part of the plaintiff, and under these circumstances I appeal to your Honor that there should be some limitation to the debate, that we shall know when it is to end upon the part of the defense, and that we shall not drift on in this indefinite and apparently interminable course of argument. I certainly do not mean, Sir, by any remark to criticise now the mode of argument adopted by my learned friend; that will be more appropriate hereafter, if any exceptions are to be taken to it, which I do not intimate. But I cannot, Sir, having experienced what my friend properly calls the voluntary and spontaneous courtesy which he has extended to the counsel for the plaintiff under peculiar and necessitous circumstances, notwithstanding all my desire to close this case, and the oppression which I feel from its continuance, I cannot, so far as I am concerned, insist that my friend should be called upon suddenly to continue his argument to-morrow. Certainly four days of continuous labor, speaking labor, is a pretty severe tax upon any gentleman, although I think my friend talks quite easily and with but little personal oppression; and besides that, it is unexpected, and it may very well be supposed that, while there is never any want of preparation on the part of my learned friend, he may not precisely have settled the line of argument proper to adopt upon a succeeding day. I do not know, Sir, what the views or wishes of the jury may be; and it is only because I have heretofore spoken to your Honor about my desire of having some expression either from the Court or from the counsel, of the additional time that they will require to conclude their argument that I have interfered at all, and out of a sense of grateful courtesy to the action heretofore of my learned friend. So far as I am concerned, therefore, Sir, and on the part of the plaintiff, I trust your Honor will give heed to the wishes of Mr. Evarts upon the subject; but I still insist, Sir, and I appeal to your Honor to assign some limit to this debate, that I may know when, on behalf of the plaintiff, I can have the ear of this Court and jury for the comparatively brief time which I shall ask in submitting the case of the plaintiff.

Judge Neilson—I was forgetful of these considerations when I appealed to the jury, as if the jury only were to be considered; I did not at the moment recall the circumstance that the learned counsel who had been speaking during the week might need time for thought and preparation, or even for rest, we having adopted the notion that he was the only one of our whole number that did not need any rest, and as to the time when probably Mr. Beach will have an opportunity to be heard. I have no doubt counsel will consult about it.

Mr. Evarts—I recognize my learned friend's kindness and courtesy, and of course it was not at all unexpected by me. Gentlemen of the jury and your Honor and my learned friends on both sides may see that there is every reason why I should wish to conclude this argument as soon as my sense of duty to my client will permit, and I will say to my learned friend, for I think it is due to him, that I have disposed of, in my judgment, the main interests and purposes of this inquiry, as called for from me, in addition to what Mr. Porter has done, and that I have not the least expectation of going beyond Tuesday in my summing up, and I have a strong desire to be able to close by recess on Tuesday; but as my learned friend is only concerned that I should have a limit that I won't fall short of, I think we must take Tuesday night.

The Court then adjourned until Monday, June 7, at 11 a. m.

NINETY-EIGHTH DAY'S PROCEEDINGS.

ARGUMENT FOR THE DEFENDANT NEARLY ENDED.

INCREASED INTEREST IN THE SUMMING UP OF MR. EVARTS—EVIDENCE CONCERNING MR. TILTON'S CHARACTER REVIEWED—MRS. WOODHULL'S PART IN STIRRING UP THE SCANDAL NOTICED—THE ADMITTED FALSE STATEMENTS OF MR. TILTON AND MR. MOULTON IN REGARD TO THE CASE SEVERELY COMMENTED UPON—INTERVIEWS BETWEEN THE PLAINTIFF AND DEFENDANT EXAMINED—MR. TRACY'S TESTIMONY EMPHASIZED.

MONDAY, June 7, 1875.

Mr. Evarts's historical method of treating his case to-day brought him to a range of topics apparently less important than those which he had before considered, but still sufficiently interesting to hold the attention of an audience somewhat larger than those which occupied the Court-room last week. The orator has followed, in his argument, almost the regular chronological sequence of the events which make up the story of the scandal. Mr. Beach still seemed to feel somewhat unwell, and he carefully avoided sitting in a draft of air, leaving his chair and seating himself at the side of the bench. He was kept away in the afternoon by a case in another court, but he left word for Mr. Evarts to go on with the argument, notwithstanding his absence.

The topics covered by the argument to-day were treated more briefly than those that have gone before. Mr. Evarts spoke, much of the time, with unusual rapidity. He reviewed several of the declarations of Mr. Tilton about Mr. Beecher's alleged statements, considered some of the interviews between the plaintiff and defendant, referred to Mrs. Morse, Mrs. Davis, and Mrs. H. B. Stanton,

enlarged upon the relations of Mr. Tilton with Mrs. Woodhull, pointed out contradictions of Mr. Tilton's evidence, analyzed the testimony of Gen. Tracy about the interview between himself and Messrs. Tilton and Moulton, and touched upon a variety of other subjects. There were several stirring passages in the address, and a good deal of humor, which sometimes depended more on the orator's manner than his words.

A playful allusion to Mrs. Woodhull's aspirations to the Presidency of the United States was brought out by the orator in a way which set the audience and the jurymen laughing. Mr. Moulton received another thrust from the orator's wit. Referring to Mr. Moulton's having said that, in a certain case, he had lied for Mr. Beecher, the orator exclaimed, "Well gentlemen, a man who lies for Beecher will lie for himself." Then turning toward Mr. Tilton, he pronounced one of the most striking passages in the day's argument, in a severe tone of voice, and with stinging sarcasm. "It may be a hardship," he said, "for this plaintiff that he has no witnesses to prove his case but men who, like himself, and as himself confessedly out of his own mouth, and as Moulton confessedly out of his own mouth, have lied, and lied, and lied to put a wrong face on this matter."

One of the most carefully elaborated portions of the argument was that in reference to the early relations of Gen. Tracy to the case, and his interview with Messrs. Moulton and Tilton. The orator asserted that Messrs. Moulton and Tilton had got permission from Mr. Beecher to tell Gen. Tracy the facts, and that they must either say that they were telling Mr. Tracy a series of lies, or they must stand upon his testimony, if the jury accepted it as true, of what they did tell him as the truth. This part of the address attracted very close attention from the audience, and it was delivered with much force of manner and clearness of statement.

THE PROCEEDINGS—VERBATIM.

MR. BEECHER'S TESTIMONY AGAINST MR. TILTON'S.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts—It does not accord with my purpose, gentlemen of the jury, nor does it fit with the limitations of time which my own sense of my duty to you imposes upon me, to treat of all the random and scattered interviews that are thrown in here and there during the years that follow this important and decisive period between these parties, of December, 1870, and January, 1871. I have proposed to you that upon the occurrences of that week, as respects charges or confessions, that week in December, the line was set between these people, and that thereafter, in any view, there would come to be no new expressions or renewals either of accusation or of admission; and in that view I pass but lightly over an interview of the 3d of January, in which there are contained several passages that perhaps may be brought to your attention, or may already exist in your memory; and I will only ask your attention briefly to them that you may see whether or no I am correct in my view, that whatever is added after the period of the last week in December is of no importance, whatever view you shall take of what occurred during that week.

Now, Mr. Moulton having insisted upon Mr. Tilton, who came in, treating Mr. Beecher with respect and consideration and courtesy in his house, a very difficult proposition to accept, if you believe that this injured husband and this paramour stood in one another's presence with this imputed injury still existing as a matter of feeling or resentment between them; now, after Mr. Beecher had said, as I have stated to you, that the expressions he had made to Mr. Moulton were sincere, and that he had this commiseration, this regard for, and this desire to aid Mr. Tilton, we have, according to Mr. Tilton, this further statement. He says—this is Mr. Tilton's view:

He then said, "I do not put in any plea for myself, but only for her. Indeed, if you wish to carry out the demand which was communicated to me in your letter of Christmas Day, that I should retire from my pulpit, you have only to say the word and I will retire. The renting of the pews shall not go on."

Now, the utter impossibility of either of these statements is obvious upon the undisputed evidence. In the first place, how could Mr. Beecher say to Mr. Tilton, "If you wish to carry out the demand in the letter made on Christmas day"—when the whole agony of Mr. Tilton in the interview of the 30th of December had been to obliterate that letter and that charge, and to conciliate Mr. Beecher to the point of not resenting it, but treating it as if it never had occurred? And how could Mr. Beecher, on the 3d or 4th of January, 1871, talk of the renting of the pews not going on, when that had already happened?

I have this request to make—that if it be necessary for you to make a public recital of this case——

What an extraordinary idea to come from Mr. Tilton's mouth, when the solicitudes of his wife, as he says, had prompted him to resort to Mr. Beecher to see to it that by chance even, from any exacerbations between Bowen and Beecher, nothing could possibly come out——

you will give me notice in advance of your intention to do so, in order that I may either go out of the world by suicide, or else escape from the face of my friends by a voyage to some foreign land. And, furthermore, I ask you to do me this favor—that whoever else in the wide

world is to be informed of the facts of this case, at least my wife shall never know anything on the subject, for she is not only your enemy, but may very readily become mine. If you can spare her the pang of having these facts communicated to her, I will consider that it is an additional occasion of gratitude.

Now, gentlemen, look at the absurdity of this. The object of this is to make a vehicle of narrative that may introduce confessions; and wherever any go-cart can be found that can take anything of that commodity in, Mr. Tilton always drives it up, in season and out of season. But the absurdity of that situation between them, of Mr. Beecher's suggesting: "Well, if publicity on your account ——" which Tilton had been struggling against with all his might all through that week, and urging Mr. Beecher not to permit a chance of publicity—he says, "If it shall become necessary for your purposes to give any publicity to this, why give me notice, in order that I may commit suicide, or short of that, that I may retire to Europe; but finally, if you do publish it in New-York and Brooklyn, if it does become known to the world at large, see to it that it does not reach Mrs. Beecher, because that would be an additional pang to me that you well might spare me. She is no friend of yours now, Mr. Tilton, and she might become an enemy of mine if she heard this narrative."

He said also that he did not wish me to understand that he solicited any mercy for himself alone, but only for his family, and particularly for Elizabeth. He said: "I do not beg at all for myself, but for her; she was not to blame; I was altogether at fault; my sacred office and my years should have combined to have made me her guardian, not her tempter."

Now, you will observe, gentlemen, that some conversation might arise between these persons concerning the state of things as it had been proposed in the evening of the 30th of December, and had been made the subject of regret, of disorder, of feeling, and of astonishment, in Mr. Beecher's mind, at the revelation of the disaster in the household, and the feelings of this wife. All that is consistent with there being no charge and no confession in the sense that is claimed here. But that I have sufficiently insisted upon. Suffice it to say that in all future conversations you see at once the great danger of having your intelligence imposed upon by substituting phrases that seem applicable to the impossible charge of adultery, instead of phrases that have relation to this disaster in the family. Mr. Beecher certainly reproached himself, too, and in regard to which he expressed himself without measure.

He furthermore told me that the relationship which had existed between himself and Elizabeth had not always been marked by sexual intimacy; that the earlier years of it were free from any such taint and crime, and that only during the last year, or a little more than a year, he said, and that year shortened by a country vacation, had that sexual intimacy existed. He furthermore said that he did not know how he could offer any mitigation or excuse for himself, and yet he said he wanted me to believe, for Elizabeth's sake and also for his own, that he had never sought her for any vulgar end, but that their sexual commerce had been through love, and not through lust; that he had never met any woman whom he had loved so well; that he had sought companionship in her mind; that he had taken manuscripts to her that she might be his critic; and that the blame—and this he repeated two or three times over—"the blame," he said, "belonged to me, and not to her." And he added—and when he did so the tears came into his eyes—he added some words like these: "Tell me, before you go away, can you possibly ever reinstate Elizabeth in your respect and love?" Then he said "that he was in great grief through Mr. Bowen's action in my case, the termination of my engagements with Mr. Bowen's papers, and said he felt that Mr. Bowen's suddenly changed mind had been largely due to statements which Mrs. Beecher had made to Mr. Bowen and to statements which he himself had made, though he said that Mrs. Beecher had been more mischievous in her utterances than he. He mentioned also that he had voluntarily written a letter to Mr. Bowen, either that day or the day before, in which he had taken back some of the unkind references or injurious statements which he had made to Mr. Bowen concerning me."

No doubt you see in this last part the entire confirmation of the idea that Mr. Beecher at this time felt and expressed to Mr. Tilton—I mean at this period from the time that the matter was brought up as a matter of difference between them in the misfortunes that had attended Mr. Tilton—felt and so expressed himself that the mischief of Mrs. Beecher's and of his own intervention with Mr. Bowen was chargeable in some degree with his disasters in a pecuniary point of view. Now, Mr. Beecher, in his evidence, gives substantially this view of the matter:

I turned to Mr. Tilton, and with far more words than I am using now—I epitomize now, and state the substance—I turned to Mr. Tilton, and spoke to him of the profound regrets that I felt that I had in any way been a party or subsidiary to the injuries inflicted upon him by Mr. Bowen; and I also said that the disturbance in his household which had been occasioned by me, was without intention, and without my recognition at the time, but that I did regard it now as being very serious, and that I had the most profound sorrow for the disturbance that I had occasioned, the rupture between him and his family, and the miseries that he must have suffered; that I asked his pardon for the one, and for the other—that I felt I had been in the wrong, and that I ought to ask forgiveness for it.

Now, Mr. Moulton's statement of this interview agrees much more nearly with Mr. Beecher's than it does with Mr. Tilton's, and this passage that I have now read to you is not denied by either of them. Then Mr. Beecher, as you will remember, is asked directly about all these odious statements, in terms specifically that I have read to you, as forming a part of this interview in the narrative of Mr. Tilton, and he denies them entirely and with emphasis, and in a manner and with a sincerity and emphasis which you all recall. You will see, then, that this interview, as narrated by Mr. Tilton, and the expressions imputed to Mr. Beecher, are all a rehash and reproduction of the narrative and scheme of the seduction and the

adultery which Mr. Tilton, in its perfect form, delivered to you as the narrative of the wife to himself and his repetition of it to Mr. Beecher on the 30th day of December. Whatever fate befalls that interview of the 30th of December, in your judgment, carries with it necessarily these subsequent reproductions of the same ideas and of the same expressions.

THE INQUEST ON THE PATERNITY OF THE CHILD RALPH.

There comes then to be a very extraordinary interview as stated by Mr. Tilton, to which your attention has been called by my learned associate, Mr. Porter, and which doubtless lives in your minds. It is an interview about the middle of February, after what was supposed to be a very full accord and settlement between these parties, of the grounds and measures of complaint, of the grounds and measures of reproach and apology on Mr. Beecher's part, made up in a circuit of letters bearing date the 7th day of February; and thereafter, Mr. Tilton says that he invited Mr. Beecher to come to his house for an interview, a house at which he should find Mr. Tilton and the wife; and this is the first invitation of Mr. Beecher to his house, and the first visit to the house that had occurred. He tells you that the object of that was to relieve his mind concerning the genuineness or spuriousness of the offspring Ralph, the baby of the family then, I think something like a year and a half old, nearly two years old perhaps. Now, gentlemen, if this interview is not in the conception, suggestion and description of it by Mr. Tilton absurd, it is not in the power of any imagination or addition to make it so. It proceeds upon nothing, comes to nothing, and has no possible existence in the nature of things. The object of it is to furnish what was regarded as a necessary, and if not unimportant link in evidence, to give time and place to these amours which nobody had detected or suspected, and which no evidence could ever approach even with the eye of jealous suspicion, and furnish a single witness or a single hint about it. And that is the whole object of this need of the interview, but not this evidence that is produced by Mr. Tilton. He says, after they have gone up stairs:

I have called you hither in order that you may remove, if you can, a shadow from the future life of the little boy Ralph. His mother has assigned to me a date at which your criminal intimacy with her began. This little boy was born a few months after that.

Well, he was born about eight months and a half, wasn't it? [To Mr. Abbott.] He was born eight months and a half after that—called a few months here, to make it a satisfying result to him, to find out that the intercourse occurred at a date that he suggested, and concerning which he seems, as he thinks, to have received the doubting assent of Mr. Beecher. Now, that was the date he had in his mind, according to his own story, (where he got it nobody knows)—the 10th October, 1868, and the child was born the 20th of June following, and he wanted to be sure that this intercourse between Mr. Beecher and his wife was on the 10th of October in order to relieve him of all uncertainty as to whether this offspring of his was genuine or not. Now, he states it in his evidence, "a few months after," in order to carry (at least while he is talking) some degree of probability or possibility in what he is going to say.

If the date which his mother has given is correct, it will save a dishonor attaching to his name. I want you to tell me, as before God, whether or not that date is right. I want, if possible, to shield him; but I want, more than that, to know the truth. Tell me the truth. And he told me on his word of honor, as before God, that the date which Mrs. Tilton had assigned was the correct one. At that moment Mrs. Tilton herself, who had followed me up stairs, came into the room, and when I stated to her the point of conversation she burst into tears.

Q. Well, now, Mr. Tilton, state whether in that conversation that morning in your study the date was named?

Mr. Fullerton asks him. Now, the witness having had his attention called to the fact that he had n't named any date after all, left it a few months before the birth of the child, which would have carried it somewhere four or five months (in any proper sense of the words "few months") later than the assigned date—Mr. Fullerton is allowed to call his attention to whether the date was named.

A. I told him Elizabeth had named as the date at which their criminal intimacy began Oct. 10, 1868. He replied that he had no faculty for dates and had made no record, but he believed in his soul that she had told me the truth.

Now, gentlemen, that is the way we dispense with evidence of any act, or proximate act, and get out of this defendant's mouth a corroboration, or support of the time and place that they allege for the first prostitution of the wife. Well, gentlemen, if you can conceive of any such interview, and if the circumstances of the dates made it possible that there could be any reassuring influence on the mind from it, and therefore the whole thing is not overthrown by this proposition of the plaintiff, of the object of the interview, it would be overthrown by the exquisite absurdity of the form and manner in which the admission or corroboration is drawn from Mr. Beecher. For, you must take it as he says it, if you take it at all—as Mr. Tilton gives it, that Mr. Beecher in the presence of this husband and with the wife in the house, and with the wife apparently coming in afterwards, should say this, that he hadn't a good memory for dates and that he had made no record of this transaction, and with all gravity and decorum, but that he could upon his honor, before God, he must think that the view that Mrs. Tilton had communicated to her husband must be the correct one. Now, gentlemen, you must compare Mr. Beecher's statement of this interview, and see which comports the best with the relations now established between the parties,

with the views that you take of the preceding evidence running through the months of December and January; the final settlement; or friendly relations in the beginning of February, which were never broken, as Tilton says, until Plymouth Church began to put its hand on his throat. Now, after Mr. Beecher has given this narrative, Mr. Tilton is brought back to the stand and he denies only one single passage in it, and his attention, therefore, was called by the counsel to this interview, and what he could deny he did deny, and what he could not deny he didn't; for it is in vain to say that this narrative that he gives in the bald terms that I have read to you is a substitution or a previous placing of the interview. Mr. Beecher's interview is an affirmative, independent, wholly unconnected interview with any such narrative, topic or subject as that of the paternity of the child. Mr. Beecher denies, as you remember, and with indignation, the very suggestion that any such topic or any such conversation—any such on Mr. Tilton's part, any such on his part—ever took place. Now see what Mr. Beecher says, which, as I say, remains wholly uncontradicted by Mr. Tilton. He found them at breakfast:

Mr. Tilton met me as if he had expected me, and introduced his conversation by the recognition of the fact that we were to act harmoniously together, and that it was necessary, therefore, for a more perfect effectuation of that, that we should have a conversation in regard both to himself and myself. There was a renewal, some renewal, of the conversation in respect to the manner in which Mr. Bowen had treated him in a business point of view; I cannot recall that very distinctly. The other part impressed itself more upon my mind. He passed on from the statement of Mr. Bowen's having slandered me to the statement that he himself had experienced a like treatment at the hands of Mr. Bowen. He proceeded to instance the stories that had been told by Mr. Bowen, if I recollect aright, one by one.

Q. About you? A. No, about himself. It was an interview far more clearing himself than clearing me. He said that the story of his having made improper advances, &c., in the back office of *The Brooklyn Union* was an absolute falsehood. He said the story of his going with a woman to Winsted, in Connecticut, was absolutely false and had no foundation in fact, and that he could not understand how it should have started, except that there was another Tilton bearing nearly the same initials as his, who was a dissolute man, and an intemperate man, and that he had been about the country, and that this story probably was true of him, and had been transferred by those who did not know the difference of personality to him.

Now, this last, about the namesake of Mr. Tilton, is the only part of this statement of Mr. Beecher's to which Mr. Tilton's attention is called by the counsel, and the only part that he denies, and he denies that (as he seeks occasion always to deny whatever he must deny) by introducing the support of a fact, and so relieving himself from the absolute and inventive falsehood. He says, "I did not say this about Mr. Tilton, because I did not know then about his immorality." But he says that this Mr. Tilton was divorced from his wife in the beginning of June, 1871; that is in his testimony—he knew the day and he gave it to you, that he was divorced June 9, 1871, and Mr. Morris asks him:

Q. And about the Spring of 1871 did you hear anything concerning Theodore H. Tilton? A. Not at the time Mr. Beecher mentions.

Q. No, but subsequently, or about that period? A. Yes; Mr. Theodore H. Tilton was divorced on the 9th of June, 1871.

Well, if the decree of divorce had come on the 9th of June, 1871, it is likely some knowledge of the profligacy of Theodore H. had come to Theodore during the preceding months of that year. And thus you have ready invention, just as easy of discovery and conviction; the whole reason that he falsifies this view of Mr. Beecher as to his explanation about Theodore H. Tilton having had sins that were carried to Theodore's, his own, charge is, "Well, I didn't know about it then." But Theodore H. Tilton was here, of Brooklyn and New-York, and identity of name, if there were no relationship (I don't know how that is) but character, profligacy, all the traits that made it natural for Theodore to pick him out to serve as a turn to hang the falsehood on applied, and he seeks to disturb that by telling you that he heard of his divorce: that his divorce took place, and he knew of it on the 9th of June, 1871. Well, gentlemen, you must judge whether this ready escape from apparent falsehood is to serve his turn in this case, any more than in the numerous others I have exposed. It must be held, then, as absolutely true that this interview with Mr. Beecher was in order to confirm the good dispositions, and to secure the good offices that he needed from Mr. Beecher. And here he threw off at once, upon this scapegoat of Theodore H. Tilton, all his sins, especially those connected with the Winsted affair.

He said the stories told to him by Mr. Bowen or hinted in respect to his improprieties in the West and North-West he defied anybody to prove; they were absolutely false. He then went on to say that my wife was not altogether guiltless in the matter of propagating stories; that she and Mrs. Morse had joined hands against him; that Mrs. Morse had repeated stories of his intemperance, and of his improvidence, and of his neglect of his family, and one by one he gave to them explicit denial. He stated then to me, in regard to his family, that, while he acknowledged that perhaps he had been at times hasty or inconsiderate, or something to that effect, he had never violated his marital vows; he declared that he had from his youth up been immaculate in chastity; he narrated to me the scene that took place between him and his father when he first began to launch out alone into the city, who took him and talked with him about the great dangers that he would have from the other sex, and from an undue intercourse with them; there was considerable that was very specific in that counsel of his godly and patriarchal father, as he represented to me, and he said that that made such an impression on his mind at that time that it had held him up ever since; he stated then that he did not know but that his life had come to a premature termination; his usefulness seemed clouded, his opportunities seemed shut up;

his household seemed desolate. I spoke then words of sympathy and words of courage to him, and was profoundly impressed with his truthfulness, and I felt worse than I had ever felt before, that I had lifted my hand against a man who, whatever might have been his weaknesses or his follies, had not deserved any such treatment, and I expressed myself so to him, and we had a kind of recognition again; and he said that in view of what had taken place through the kindly offices of Mr. Moulton, through interviews with me. that, as we were to co-operate in the future, he wanted to have this conversation to say what he had said, and so on, and he wanted also to say that he should desire me to visit in his family again just as I had done in former days, before any of these troubles arose. This was not said just as I have said it—that is to say, it was much more largely opened rhetorically, and yet this is the substance of it. We left the study and went down stairs. I have forgotten exactly how it came to pass that I found myself with him in the bedroom with Mrs. Tilton—in the back bedroom on the south side of the house; but there I recollect there was a supplementary conversation between us three, or rather there was a supplementary discourse to us two, in which he stated again to his wife that he had had a long and satisfying interview with me; he said that he did not know that he should ever again be put in such prosperity as he had lost, and spoke tenderly and sadly about that, and yet terminated with a kind of reassurance—he was young and he was energetic, and he meant to recover himself; he spoke also in respect to his family; he said that he thought it only right to say to Elizabeth, addressing himself to her, that "Mr. Beecher, in all this difficulty, has acted the part of a man of honor toward you, and he has taken in every case all the blame to himself; and I feel bound also to say to you, Sir," said he, "that Elizabeth has pursued the same course toward you," and said, "If there is any blame, it is mine." He said, then, that he did not know that he should ever be happy again; his home seemed to him to be a divided and a desolate home, but he did not know but out of this very condition of things there would spring up again an affection that would be purer and stronger than if it had not been tried by these difficulties; and with that—we all kissed each other, and I departed.

Now, gentlemen, there is an invention by Mr. Beecher of most unblushing effrontery, or it is a true narrative. You must compare the oaths, the characters, of these two men. You must apply your intelligence and your common sense to determine whether Mr. Tilton's statement of that interview has any possibility of truth in it, even if it were supported by a witness that you would fully credit and was uncontradicted; and then you must determine whether you believe that this interview that I have given you in Mr. Beecher's statement of it does or does not comport with the objects which Mr. Tilton had in hand, with the objects which he had been pursuing, with the views and purposes which he and his friend Moulton had been expressing in every possible way to Mr. Beecher as the reasons governing their conduct. Now, when Mr. Tilton says, as he does in his interview, that there were some things said that he does not remember, and then when Mr. Beecher comes and gives this narrative, and no denial either of the principal narrative or of the cause of reconciliation, you must understand that it is absolutely proved before you upon every rule of evidence, even if the witnesses stood equal, that this narrative of Mr. Beecher's is correct.

OTHER EVIDENCES OF RECONCILIATION.

Now, there came to be an interview in May again, and this was at Mr. Tilton's house [reading]:

There was some—there had been some, either they had not fulfilled some agreement, or there was some kind of dissatisfaction with me, but I cannot recall it, what it was. [He was sent for to come there.] I only know that when I went in Mr. Tilton received me moodily, and then, after a little conversation and explanations which took place, he became gracious, and we fell into an easy and unbusiness-like chat, and that in the course of it, sitting there in the old-fashioned way in his house, I went up and argued—sat down on his knee, as it were, to make the appeal closer, and when I was sitting there Mrs. Tilton came into the room and burst out laughing. I recollect that interview, and I think when she came into the room she came up and kissed me very cordially.

Now, this is followed by this statement of Mr. Beecher:

Q. During this Spring and up to this time that you have now named, the latter half of May, did you understand that the ill-feeling between you and Mr. Tilton, or misunderstanding, was removed? A. I did; I thought the difficulty was all dissipated, and that the only thing remaining was the performance of the undertakings in which we had engaged.

Now, when Mr. Tilton is recalled for this interview in the last half of May, concerning which he had given no evidence in his direct testimony, he disposes of it by saying that this sitting on the knee he thinks occurred ten years before. Well, we have his say so far that he does not connect it with anything, except that it was about some book that he had written ten years before. But he does not deny the cause of reconciliation, although he does not think that the sitting on the knee occurred at that time. But he shows you that the sitting on the knee did occur; the fact occurred, and therefore you have only this question left. He does not dispute the character of the interview; he does not dispute the harmony and the cause of the reconciliation, but he tries to dispose of the absolute assurance that there was a removal of all ill-feeling or show of ill-feeling in the harmony between him and Mr. Beecher, and in the renewed purposes of co-operation for the improvement of Mr. Tilton's condition which Mr. Beecher had so readily acceded to.

MR. BEECHER NEVER VERBALLY ACCUSED OF ADULTERY.

And now, gentlemen, let me once for all call your attention to a final question which was put by the learned counsel for the plaintiff both to Mr. Tilton when he was on the stand, and to Mr. Moulton also, and that was:

During all these interviews (taking them in a body), did Mr. Beecher ever deny the adultery?

And the answer is, "No, he never did,"—and for the best of reasons, for when I asked Mr. Beecher, not only

displacing one by one all the supposed admissions, all the implied admissions, all the recited admissions, I asked him—

Mr. Beecher, did Mr. Moulton, did Mrs. Moulton, did Mr. Tilton ever, from the beginning of this matter in December, 1870, down to your last interviews with either of them, ever accuse you of adultery, and ever impute carnal connection, ever suggest this impurity in any form or degree? He says: No person ever did in my house, in either of the houses, from the lips of either of these persons.

And adds that the first word of that kind from any lips would have been the last moment of any intercourse between them. So you see how easy it is by a form of question and answer to get apparent proof, until it is searched and probed and shown to be worthless. Mr. Beecher never did deny adultery, never did deny carnal connection, never was accused by word, by hint, by suspicion indicated in any form. And the whole course of this affair shows the utter impossibility of Mr. Beecher's having submitted to any of this intercourse to get his friendship, to obtain his aid, and he is quite justified on every principle of human nature when he says to you in his evidence:

The whole course of my interviews with all these parties—Mrs. Moulton, Mr. Moulton, Mr. Tilton—was utterly inconsistent with there being an idea of that form and degree of criminality, without imputing the utmost infamy to all of them.

And we recognize that. How are these respectable people, as they would have themselves considered, to explain this long continued intercourse and effort to get the services either in money or in aid, in help, in support, in reinstitution of Mr. Tilton in employment, or in character, or in credit—how are they to accommodate those courses of conduct to and with him on their part, with anything but the basest compromise and money settlements of this great disgrace?

I ask your Honor's attention to the case of Giles agt. Giles (6 Notes of Cases in Ecclesiastical and Maritime Courts, p. 161): The facts were:

A witness, a gentleman of great respectability, who had been called in as a mediator, testified that he visited the husband and communicated to him the charges made against him, and that the husband in effect admitted the charges. The witness testified that he considered the husband's conversation to be an admission of the truth of the charge, but the witness also stated that, before leaving, he took wine with the husband, entered into general conversation, and shook hands at parting. Held, not sufficient proof of guilt.

"Now, considering," the Court say, "the nature of the expressions said to have been made use of by Mr. Giles, I cannot possibly conceive how all this conduct is to be reconciled with the belief that he was guilty of the offense imputed to him. How is it possible to conceive that a gentleman in Mr. Hume's situation, having received this communication from Mrs. Giles, and a confession from Mr. Giles, could sit down with him, drink a glass of wine with him, talk with him, as he says he did, of the road he had been making to Queen's Charlton, shake hands with him at parting, and conduct himself as he admits he would not have done if Mr. Giles had been convicted of the offense? The belief of Mr. Hume at this time was that Mr. Giles was not only guilty of the offense, but that he had confessed it, and where is the difference between that and his being convicted of the offense? It is impossible to reconcile the evidence of Mr. Hume with his conduct upon the occasion."

And that is the way the law always deals with words of witnesses when they are confronted and compared with their conduct. It does not hesitate to say of Mr. Hume, "You profess to be a respectable gentleman; you come here to report after information from the wife of charges against her husband, the confessions of the husband—and you go on and describe the interview just as it would have gone on if this gentleman had had no guilt, no dishonor, no criminality that he was avowing before you. You tell us you would not so treat a man if he had been convicted, and yet you tell us that the wife had told you, and the husband had assented." Gentlemen, the law says people must understand that here, as in the practical intelligence of mankind "actions speak louder than words," and, even in a matter like that, where Mr. Hume had no relation with the matter except that interview and that conversation, the experienced court of England rejects his evidence, and charges "That is no confession that we can believe in, for your conduct shows that you could not have believed in it; your conduct shows that it never could have happened." But when this test, thus remorselessly applied against a mere intervening witness, comes to be applied to the conduct of the parties, to the social relations renewed, to the adulterer reintroduced into the family and kissing the wife before the husband, and having this talk: "Now, this misunderstanding that has arisen, this degree of difficulty, of interference, which you, Elizabeth, have stated, and which Mr. Beecher has taken blame to himself for—that is all over; let everything be as it was before; come to the house just as before; each of you has honorably said that for all this beguilement, this irregularity in these affections, each was to blame," though Mrs. Tilton, according to Mr. Tilton, on the very act of adultery never admitted that she was to blame at all, or that there had been any sin committed by anybody, but insisted that it was all pure and right and justifiable, but now it is exposed, and each of these parties, the clergyman and the parishioner, feels that this never should have occurred, that grounds for opinion, even, on the part of the husband, and much more in real fact, to sustain such an opinion of the attraction of the wife's allegiance from the husband and its implication even in undue affection toward the clergyman, never should have occurred, that the wife should have prevented and the clergyman should have prevented it, each exonerating the other and each taking blame upon himself or herself—when, I say, you apply this test to the parties themselves instead of to a mere intervening witness, how much more forcibly it applies! Now, gen-

tlemen, you must think that the community in which we live, the people that make up respectable society with us, are upon a much lower level of integrity of conduct—which must comport with alleged conversations, which must sustain words, or else the word must fall—than these people in England are; or else you must suppose that this whole family had gone mad and were different from other people, or else that your judgment and that of this learned Court is less elevated, less penetrating, less serene, and less severe than that of the English courts.

THE RENEWED SOCIAL RELATIONS.

And now what were these renewed social relations? Take them as they show themselves in undisputed evidence. Mr. Tilton and Mr. Beecher were repeatedly together at Mr. Moulton's after the starting of *The Golden Age*, after the active movement that was expected to elevate Mr. Tilton's fortunes and restore him to influence as an editor and to credit in society. Of that there is no dispute. Mr. Tilton and Mr. Beecher met at *The Golden Age* office; Mr. Tilton endeavored to get, through Mr. Southwick, Mr. Beecher's influence on Mr. Claflin, Mr. Southwick's uncle and Mr. Beecher's parishioner, to take stock in *The Golden Age;* there was a yacht excursion in which they both took part, and both by the invitation of Moulton, and perhaps another excursion, even, besides—if the two were not confounded by the different witnesses when really there was but one. You find them dining together at Moulton's house in the Fall of 1872 and having that talk about the prospects and the future of both, and the interest in the political campaign, and the speeches that each of them was making on the one side and on the other; cordial greetings—no pretense that they were not cordial—when they met; the kiss at Mr. Moulton's, about which the only doubt is whether Mr. Beecher kissed Mr. Tilton on the forehead or on the lips, Tilton putting it on the forehead, so as to escape anything like participation, I suppose, except that of a passive recipient, but Mr. Beecher saying of the kiss that what Mr. Tilton has disclosed is all right as to the time and place of its occurrence, but that it was on the lips and not on the forehead; and certainly Mr. Beecher would have needed to have got up on a chair, or Mr. Tilton must have surrendered himself to this embrace much more decidedly if it were on the forehead than if it were on the lips; at all events he did not apparently repel it. Then, after Mr. Tilton's return from New-Hampshire, after this scandal had burst out, there is cordiality and shaking of hands with Mr. Beecher on his return, about which there is no dispute; and then you have what Mr. Moulton and Mrs. Moulton said to Mr. Halliday. Mr. Moulton said to Mr. Halliday, when he was inquiring about this affair of Mr. Beecher, or this Woodhull charge and Mr. Moulton's knowledge of it, "Mr. Halliday, I am not a member of your church, but my wife is, and do you suppose, if Mr. Beecher were a bad man, I would allow him to come and sit here at the table with my wife as a guest, as he frequently does?" That is not contradicted by Mr. Moulton. Now, gentlemen, you see what the English judge saw—you have it out of Moulton's own mouth that he said to Mr. Halliday, when Mr. Halliday wished to get at whether Moulton had any foundation for these stories, or whether there was anything to support them as they had been promulgated by the Woodhulls, "Mr. Halliday, do you suppose if Mr. Beecher were a bad man I would allow him to come and sit here at the table with my wife as a guest, as he frequently does?" And Mrs. Moulton said to the same gentleman: "Mr. Halliday, Mr. Beecher is my pastor and has been from my childhood, and I believe in him, and there is nothing that they can say that will affect my confidence in him, or my affection for him, one particle."

Now, when Mrs. Moulton was asked, as she was in advance before we called Mr. Halliday upon this point, when her attention is called to the evidence proposed to be drawn from Mr. Halliday, how does she negative it? Only thus: that she remembers saying to Mr. Halliday, "Mr. Beecher is my pastor, and has been from my childhood;" but she cannot remember that she used the latter part of these expressions. She does not say that she did not use them, as I understand it; and what under heaven she should have uttered the first proposition for—that Mr. Beecher had been her pastor from her childhood—and there stopped, no man can understand. It was the introduction of the asseveration: "Talk to me as to whether there is any truth in these charges against Mr. Beecher! Why, I have known him since my childhood; he has been my pastor; I became a member of his church in youth, and I have known him ever since, and nobody can make me believe evil of him." And this is not contradicted when Mr. Halliday says:

I never saw Mrs. Moulton at the church except she came around at the foot of the pulpit stairs where I used to stand, at Mr. Beecher's request, at the close of the service—came around, and if Mr. Beecher was not where he could shake hands and speak with her she would wait until he came and did so; and I think I invariably shook hands with her on those occasions; I don't think that the number of times exceeded six.

Q. On every one of these occasions did she shake hands specially with Mr. Beecher? A. I think invariably.

Nobody has contradicted that. Now, the portrait. The portrait was sent from Mr. Tilton's, in the Fall of 1870, to the Clinton-st. house of the Moultons, and remained there until they moved; it was hung in their parlor in Clinton-st., and hung in their parlor in Remsen-st., in their new house (the house which they at present occupy, I suppose), until it was taken from the parlor some time during the last year and placed up stairs in one of the principal bedrooms, either of the wife or of the husband, of that family. Now, gentlemen, you see with what im-

mense force these facts (which a jury always wants to have) of the conduct, of the way people *did*, bear upon the relations of these parties, in connection with the views of a sensible court, as I have read them to you and to his Honor from the case in the English Ecclesiastical Courts. Now, you have no doubt whatever of the movements during this period toward a newspaper, in which Mr. Frank Carpenter was made the agent of Mr. Tilton, and in which he went around seeing Mr. Beecher's friends, and seeing Mr. Tilton's own friends, for Mr. Schultz was his friend, Mr. Southwick was his friend—Mr. Claflin was Mr. Beecher's friend, if you please, especially the interview with Mr. Charles Storrs and with Mr. Schultz—all these efforts in which Mr. Carpenter was active in Mr. Tilton's behalf, and which led afterward to conversations directly between these parties and Mr. Tilton, in which Mr. Tilton was accused of attempting to build himself up out of imputations against Mr. Beecher, and of blackmailing, when he knew there was no foundation for the matter, and he denied the blackmailing, and they had a club arbitration, and called in a bystander, Mr. Bailey, to hear both sides, and he decided that Mr. Tilton was a blackmailer: that is, that this proposition of his, in the way that he put it—of getting up a newspaper in which Mr. Beecher and himself were to be coadjutors, was in the nature of a coercion upon Mr. Beecher and Mr. Beecher's friends, upon his own, Tilton's, showing, to do this thing in his, Mr. Beecher's behalf, not on the merits, not on the inducements that would affect Mr. Beecher's own conduct, but on the ground that he, Tilton, had some story or other against Mr. Beecher. But now I am only looking at the evidence of the disposition of Mr. Tilton, as manifested by this open activity, not to call it merely action—this open activity on his part to promote intercourse, combination, coöperation, association, in the restoration of his, Mr. Tilton's fortunes, between Mr. Beecher and himself. So, too, we have not only the invited restoration of the old habits of intercouse, but we have a course of conduct on Mr. Beecher's part of great discretion, no doubt, but which shows clearly that no such relation as the plaintiff pretends existed—shows it in the notes that passed between Mrs. Tilton and himself on occasions where a pastor could rightly address a parishioner (few in number, to be sure), and in the several cases in which he met her in the street, once or twice perhaps, and on a visit to her house when she sought his aid and counsel in the difficulties of her household, and when Mr. Beecher disposed of this application of hers in a manner certainly extremely creditable to him and most effective. When, after hearing from her, in the latter part of 1871, her distresses and her troubles and her desire to have him furnish her such aid as a religious teacher should furnish to a woman in that form of distress, he heard her, and, without saying another word, took the Bible, marked a passage for her perusal, and left the house. Nobody can say of that interview that he had again given any right to think that he would listen to (in the sense of encouraging) or that he would interfere in (in the sense of promoting) any difficulties between the husband and the wife. This was the passage that he marked, this was his suggestion, in the language of the Apostle, as to the course by which she must deal with the discomforts and the disturbance in her household which she experienced at the hands of her husband:

Charity suffereth long, and is kind; charity envieth not; charity vaunteth not itself, is not puffed up.

Doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil;

Rejoiceth not in iniquity, but rejoiceth in the truth;

Beareth all things, believeth all things, hopeth all things, endureth all things.

THE SOURCE OF MRS. WOODHULL'S INFORMATION.

Now, gentlemen, a particular occurrence took place, which I will briefly advert to. In the Spring of 1871, in this very month of May in which this last interview took place between Mr. Tilton and Mr. Beecher at his house, and where there was an absolute wiping out of ill-feeling, of evil opinion, of evil purpose, apparently, within a week after that there was published by Mrs. Woodhull a card in two of the leading morning papers of the City of New-York, in which what must be considered as a very open reference to the condition of adulterous intimacy between Mrs. Tilton and Mr. Beecher, continued for years, was clearly made. The evidence, as I submit to you, gentlemen, clearly shows that this publication was promoted by Mr. Tilton himself. On this evidence it is impossible to doubt that the source of Mrs. Woodhull's information was Mr. Tilton. The scandal proper was not published until November, 1872, but this card was published on the 22d of May, 1871, and at the very period when, apparently, if there were any sincerity in Mr. Tilton, if there were any possible fidelity on his part to the duties to his wife and family that he has suggested, any possible honesty in his relations with Mr. Beecher, and any possible confidence to be put in the attitude and conduct of Mr. Moulton, everything was at an end when everything had been explained, and when it was perfectly understood that the extent to which Mrs. Tilton ever had gone—to which she unhappily had been brought in the way of accusation—was of that written slip which she had retracted the next day after she gave it, there comes out this direct imputation in Mrs. Woodhull's card; and this introduces a certain episode, so to speak, in the course of this direct narrative, brought in by the plaintiff, and made to serve the turn, in his mode of showing it, of inculpation of Mr. Beecher, as requiring, or at least desiring, or at least acquiescing in and approving, a course of action on the part of Mr. Tilton and Mr. Moulton and Mrs. Moulton of association with Mrs. Woodhull. dis-

reputable to them—that is, to Tilton, Moulton and his wife—distasteful to them, injuring their credit with the community, but submitted to by them as the willing aids and helps of Mr. Beecher in a course of concealment. True, Mr. Tilton professes that a zeal, an interest to keep his wife's fame from exposure, and the disorders of his family, whatever they might be, grave or less serious, from publicity and comment, furnished a motive also, on his part, for this odious association that he maintained for more than a year. He introduces it upon oath in this way: That he was sent for by Mrs. Woodhull, with whom he had no previous acquaintance, though he admits he had seen her once in some promiscuous company, and that she put into his hands that card, and he read it with astonishment and kept the best face he could, and tried to conceal any consciousness that it related to anybody that he was concerned in or that he knew anything about, and that thereupon Mrs. Woodhull informed him that it related to his wife and to Mr. Beecher.

Now, gentlemen, this was the 22d of May, 1871, and, as Mr. Tilton played the role of intimacy on his own showing, and of complete intimacy on the evidence that we have adduced, with this lady for certainly a period of twelve or fifteen months, and we think much longer, and at some time or other—to wit, in November, 1872—there came to be a full publication, however wild and exaggerated and extravagant, for the purpose of cover that was, that included not only the facts, the original scandal as between Mrs. Tilton and Mrs. Beecher, but of all the maneuvers between Mr. Moulton and Mr. Tilton, the interviews, the secret confidences to which Mr. Beecher, Mr. Tilton, and Mr. Moulton alone were parties, during the week in December and the early part of January, as finally all those things came out, Mr. Tilton, by one of those judicious falsifications that is to protect himself against a necessary implication, begins by telling you that in that week, in May, 1871, Mrs. Woodhull had in her knowledge, and detailed to him substantially, all that she published in December, 1872. Cunning Mr. Tilton! To get rid of a necessary imputation, that there had been a growth of the woman's knowledge during her association with him, he tells you that she had it at the beginning of that association. Ah! Mr. Tilton where did she get it thus early? Well, you may remember that I asked him if he thought Mr. Beecher had told her, and he did not think he had. If Mr. Moulton had told her? "Oh, no! it astounded me when she pointed her finger at that paragraph in her card." "Well, who do you think did tell her?" And then I called his attention, that it was not a question whether some of the notions of the scandal itself had transpired through the whispering galleries of his malicious heart, accusations and insinuations against Mr. Beecher and his wife during the preceding year, but that it carried knowledge of the interview between him and Mrs. Tilton, and Mr. Tilton and Mr. Beecher, about the charge, the confession, the retraction, the wife's action, and about the pistol, and the resumption of the retraction, and all the narrative of the private councils which had for their sole object absolute secrecy—"where did all that get into this woman's head in the month of May, 1871, at the time, as you say, when you had your first interview with her?" Well, it was a little troublesome, no doubt; no doubt of that. But he says, "Well, I suppose it must have come through Mrs. Morse." Whenever any trouble in the Tilton family cannot be imputed to anybody else, then poor Mrs. Morse has to take it. [Laughter.] Mrs. Morse, the mother-in-law! "Well, Mr. Tilton, did you feel at liberty to mention any of these matters that occurred between Mr. Beecher and yourself, or between Mr. Moulton and Mr. Beecher, during this period that you were trying to arrange to disarm his resentment and get his aid? Was it not your adjuration to Mr. Beecher that for your wife and children's sake there should not be a collateral whisper get out when he was fighting Mr. Bowen and Mr. Bowen fighting him, if they should have a fight again? Did you then feel at liberty to speak to anybody about any part of those confidential confidences?" Well, there was no choice between a direct pouring of it himself into the ears of Victoria Woodhull and his inventing some possible channel, however much he was cornered as to the baseness of the latter by my questions and his answers. "Well, I did speak to some persons about it, and I said some things." "And you felt at liberty, did you, to choose to whom you would speak, and to say as much as you pleased about those private counsels when you started with the proposition that secrecy for your wife's and family's sake lay at the bottom of the whole?" "Well, I did." "And so you told Mrs. Morse, did you?" "Yes; and out of her open mouth"—is his own expression—"came, I suppose, these stories of these confidential interviews that reached Victoria Woodhull." Now, nobody ever pretends that Mrs. Morse ever saw Victoria Woodhull, or had any interviews with her, and I said to him, "Well, when you told Mrs. Morse you knew her infirmity, didn't you?" "Yes," said he, "I did." And there the poor man was in the condition, for immediate purposes of falsehood, of representing himself to you as having during those months of February and March, 1871, made a confidant of Mrs. Morse, when one of his most important interviews is a warning to Mr. Beecher to be careful not to allow Mrs. Morse to take affront even at her letters not being answered, for fear she will, by some mode or other, in her inventions and imaginations, mingle herself with the matter. Well, it stood so until the next morning, and you had for half a day a possible chance, on Mr. Tilton's evidence, that what Mrs. Morse knew might become known to other people and might have reached Victoria Woodhull, but the puzzle was if Mrs. Morse

knew it, and was the channel by which Mrs. Woodhull knew it, and only by the open-mouthed circulation of Mrs. Morse's ideas, how happened it to have been a private and secret communication between those two ladies that astounded you when you read it? That is not easy to get over. But the enormity of his proposition that he had been disclosing hither and thither and to Mrs. Morse these interviews with Mr. Beecher, of his own, and of Mr. Moulton, was too much for his case, and the next morning he came in and said that he wished to correct his evidence, that he did n't have any communication of any kind with Mrs. Morse after the month of December, 1870, and so he could not have told her (Mrs. Morse) anything about what occurred between Mr. Beecher and Mr. Moulton, or between him (Tilton) and Beecher, or him (Tilton) and Moulton, or between him (Tilton) and his wife in respect to the retraction, &c. Now, there is an instance of the memory that comes and goes—comes at night and goes in the morning. There is an instance of the memory that the necessities of counsel fetch and carry, and yet it must be natural, as they said in "The School for Scandal" of *Miss Vermillion's* complexion. Now, let me show you how the testimony is about the relations of this gentleman with Mrs. Woodhull. Mr. Andrews comes and says:

At Mr. Tilton's desire I brought him into connection with Mrs. Woodhull in the early days of May, 1871.

And there was time enough during the running of those weeks of May before the 22d for Mr. Tilton to have told this story as he pleased; enough to sustain that card, and Mr. Tilton had not yet got any practical proofs of reinstitution; he had not collected any money from Mr. Bowen, and he had not got restored to *The Independent*, and he had nothing but the contribution of respectable gentlemen, in which Mr. Beecher certainly was not a participant, nor Mr. Beecher's friend, Mr. Claflin, in the constitution of *The Golden Age*, and he thought it was quite as well, while he was healing the wound ostensibly, and saving his family, nevertheless to find some open mouth of irresponsible imputation that should keep alive excitement and sustain solicitudes. There you have the first open proposition through the convenient agency of Woodhull & Claflin's card to make this charge, and for fear that that would not be evidence enough to show that they knew anything particular about it, I brought you Mr. Tilton's testimony, that at that time the woman knew all that she published in the Fall of 1872, and he was horror-struck to find it out. Now, I shut Mrs. Morse's ears by his testimony, if I have not shut her mouth. Now, besides this, we have evidence, entirely trustworthy, that, although Mr. Andrews has given us three weeks' start nearly of acquaintance, invited by Mr. Tilton, with Mrs. Moulton before the publication of this card, yet from our witnesses, Mrs. Palmer, Woodley and Gray, we take this intimacy between the Woodhull lady and Mr. Tilton into the late Winter or early Spring of 1871. Now, Mrs. Palmer says that Mrs. Woodhull read to her (Mrs. Palmer) that card of the 22d of May, 1871, before it was published.

Q. Can you recollect whether before she read the card to you in that way there was any conversation between Mr. Tilton and Mrs. Woodhull on the subject of the charge against Mr. Beecher and Mrs. Tilton? A. Yes, in the back office. Mrs. Woodhull was speaking of this charge against Mr. Beecher and Mrs. Tilton, and Mr. Tilton started up, his face flushed, and says, "Vickey, that is not true; my wife is as pure as snow, and no such relation ever existed between Mr. Beecher and my wife; it is false."

Q. Did he say anything about never having told her so? A. He said, "I have never told you so. You may have inferred it from what I have said."

Q. What was Mrs. Woodhull's reply to this? A. Mrs. Woodhull stepped up to him and laid both her hands on his shoulders, facing him, and said: "Theodore, Theodore, you know it is not in the nature of things that a man and woman should be thrown together as Mr. Beecher and Mrs. Tilton were and have nothing of that kind take place between them," and he soon left the room.

Now, when Mr. Tilton is recalled, all that he denies is the "Vicky." He says he never called this woman Vicky. Well, that doesn't deny a conversation. That may be an error of a narrator, or it may be true. You have the oath of one and of the other on the "Vicky." We have conceded "Victoria" and "Theodore" as the ordinary method of address between this gentleman and this lady, and the "Vicky" is all that he denies of that conversation.

Now, there is some effort to make out a sort of alibi, but that, I believe, is the next year—that is also in reference to some statements of Mrs. Palmer—or 1872. Now, gentlemen, Mrs. Woodhull's statement, when she does finally publish it, in 1872, gives two persons as sources of some large information to Mrs. Woodhull about this matter, but she gives her narrative, and bases it upon what Mr. Tilton told her. Her story, therefore, of it is that Mr. Tilton told her, and we will see what Mr. Tilton does in regard to the pretensions of Mrs. Woodhull's article, that Mrs. Paulina Wright Davis, a great intimate in Mr. Tilton's family, had poured into Mrs. Woodhull's ears considerable information, and Mrs. H. B. Stanton had had a long interview with her, and told her the same, or the rest. Mr. Tilton furnishes this refutation of both of those stories of Mrs. Woodhull's information in the publication which he makes as a part of his "True Story." Fortunately this part was preserved, and was produced from the original in Mr. Tilton's own hand. It is the tail-piece of the "True Story," of which we furnished the introduction. He publishes this refutation of Mrs. Paulina Wright Davis's share in it:

Mrs. Paulina Wright Davis was given as a chief witness in Mrs. Woodhull's scandalous Beecher-Tilton's libel, but in a note just received from her in Europe, Mrs. Davis

thus utterly repudiates, in gross and in detail, the statements concerning her relation to the case, and gives the most damaging direct blow to the whole libel that has yet been rendered.

And then quoted from Mrs. Davis:

In relation to the Tilton agt. Beecher affair, I have only this to say: I was never on any terms of intimacy with the families of either party. I never visited the Tiltons but once in my life, and that was ten years ago in company with Mr. and Mrs. Johnson. A year or two ago I called at Mr. Tilton's house for some books which I had lent to T. I then saw Mr. Tilton for ten or fifteen minutes. I have met Mrs. Tilton two or three times at the houses of mutual friends, but at no time has there been the slightest approach to confidential conversation between us, nor have I insinuated that there had been. If Mrs. T. has ever in my presence spoken of Mr. Beecher it has been in terms of respect as a man of honor and her pastor. I did believe that Mrs. Woodhull was going to do a great work for women. I am grieved that she has failed in what she gave promise of doing.

And Mrs. H. B. Stanton, in a letter to a friend in New-York, which Mr. Tilton produces as a voucher that Mrs. H. B. Stanton didn't communicate anything to Mrs. Woodhull, writes:

NOVEMBER 5, 1872.

I have had a great time visiting friends here, but my pleasure has been fearfully marred by this Woodhull paper. I thought it dead. "False in one point, false in all" is a good old Latin motto.

And certainly no greater authority for the common law in this State has lived for a century than Mrs. H. B. Stanton's father, Daniel Cady, a great lawyer.

The filthy language she puts into my mouth is utterly false. I never spoke to that woman but once on the subject—about five minutes—fortunately in the presence of one witness, a gentleman, and simply replied in general terms to a question that I had heard about this rumor.

Say this to T. T., and tell him I shall stand by him in the hour of need.

Now, Mr. Andrews tells you that he was the gentleman that was present when Mrs. H. B. Stanton had her interview with Mrs. Woodhull, and nobody has undertaken to produce that interview as covering any greater length and breadth of communication than is given in this letter of Mrs. H. B. Stanton's. Now, I produce this statement of Pauline Wright Davis, and this letter of Mrs. H. B. Stanton, not because they are in themselves evidence, but because they are made evidence by Mr. Tilton's producing them as a correct and truthful statement of the connection of these ladies with any communication to Mrs. Woodhull, falsifying the proposition that either of them made any such communication, and putting it as a part of his narrative, under his own hand, that precludes the idea that either of them had. It is evidence against him, and it is true, for the letters speak for themselves, and the ladies are not impeached in character or in any way. Well, now you see, having shut Mrs. Morse's ears, I have now shut Mrs. H. B. Stanton's and Mrs. Paulina Davis's mouths, and what mouth and ear was there that could come together for the communication of this scandal but Mrs. Tilton to Mrs. Woodhull. She so published it in her paper that he told her, and she put it on his telling, although she had, as she said, these previous communications from these ladies, and more or less of them. But I don't put much upon that.

The Court here adjourned until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Judge Neilson—Mr. Evarts, Mr. Beach has a case in another court, and requests that you proceed without him.

Mr. Evarts—Yes, your Honor. Mr. Beach mentioned it to me.

You will perceive, gentlemen, very readily, that any movements or disposition either on the part of Mr. Beecher, or on the part of Mr. Tilton, or on the part of Mr. Moulton, as the friend of either, to prevent publicity of scandal, carries no imputation or recognition of fault of any kind in the just consideration of candid minds. Who does not wish to avoid scandal? If there ever was a vindication both of the rectitude of such a disposition, and of the solicitudes that rightly may be felt and of the sacrifices that rightly should be made to prevent scandal and agitation concerning reputations, and controversies concerning neighborhoods and families and churches and sects, denominations, divisions of society, religious opinions and religious connections, the experience of the enormous mischiefs which, by persistently maligned influences, have prevented the necessary and proper desire and duty of every honest man connected with this matter, to prevent scandal—this history, I say, will exhibit in the strongest light the propriety of such dispositions and of all such efforts. But the plaintiff has thought it necessary for him, in the failure of all direct proof of any acts tending to support his charge, and in the great risks of any credulity accepting the stories of confessional conversations, and the clear knowledge that a correct reading, an intelligent and honest interpretation of the writings of Mr. Beecher, so far from giving countenance to the idea of his guilt, are the strongest evidence, as I shall have the honor to impress upon you before I close my address, of his innocence—has tried even the more remote method of affixing to certain lines of conduct an argumentative or inferential view of guilt as lying at the bottom of those lines of conduct. And the fact of this intimacy of Mr. Tilton with Mrs. Woodhull, however successful they might have hoped to be in limiting the evidence of it to such a view and estimate of it as might suit Mr. Tilton's purposes—that fact existing and the fact of this warning card, in May, 1871, and of the final promulgation of the scandal, and all the mischiefs that followed therefrom in the end of 1872, being

facts that could not be displaced, an adventurous scheme worthy of the superficial ingenuity of this plaintiff, that presents a very good view of things until the cover is lifted and the feebleness and folly of the contrivance are exposed, led to the affirmative introduction of the theory on his part that all this association and operation with Mrs. Woodhull, was to be set down as a continuous and impressive condition of guilt, concealed on the part of Mr. Beecher. Now, as I have said, the suppression of scandal may worthily be imputed as a motive to any and all of these parties; and Mr. Tilton has taken pains to give the most direct and the most conclusive evidence that that was his desire and his purpose.

MRS. WOODHULL'S RELATIONS WITH THE PRINCIPALS.

Now, we come to take up the challenge thrown down to us, that this intimacy of Mr. Tilton, and Mr. Moulton, and Mrs. Moulton with this lady, Mrs. Woodhull, is a concession to their purpose of aiding in protecting from public gaze the faults, errors, crimes, guilt, of Mr. Beecher. We then probe that intimacy. We lay it before you in its true dimensions, forcing, step by step, this plaintiff from every cover of falsehood with which he seeks to disguise and to limit it, and exhibit it to you as an enthusiasm of his for Mrs. Woodhull's principles, and an infatuation with the charms of her society and her person. We show you in various ways how completely enraptured he was with her; his life of her, his letters for her to public men, his presiding at her meetings, his personal familiarities, or habitual association with her, and all that makes up the intimate association of a man with a woman of whose charms of mind and of person he feels a strong impression. Now, with regard to this lady, never suitably to be brought into this inquiry, except as it was forced upon her attention by the course of the plaintiff, she remained a vailed priestess to our mortal gaze until the very last days of the trial; and I am sure, whether she be most a *Pythoness*, or a *Phryne*, a *Sappho*, or an *Aspasia*, through the long course of distant allusion to her that marks the course of this testimony, it would be very difficult for any one to determine; but yet behind all there seems to be a general impression that there is no danger of her being misconstrued or misunderstood, that with her great and public repute she is one of those persons whose character evinces itself, and needs not to be explained, or commented upon. All I can say of any personal observation of her is to be drawn from the few moments in which, for the first time, in the court-room, I set eyes upon her; and I can only say that if the delicacy of trust and of honor which she exhibited, and for which she should have fair credit, in disclosing to the public the correspondence which had only the implied obligation of privacy because it occurred between a gentleman and a lady—that if the least approach to that sense of honor and of duty had characterized the Sir Philip Sidney of this cause, there would have been no occasion for this trial, no opportunity for these long perversions of truth, and these tangles of misrepresentation and falsehood. Now, for some reason or other Mr. Tilton found it necessary to present his relations with this lady upon the narrowest possible footing of personal appreciation, regard, and familiarity; as if his character somehow was to lose by every touch or trait in this intercourse. I do not see, from anything disclosed on this trial, how Mrs. Woodhull has ever deserved any such treatment at his hands, or at the hands of Mr. Moulton, or at the hands of Mrs. Moulton. I find no evidence that she has ever courted their favor, and I see abundant evidence that she had, in large measure, that favor accorded to her by all three of these persons. Now, we have shown you that this intimacy was of the closest character, in the sense of habitual enjoyment of one another's society, the great frequency of Mr. Tilton's resort to the office, and the lunches of Mrs. Woodhull day by day; and the only objection to the truthfulness and accuracy of our evidence in that behalf, that I have noticed, is the production of a witness who proves that Mr. Woodley, the colored waiter and clerk, or office lad, was mistaken in thinking that they went up stairs to lunch at Delmonico's. And Mr. Longhi, the superintendent of that house of Delmonico's now for years and years, knowing everybody in the world, and well known as a man of the highest character—he comes to you to prove the fact that the second floor, now used as a restaurant, was not then used, but he proves the fact that you had to ascend a flight of steps to get to the floor that was used, and that there was near by, within 20 feet of it, a descent into another restaurant beneath; and Mr. Longhi, knowing Mr. Tilton, knowing Mrs. Woodhull, Miss Claflin and Col. Blood, his near neighbors, having habitually resorted to his café, was not asked at all to say that Mr. Tilton and Mrs. Woodhull and Miss Claflin and Col. Blood did not lunch at his establishment day by day, as Woodley had stated it. You learn to discover how feeble and foolish are these little touches of apparent contradiction, to bring into doubt accuracy about a matter in which accuracy is of the least account, and confirmation of the main substance of the story, by the omission to contradict that. So, too, there was not any reason why Mr. Tilton should deny that he went in bathing with Mrs. Woodhull, except that he did not wish to have the fact appear, and he thought there could be no mode of proving it if he denied it; and that step simply brings him face to face with Mr. Gallagher, the man who drove them to Coney Island as a resort for bathing, took their watches from them, missed them from his carriage for the time that would be taken for a bath, and received them, if not dripping from the sea, at least to resume possession of their watches and ride home. Why this?

What is its value? First, as showing the particular falsehood itself; second, as showing the falsification in purpose of the relations between Mr. Tilton and this lady, as not being personal and of his own choice, and with his own satisfaction; and then to put off upon Mr. Beecher the minimum of cessation possible on Mr. Tilton's part as ascribable to Mr. Beecher. Then, when we come to the house: "Were you about the house up-stairs? A. Never, except once. Mrs. Woodhull took me up to show me how empty it was when it had been stripped of all its furniture, and I went over the house in that way, and that is the only time." Well, that ends it, if nobody can contradict him. He says that his familiarities were not of a personal character; that he was up-stairs only by chance, to have the nakedness of the house exhibited to him. But the witnesses come—their witnesses and our witnesses. Mr. Andrews repeatedly saw him up-stairs, repeatedly saw him in the rooms of resort up-stairs, the rooms of Mrs. Woodhull and of Col. Blood—a sort of library bedroom, as I understand it. Cook speaks of it over and over again, gives instances of its being the habit of Mr. Tilton to be familiarly up-stairs, openly up-stairs, calling to him, "Tom, wait for me till I come down;" "Tom, are you going? wait for me till I come down," and every degree of familiarity, of what we call "having the run" of a house, thus brought home to Mr. Tilton. Then Mr. Cowley comes, and describes an evening there in one of these *salons* that Mrs. Woodhull held, in which, greater than Madame Roland, she had guests greater than the philosophers of France; and he gives you a conversation between the three, himself, Mr. Tilton, and Mrs. Woodhull, in which all this scandal about Mr. Beecher is talked about, and Mrs. Tilton is talked about, and Mr. Beecher's mistresses are talked about, and Mrs. Tilton's relations are talked about, and the necessity and purpose of bringing Mr. Beecher to the maintenance of free love doctrines are talked about; and although Mr. Cowley, being rather a hard-headed man, a practicing lawyer of twenty years' standing, who obviously knew very well what he was about, undertook to represent to Mrs. Woodhull that if she would put her logic to this or that statement, she would see that, although it might be possible that a leading clergyman should have a liaison with one woman in the congregation, it would be very difficult to keep up such relations with two, let alone a dozen. But we have the narrative of this intimacy, and the character of it, and that touching little dialogue where Mrs. Woodhull with proper delicacy dropped her voice so that Mr Tilton should not hear it, and which our learned friends insisted upon bringing out on the cross-examination, because the rules of evidence did not allow us to prove it, and they thought that our feint to get it was only a feint, and they might discover something; they brought out this interesting little colloquy that Mrs. Woodhull told Mr. Cowley that Mr. Tilton was her very ideal of a man, and Mr. Cowley ventured to suggest that apparently Mr. Tilton reciprocated that sentiment toward her as a woman, and she replied with emphasis, "Indeed he does!" Now, there isn't any impropriety in that. Nothing is more beautiful than that the affections should be cultivated, even under glass, so to speak, and forced a little. But let us have a statement of the truth about it; don't let us have denial of all these agreeable indulgences, and put upon us the necessity of proving them. And then that letter that is finally unearthed, which Mr. Tilton writes to Mr. Davis, the husband, isn't he, of Paulina ——

Mr. Shearman—Andrew Jackson Davis.

Mr. Evarts—Oh, Andrew Jackson Davis, the very head, I believe, of the spiritualists, more spiritual than a spiritualist, in which he commends to his attention his, Tilton's, "Life of Victoria Woodhull," and desires his criticism upon it, Tilton himself, I think, expressing a favorable opinion about it:

> I want you and your wife to read carefully my narrative of the life and spiritual experiences of Mrs. Woodhull, and then to give me your exact impression of the tale. Some people refuse to believe what is so marvelous, but I understated rather than overstated the facts, which were originally communicated to me by—[I suppose it should be "her authority;" it is printed "my authority"]. Tell Mrs. Davis to write more for *The Golden Age*. and do the same yourself. Fraternally yours,
>
> THEODORE TILTON.

Now, see how this intimacy had progressed. Mrs. Moulton tells you that Mrs. Woodhull was at least a dozen times at Mrs. Moulton's house during this period of intimacy. Her narratives of her own visits to Mrs. Woodhull's I shall make the subject of particular remark. But all this is the true exposition of the relations of this plaintiff and of Mr. Moulton and of Mrs. Moulton, to this lady. If I be right in the propositions that the first knowledge must have come to Mrs. Woodhull from Mr. Tilton, of all that part of her publication, all that part of her knowledge which she possessed in May as to what passed in the end of December in the private rooms of the Moultons, and of Mr. Beecher's house—if I be right in that you will see how the stream of the same purpose and influence ran on in Mrs. Tilton's name and interest with this lady, that the somewhat irresponsible publications of her wild rhapsodical sheet would answer the purpose of promoting the knowledge of the scandal without carrying trace or responsibility to Mr. Tilton, and in a form and guise that would enable him to say such wild, extravagant slanders—I don't remember how opprobrious his terms were, but he certainly condemned them in the severest manner—how all that could be compatible on his part with the publication that he had desired to promote.

Now, gentlemen, this leads me to consider what is called the whole policy of silence; and before taking up

that general head, of which this Woodhull intimacy forms a part—suppression—let me call your attention to the entire absence, on the part of Mr. Tilton, when recalled to the stand, of any contradiction of any importance, of either Woodley or Gray, or Lucy Giles, or Tom Cook, or Cowley. Not one word of Cowley's is contradicted, nor of Mrs. Palmer, except in the very slight instance to which I have called your attention. It must then be conceded that, in the first place, we have shown repeated falsehoods on his part in his narrative; second, systematic and purposed falsehood in the character that he has sought to impose in your understandings, and in your acceptance of that intimacy. The degree and form of this intimacy, as imputed by our witnesses, and not denied by Mr. Tilton when he returned, I need but lightly touch upon. They are the familiarities at the office, the familiarities at the house, the habitual presence in the upper story, the enjoyment of refreshments late at night in the upper rooms of the house in regard to which Mr. Tilton says that he never took refreshments in those upper rooms. I need not insist further. The whole matter comes to be legitimate in this case only as meeting a proposition of the plaintiff's, introduced in his testimony, that his relations with Mrs. Woodhull were of self-sacrifice, and in respect to character, convenience, and feeling, in the interests of Beecher, and perhaps also of his wife.

THE POLICY OF SILENCE CONSIDERED.

Now, the "policy of silence," as it is called, is of no value in this case unless to carry an inference or argument that—because Mr. Beecher knew of, and concurred in, aided in, or submitted to the policy of silence—therefore it is an evidence of guilt. Why, gentlemen, the whole line of impression of such an argument fails when we have disclosed to you the misery and misfortune of this family, the disturbance of the affections between husband and wife, and the conceded self-reproach of Mr. Beecher in regard to his participation in those results as they were imputed to him, as they were in his mind, made the subjects of impression from evidence to which he trusted. But you will see, and have seen, that all this policy of silence was not of Mr. Beecher's choosing. Indeed, there is no disguise on the part of this plaintiff, nor on the part of his actor and friend, Mr. Moulton, in the presentation to you directly and affirmatively that it was his policy and his effort; and the anxiety was that Mr. Beecher should not, by the frankness and boldness of his nature, inadvertently, in his defiance in any controversy that Bowen might raise against him, lead to publicity; for nobody had seen on the part of Mr. Beecher, on their own testimony, any desire to keep anything quiet. It was his concurrence in the right and duty on his part to preclude scandal in its general mischiefs, in its injury to himself and his relations to society, and especially to the fame of the woman. And the very point of the thing with Mr. Tilton was, "Why, here I am ruined in public repute. These scandals about my profligacy, about my vicious indulgences, have blasted my character, and anything in the nature of evidence of discord between Mrs. Tilton and myself—of a break—of a flight on her part—a separation from me, or of all the shades and degrees as a basis of imputations of cruelty, of disorder or disaster in my domestic affairs, puts the final and destructive plunge into irrecoverable despair of my personal, my family fortunes." And, under that influence, the policy of silence is accepted and submitted to. And now, observe how, if this had been an honest policy, if there had been anything in it on the part of this plaintiff and his friend Mr. Moulton except a mode of holding both ends of this matter in their hands and using silence or disclosure at their pleasure, as they found it useful in their purposes, how that policy would have been absolutely and completely successful. Here were three persons possessed of knowledge of what they desired to be kept secret, and if there was a necessity of bringing Mr. Moulton in as a fourth, why, then his fidelity could be trusted, and all the machinery of silence, all the machinery of suppression which afterward came into such active operation, had no place whatever. These elaborate schemes and contrivances came into play to keep up that dishonest shifting from silence to promulgation; and that was the policy and the scheme that actuated the movements of Tilton and Moulton all through from that time forward. "See to it that you, Mr. Beecher, have no confidences and take no advice but ours; see to it that you run no risks of promulgation, by not imparting these disturbed relations to the confidence even of your wife. We then shall be able to manage silence on our part." And then, see what a ponderous system of suppressions, of disclosures, came to be the occasions of solicitude and of conference when, in fact and in truth, these two men were laughing at Mr. Beecher all the while, and were keeping alive or reviving rumors and suspicions whenever the natural course of things would have buried and extinguished them.

Now, just see how Mr. Beecher acted when this whole matter was in his hands, provided you believe that there is one word of truth in the imputed relations of guilt between Mr. Beecher and Mrs. Tilton. Now, you have a resort of the wife in flight from an exasperated husband, knowing of her guilt, to Mr. Beecher, and Mr. Beecher's introduction of the lady to the keen search of his wife's scrutiny, and a ready and prompt resort to Mr. Bell, and a proposal for his deliberation and conclusion whether all the deaconesses and all the matrons of Plymouth Church should not be made confidants of this difficulty. Now, you don't see any disposition of silence on the part of Mr. Beecher. And yet, to say that he, conscious of the guilt of himself and of the woman,

conscious of the knowledge of the husband of the guilt of himself and of the woman, understanding the nature of Theodore Tilton, who would be exasperated in the last degree by this final blow, this final disgrace, that this woman who adored him, and whom he flattered himself he could turn as wax to his purposes in any shape he chose, had actually found him insupportable, had actually had to choose between the sacrifice of home and of respectability, in one form, or the sacrifice of honor and of character and the submission to disgrace in the other, by remaining at that home; then to suppose that Mr. Beecher was to let in, first, the wicked scope of the unmeasured malice of Mr. Tilton, which he had been aware of in his whisperings for years, and then the examinations of the wife and of the matrons into this woman, thus putting under the microscopic gaze of these intelligent and yet astonished companions and friends of hers, the fact of there being no ideal home at all, no worship and protection of the wife on the part of the husband, but destruction and injury, and then the inquiries, "When did it begin?" "How did it arise?" "How did it widen itself?" "What has passed between you and your husband?" "What has been your conduct?" "Why is it that you have preserved the professions of this idolatry for Mr. Tilton, and this worship of the hearthstone at which he sat?" All that you are to believe that a clergyman invited, opened. Ah! no wonder our learned friends tried to keep this evidence out when we wanted to get it in. But only Divine Providence can understand why they introduced it when they had succeeded in shutting our mouths. But there it is, and it strikes right down into the center of the case, that Mr. Beecher had the consciousness that made silence his policy, suppression and its interest his policy; and when we find him, alone, he is ready to scatter it to the winds, and when we find *them* dealing with the same suggestion we find them urging him to save Tilton and his affairs, and save the wife from this exposure of the broken conditions of the affections of that family and of this false charge against Mr. Beecher.

Now we go on with the little items of importance. And first, Bessie Turner. Well, what is Bessie Turner, and what turn does she serve in this matter of silence? Why, Mr. Moulton says—for I believe he is the only one that speaks of it on the part of the plaintiff—Mr. Tilton has nothing to say about it—Mr. Moulton says that one day he spoke to Mr. Beecher about this girl being a person who possessed some information, and was a dangerous person to have about; that she was what Mr. Tilton called a prattler, and knew of the facts as between Mr. Beecher and Mrs. Tilton. [Reading.]

And I said to Mr. Beecher that I thought she was better out of the way than here, and Mr. Beecher said he thought so too, and Mrs. Tilton then told Mr. Tilton—and I told Mr. Beecher that Mr. Tilton could not afford to pay her expenses, and he said to me, "Well, I will pay the expenses, or I will do anything that is necessary to keep this story down," and he approved.

Now, gentlemen, it depends altogether upon what the interests about Bessie Turner's prattling were. Mr. Beecher might very well have felt: "Well, Bessie Turner has told me these stories about Mr. Tilton, and if the restoration of Mr. Tilton is to be expected, if there is not anything in those stories, as you have assured me, and no truth in them, why, nevertheless the girl, for aught I know, may be telling them over again, and I see that it is important for Mr. Tilton and the plans of his restoration that she should be properly disposed of, and receive a good education." Now, there is no imputation upon Mr. Beecher in that. The question is only of his generosity about it. But, mark the way that Mr. Moulton puts it to him—"I think she ought to be sent away, and I don't think Mr. Tilton can afford to do it, and you ought to assist him because he can't afford it." Well, if they had wanted her sent away on Mr. Beecher's account, why should Mr. Tilton trouble himself to pay that expense? Why should it be put in this circuitous way by Mr. Moulton to Mr. Beecher, that "you ought to help Mr. Tilton pay a debt, bear a burden that he needs on his own account, and which he cannot well pay in his present condition!" If it was that "she is to be sent away on your account," why shouldn't he pay the bill? So you see that wherever you take these people there is a hold unconsciously upon them that while they contrive, and shape, or modulate a story, they leave, nevertheless, some sign of truth to stick up and give character to the whole figment. But, Mr. Beecher says, so far from his knowing anything about sending Bessie Turner away before she went, or being consulted as to any policy in sending her away, all he knows about it is, that when the first term bills came in, then Mr. Moulton says to him, "Why, here are these bills of Bessie Turner. I am making a good many payments for Mr. Tilton; I think you ought to help here; you ought to bear this"—that is, bear that particular bill. Mr. Beecher says, "Very well," and furnishes the money. But, as has been exposed to you, the decisive and conclusive disposition of this matter of Bessie Turner is shown in the guarantees against her story that were taken by Mr. Tilton before she went away, and they were guarantees against the stories about his, Mr. Tilton's irregularities with her, and nothing else. And of these two letters, in respect of which there is evidence when Mr. Tilton is recalled, he only denies dictating the short letter. The short letter is: "The story that Mr. Tilton once lifted me from my bed and carried me screaming to his own, and attempted to violate my person, is a wicked lie." He denies dictating the short letter. But the long letter, which is the one that he did dictate, as Bessie Turner testifies, he does not deny having dictated. That letter confesses the facts of his approaches to her, but gives

them an honorable character, and throws off upon poor Mrs. Morse the responsibility for having made Bessie think that there was any wrong intention about it.

Well, then they say there was suppression shown in the disposition that Mr. Beecher was induced to make of a letter that Mrs. Morse wrote to him in the end of January, 1871. Mr. Beecher was induced on Mr. Tilton's representations to write what seems to me a very sensible letter on his part, in any view of the case. [Reading.]

Mrs. JUDGE MORSE—*My Dear Madam:* I should be very sorry to have you think I have no interest in your troubles. My course toward you hitherto should satisfy you that I have sympathized in your distress. But Mrs. Beecher and I, after full consideration, are of one mind, that under present circumstances the greatest kindness to you, and to all, will be, in so far as you are concerned, to leave to time the rectification of all the wrongs, whether they prove real or imaginary.

This, you may remember, is the letter in which Mr. Moulton called Mr. Tilton to account before Mr. Beecher as to whether he had told twelve persons of this trouble that had taken the life out of Mrs. Tilton. There is no other description of the matter than that, and certainly there was trouble enough, and it was crushing trouble, and certainly had taken the life out of her character, her force and control of her conduct. Well, he said, he had n't told twelve; he had told quite a number of people more or less, which simply means that he had whispered insinuations against Mr. Beecher in his relations of improper solicitations, or of interference with the family, without much care for what he had done. But the point was, that he denied that this was true, and that Mrs. Morse could not be credited because it was not true, that he hadn't money enough to pay for his breakfast, and appealed to Mr. Moulton that he had a balance at bank. Well, Mrs. Tilton's view was that she did not have money enough to pay for breakfasts, not that he did not have money in bank. But that is the way these people argue. They say, "Oh, no; there can't be any truth in that, because that is wholly untrue that I had not any money." This letter, you will remember, of Mrs. Morse was brought by Mr. Beecher to Mr. Moulton and Mr. Tilton.

WHERE THE POLICY OF SILENCE WAS DISREGARDED.

Now, there comes a letter from Mr. Perkins to Mr. Beecher, in which he tells his uncle:

Mr. Tilton has been justifying or excusing his recent intrigues with women by alleging that you have been detected in the like adulteries, the same having been hushed up out of consideration for the parties. And, as he says, "you will do what you please; I suppose you think such talk dies out because unanswered." And then he puts in a postscript: "I cannot say Mr. Tilton said 'adulteries.' He was referring to his late intrigues with Mrs. —— and others, however he may have described them. What I am informed of is the excuse for implicating you in similar affairs."

Well, now, that is shown to Mr. Moulton, and to Mr. Tilton, and Mr. Tilton suggested this answer for Mr. Beecher to send to his nephew:

MY DEAR FRIEND: Whatever Mr. Tilton formerly said against me, and I know the substance of it, he has withdrawn, and frankly confessed that he had been misled by the statements of one who, when confronted, backed down from his charges.

Now, that is Mr. Tilton's meeting of Mr. Frederick Perkins's suggestion that the stories that Mr. Tilton set forward as faults of Mr. Beecher to cover his own, Tilton's, admitted profligacy. But I find I am mistaken, gentlemen. Mr. Tilton's proposed card is this:

An enemy of mine, as I now learn, poisoned the mind of Theodore Tilton by telling him stories concerning me. T. T. being angered against me because I had quoted some stories against him which I had heard from the same party, retaliated. Theodore and I, through a mutual friend, were brought together and found, upon mutual explanations, that both were the victims of the same slanderer.

It is a little more full and explicit in this regard as Mr. Tilton proposes. Now, look at that, gentlemen. Here in this very month of February, when Mr. Beecher's nephew, a reputable gentleman, hears of these insinuations—not a great observance of "the policy of silence" on Mr. Tilton's part—and communicates them to his uncle, Mr. Beecher brings it to Mr. Tilton's notice, and Mr. Tilton says: "Send him as an answer that these adulteries are the charges of Bowen—these adulteries that have been talked of are the charges of Bowen; send him that answer." Mr. Beecher then having, so far as Mr. Tilton is concerned, that form of answer, does proceed to write what I consider a very proper note to Mr. Perkins:

MY DEAR FRED: Whatever Mr. Tilton formerly said against me—and I know the substance of it—he has withdrawn and frankly confessed that he had been misled by the statements of one who, when confronted, backed down from his charges.

That is quite within the permission and authority of Mr. Tilton's card.

In some sense I am in part to blame for his indignation, for I lent a credulous ear to reports about him which I have reason to believe were exaggerated or wholly false. After a full conference and explanation there remains between us no misunderstanding, but mutual good-will and reconciliation have taken the place of exasperation. Of course I shall not chase after rumors that must soon run themselves out of breath if left alone. If my friends will put their foot silently on any coal or hot embers and crush them out, without talking, the miserable lies will be as dead in New-York in a little time as they are in Brooklyn. [This was only in February, 1871.] But I do not any the less thank you for your affectionate solicitude and for your loyalty to my good name. I should have replied earlier, but your letter came when I was out of town. I had to go out again immediately. If the papers do not meddle, this slander will fall still-born—dead as Julius Cæsar. If a sensation should be got up, of course there are enough little enemies to fan the matter and create annoyance, though no final damage.

Now, you see, gentlemen, how, in this very month of

February, Mr. Tilton was making these imputations against Mr. Beecher, not observing the policy of silence, and when they are brought to Mr. Beecher's ear, then Mr. Tilton says, "Oh! well, that can easily be answered; answer it so." Mr. Beecher does answer it in a truthful manner—in a suitable manner, and takes it for granted that Mr. Tilton has not been circulating any such reports, but that these are only echoes of some older rumors that had been running before there had been an explanation. Well, then, you see, when Mrs. Woodhull's card in May, let alone, had not produced any disturbance, Mr. Tilton in the Fall, in November, when he finds that things are quiet, and that Mrs. Woodhull is not moving any further, undertakes to publish, for the sake of the poetry, he says, with no motive whatever, but the same that actuates an author in publishing any production, this "Sir Marmaduke's Musings," containing a phrase that refers to "a woman's breast, who proved, alas! she too, false like the rest," a vague poetical insinuation, equally compatible with either view of the case, either that this woman to whom he referred (and he admits it was his wife) had not preserved entire fealty of undivided affection, but had become entangled in her relations; and he therefore pronounced her false, too, in the absolute devotion that he had expected—equally compatible with that as with the other view of the case, of complete violation of the obligations of a wife. Well, now, he has the effrontery to tell you that when he wrote that poem he didn't think anybody supposed there was in it any reference to his wife. It struck him with astonishment when Mr. Beecher said, "What do you do such things as that for?" and when his wife said, "What do you do such things as that for?" He was astonished that anybody could imagine that there could be the least reference to his wife; and yet he signed the poem "Theodore Tilton," you know; and it contained a biographical sketch of his downfall in other particulars which nobody could fail to recognize.

Then he comes along and writes to "a complaining friend." That is at the end of 1872. Then comes what he says he had no responsibility for, but concerning which we have given you considerable evidence, that is the publication of the Woodhull scandal in all its flagrancy, in the Fall of 1872. Now, gentlemen, I think the evidence shows this as the true theory of Mr. Tilton's relations to that scandal. I think that in that Spring of 1872, there was within the meditations of Mr. Moulton and Mr. Tilton a very effective blow of some kind to the proper, natural solicitudes of all that were concerned to prevent public comment upon the relations of Mr. Tilton and his wife and the situation of that family, and a purpose of resorting then to a full publication by Mrs. Woodhull; that the slips were then brought into existence in that Winter and Spring, and that they were shown, as the witnesses have testified; and if the enginery of the fortunate visit to Mr. Wilkeson had not produced the effect on Mr. Bowen of procuring the payment of the $7,000—if that *slip* of his, the threatened publication of the Bowen letter, had not brought about the results aimed at, then these *slips* that were in existence of Mrs. Woodhull's article would have been resorted to as a more powerful engine to accomplish the same result; and then you would see the operation of cause toward effect, of motive and of object. Now, we have given you abundant evidence from witnesses whose truth cannot be questioned, that these slips were in existence; but this threatened publication of the Bowen letter in *The Golden Age* slip, answered the purpose and secured the money; and this engine could be saved for some future use. But then there came into play two facts—one, that the Woodhull publication stopped in that Spring and did not issue a single paper until the end of October, when the one that contained this paper of Mr. Tilton's was published; and second, the fact that Mr. Tilton broke his friendship with Mrs. Woodhull. Why? There was the same need of keeping it up for the sake of suppression, if you believe that he had been working for the suppression of this business; but he broke it when Mrs. Woodhull placed before him the slips of another article called the "Tit for Tat" article, and showed that if Mr. Tilton could expect her aid in the movements of publications that might suit his interests, about his, Mr. Tilton's scandal when he wanted it promulgated, she might also perhaps use the the same faculty and independence in promulgating some scandals that he did *not* want to have published; and as he said to you, this "Tit for Tat" article—I am sure I know nothing about it except from his testimony, and I would not wish to have Mrs. Woodhull harshly judged upon Mr. Tilton's testimony—this article, he tells you, touched the reputation of some dozen very respectable ladies, prominent in the public life of these organizations, whatever they may be; and then he broke with her; and then, alas for ambitions, Mr. Tilton's devotion to Mrs. Woodhull, thus unhappily snapped asunder, led to the withdrawal of his political support to Mrs. Woodhull's expectations of the Presidency of the United States. [Laughter.] And there occurred one of those great movements in the public affairs of the country which wise statesmen deliberate and speculate about, but in respect to which they never get at the real secret history; for the difference between Mr. Tilton's support of Victoria Woodhull and her loss of that support, who can estimate in the future destinies of this country? [Laughter.] It was this little "Tit for Tat" article, a wholly private matter, that produced these immense public consequences, not only the withdrawal from her, but his adhesion to the fortunes of the great Democratic party, with which he had not before been in unison; and we should have, to be sure, a stronger argument for these hypothetical influences upon our history, if Mr.

Greeley had been any more fortunate with his support than Mrs. Woodhull was without it; but, nevertheless, who can tell what the union might have produced in the way of a settlement of this final struggle for the priority of the sexes? For who, in this country, after having had the experience of one lady for a President, would ever have been impolite or rash enough to desire a repetition of the experiments which have been constant failures on the part of the men who have been President? [Laughter.] But it was all broken up, you see, this relation—and then this operation of Mrs. Woodhull comes in the most inopportune manner and at a time when it serves no useful purpose of any kind, in influencing payments of money or the attainment of any ultimate purposes; but this lady no doubt had a will of her own, and what had been prepared for Mr. Tilton's use in the Spring of 1872, while she and he were friends, came in after the election, and her disappointment at that election, as something in the nature of retaliation for his desertion. Now, the actual importance of all that is the introduction of this publicity and the course of things which followed, in determining whether or no they should do this, that, or the other thing. Mr. Beecher never had any doubts or difficulties about this matter. He never had any occasion to think it worth his while to make contradictions of this extravagant and wild publication. But then there came to be a great anxiety in the camp of Moulton and his firm, as to what should be done about it, for Mr. Moulton was represented as being an actor in one of the scenes portrayed in this lady's publication, and it was a natural imputation that it must have proceeded from him or she could not have had the knowledge of it. Then there was a statement direct that Mr. Moulton had furnished information out of which the staple of the story was made, and it was natural enough to ask, "Well, why doesn't Tilton say something about it?" but as nobody had accused Mr. Beecher of being the source of any of the information of this lady, why, there didn't seem to be any actual call upon him. The consequence was that, it is said, Mr. Moulton's partner, Mr. Franklin Woodruff, and his other partners perhaps, and the Produce Exchange people, seemed to think that Mr. Moulton ought to say in some definite manner that there was some truth in this, or that it was all false and he had furnished no support for it in any form; and you have heard Mr. Moulton's statement of how the Produce Exchange people, its prominent men, its most sagacious men, its most respectable men—I don't mean all of them, but these gentlemen seem to me to be properly included in that description; there are plenty at the Produce Exchange of the same character, no doubt—but these gentlemen all came about Mr. Moulton, and Mr. Moulton has told you how, sometimes with solemnity and sometimes with indignation, and sometimes with an oath (I suppose according to the temperament of the people that were talking with him) he put his foot on the scandal, said there was nothing in it, and objurgated anybody that could demand of a man of Mr. Beecher's life and character any refutation of any such story. A familiar form with him seems to have been, that if it was true the publication was infamous, and if it was false it was diabolical. Well, we have called a dozen people to tell you what he did say, and they put it in a much more explicit and definite form. He tells you that he was lying all that time, and lying for Beecher. Well, gentlemen, a man who lies for Beecher will lie for himself. [Laughter.] You may rely on that. I think so. It is said upon the best authority, that "peradventure for a good man one will even dare to die," but it is not said that he will even dare to *lie* for a good man; and if a man confesses that he will lie, lie, lie, on a motive and for another, he will lie on a motive for himself, and on no other motive than that it is for himself. Ah! gentlemen, it may be a hardship for this plaintiff that he has no witnesses to prove his case, but men, who like himself, confessedly out of his own mouth, and Moulton confessedly out of *his* own mouth, have lied, lied to put a wrong face on this matter. The trouble is that when they present to you the various circumstances under which each of them tells his present story, and the circumstances under which each of them told his other story, you see that the motives for falsification then were trivial compared with the motives for falsification now; and therefore if you are to judge between the two stories, you choose their statements as they first made them, and you find for that the additional reason that every written scrap of paper that is produced confirms their then story and rejects their present one. But the difficulty is, that when you are asked to give a judgment against Mr. Beecher, and you only have the word of these two men as to which were their falsehoods and which their truths, the law and common sense and common honesty do not allow you to take that testimony from such corrupt lips. Well might they laugh at you for believing them now, when they have exposed to you their habit of falsifying when and as they chose during a series of years. When the gravity and danger of trusting to these confessedly lying lips come to be brought home to whoever has trusted, well may he feel that he has no refuge against the reproach: "Why did you trust a man who in the same breath told you that in the same matter he had told exactly the opposite story, and it was a lie?"

GEN. TRACY'S APPEARANCE ON THE SCENE.

These gentlemen then got to think that the interests of Mr. Moulton's firm required something to be said or done about this imputation of responsibility on Mr. Moulton's part for this scandal, and Mr. Moulton says to Mr. Beecher: "My firm think that we ought to

have some intelligent, sagacious, and upright counsel's advice about this on our account," and Mr. Tracy naturally suggested himself, as he would to any one in Brooklyn, as the best man for that purpose. "But in talking with Mr. Tracy as to what we should do about this scandal, its refutation, or denial, we may have to tell him the truth, the facts of your case, and we should not do that without your consent." Mr. Beecher has no objection to the facts of his case being told; of course he assumes that they are going to tell *the facts* of his case, and it is a reasonable proposition. There Mr. Beechers's connection with this matter begins and ends. Now, out of that and its sequels grows a most important result, of great value to Mr. Beecher, and of great reliance on your part, as to getting at the truth. The learned counsel for the plaintiff, desirous of having certain advantages from what he expected to prove through the interviews with Mr. Tracy, of complicity by Mr. Beecher in the "policy of silence," and even in justification of the habit of lying, seeks some legal basis to support the evidence of conversations between Mr. Tilton, Mr. Moulton, Mr. Woodruff, and Mr. Tracy. On all the ordinary relations of men, of course talks between these four men, including Mr. Tracy, could carry no more weight against you or me or Mr. Beecher than it could between any four men, and there was found, therefore, in what passed between Mr. Moulton and Mr. Beecher of the character that I have stated, a basis for the proposition that Mr. Beecher, by assenting to Mr. Tracy's being made a conferee with Mr. Moulton about his (Moulton's) interests and his firm's, and to receive therefor information of the truth about which Mr. Beecher's affairs—remember that word—could be treated as if Mr. Beecher himself formed a party to these conferences; and the evidence, therefore, of those conferences has been displayed before you. Now, Mr. Tracy, without representing Mr. Beecher, and as a voluntary witness on our part, might, upon all the rules of evidence, have been brought as our witness against Mr. Tilton and Mr. Moulton (for his conversations were with them), and we didn't need any aid of any artificial rule to entitle us to prove these conversations; but by that proper sense which restrains our profession from giving testimony in causes in which they are counsel, unless of absolute necessity, this plaintiff might very well have counted upon the fact that Mr. Tracy would not have brought into view these conferences, and struck at the very center of their counsels and of their case. But mark how the designs of men meant for evil turns to good. This devious course of theirs, which they flattered themselves was so useful to them in trying to make out, through Mr. Tracy's acquiescence, that Mr. Beecher acquiesced in separation, and even patronized and approved lying, leads to a release of Mr. Tracy by necessity from any of the constraints of feeling in not coming into the cause with his proof when they have introduced the proofs upon this artificial rule as treating him as Mr. Beecher, to be fired at in conversation, of necessity he comes as a witness to tell what the conversations were, and will give them the benefit, on the testimony of Mr. Tracy and their own, of either of these notions, that Mr. Beecher, through Mr. Tracy as his representative, favored silence or that he favored lying; but you must take it on the evidence, and on that it comes to this, according to Mr. Tracy, according to them, the question then to be disposed of was what publication should be made denying that story, and Mr. Tracy thought there should be publications made, insisted on it, argued it hour after hour with Mr. Moulton and with Mr. Tilton, that this scandal in the Woodhull and Claflin paper could be strangled at once by Mr. Moulton's denying the part that was at his charge, and Mr. Tilton denying the part that was at his charge, and then a foolish, circuitous argument of Mr. Tilton and of Mr. Moulton of the absolute regard for truth that didn't permit them to deny the great falsehoods which they both protested were contained in this publication of the Woodhulls without they purged their consciences into a publicity of the real facts, whatever they were. Then Mr. Tracy argues with them, and they said: "Why, that would be a sort of lying"—sort of lying!—"if we don't go on and narrate all the truth of this difficulty in Mr. Tilton's household, these estranged affections, these false accusations, this retraction, this recantation of the retraction, in other words, a publication of the whole matter." Mr. Tracy then argues: "Well, I don't understand the right of a person, by making a false charge against another, to preclude that other from exposing the falsity of the charge without imposing upon the other the necessity of disclosing the truth about private affairs. If you call it lying to do that, why, make the most of it. I don't call it lying. If you call it lying, it is a kind of lying that the circumstances of this case, in my judgment, make the duty of people here;" that is, of denying these falsehoods and not disclosing private complications between these parties that anybody has a right to know.

Now, I will spend no more time upon that part of it. I now call your attention to what constitutes the substance of the Tracy interview, to wit, this fact, that Mr. Moulton got permission of Mr. Beecher to tell Mr. Tracy the truth, that the only possible support of the good faith toward Mr. Tracy and their interview was, and is, that they did tell him the truth—are they going to stand up here now and tell you that they told Mr. Tracy a series of lies, as they had the Produce Exchange people, and Mr. Tilton his friends, when they wanted to know something about this matter? Now, they must either say that, that they were telling Mr. Tracy a series of lies about the facts in Mr. Beecher's case, or they must

stand upon his evidence, if you believe him, as to what they did tell him, that that was the truth. And, when you find that what they thus told him comports in every point with every written paper in this case from one end of it to the other in respect to the charge, the retraction, the recantation, the narrative of the "True Story," the denials of impurity both on the part of the wife and on the part of Mr. Beecher which Mr. Tilton has incorporated in his "True Story," and which I shall read to you, and what he told Mr. Storrs, and what he told Mr. Belcher, and what he told Harman, and Schultz, and McKelway, and Wilkeson. Ah, gentlemen, you have now, out of their own mouths, in an interview that they sought in their own interests, obtained upon the proposition that they were to tell the truth to Mr. Tracy, and with the full and free allowance of Mr. Beecher that they should do so, and now we will see what they did. Now, the interview was held, and we must either stamp Mr. Tracy as a perjured witness or condemn him as incompetent to understand the nature of that conference and the character of the statement that he heard, and which he repeats, and the arguments that were made there, or you must draw out of this providential admission of testimony, out of the folly and contrivances of the other side of Mr. Tracy's truth-discerning and truth-speaking mind—you must draw what is an absolute right, an extorted confession, an exposed conspiracy, by an exhibition of what in their private counsels, when they had driven him by necessity and under motives of importance to themselves, a cool judgment and an honest heart—you must stamp this conspiracy as confessed upon the statements of what occurred that night between Mr. Tracy and these people.

THE PAPERS SHOWN TO GEN. TRACY.

Now, they had there, first, Mr. Moulton, before Mr. Tilton came in, and the first thing Mr. Moulton did, in order to make a good impression by putting the most damaging piece of evidence, as he regarded it, forward, he put in his hands this "Letter of Contrition," as it is called, this report of Sunday, Jan. 1, in Mr. Moulton's handwriting, and put that into Mr. Tracy's hands without note or comment or advice as to its origin or character, and Mr. Tracy takes it up, and says, after looking it over:

The first thing that attracted my attention was the character of the handwriting, and I said to him: "Mr. Moulton, is this Mr. Beecher's handwriting?" He said, "No." I said, "Whose is it?" "It is mine." I went through it that way [turning the leaves quickly.] I said, "How do you write a letter to yourself?"—it begins "My Dear Frank," you know—and at that time I went through it in that way [turning the leaves over.] I said quick, "It is not signed."

Because Mr. Tracy looked at the place where it should be signed, on the right hand of the page, and as he held it in *this* hand, and turned it over so, it covered this part of the leaf in, and he looked down at the place where it ought to be signed and said:

"It is not signed." He said: "Yes it is." And just at that instant my eye caught this indorsement or memorandum at the foot of the sheet, not seeing it as I looked at them first in that way. He said, "Yes, it is signed by Mr. Beecher;" and I saw the form of the signature of Mr. Beecher.

Q. What did he say? A. He said, in that connection, "It is a memorandum, or notes of a conversation I had with Mr. Beecher?"

Now, this clause which I have just read to you, Mr. Moulton denies, but he does not deny the question that was asked him, and he has not given us any other answer that he gave, but I am willing to put Mr. Tracy against Mr. Moulton. I would not want any safer conflict of evidence, if I had got to stand with a contradiction of one witness by another, than that between Mr. Tracy and Mr. Moulton. It is a note and memorandum. That is proved as a matter of fact. The only question is how accurate it is, and he described it properly.

I then read the paper over sentence by sentence and studied it for some minutes. I said, "I don't see that this paper prevents a denial of the Woodhull publication. That publication charges that Mr. Beecher has lived a life of adultery with Mrs. Tilton for years. This paper states, I see, that 'she is innocent—sinned against—bearing the transgressions of another. Her forgiveness I have.'" I said, "It seems to me that that language would not be used by the woman with whom a man had lived in adultery for years." Mr. Moulton said nothing. He showed me the next paper, a retraction. I read that.

And then he showed him also the explanation of this retraction.

Then I asked Mr. Moulton, after further conversation, "Well, what does Mr. Tilton charge Mr. Beecher with? Does he now charge him with adultery?"

For he struck right at the matter without regard to these papers, and all of these matters.

"What is it now? Does Mr. Tilton accuse Mr. Beecher with adultery with his wife?" He said, "No."

That is, Mr. Moulton said "No."

I said, "What is the charge?" He said, "I would rather Mr. Tilton would state that to you in his way, if you will consent to hear it."

Now, when Mr. Moulton and Mr. Tilton returned to the stand they don't deny this conversation, and Mr. Woodruff doesn't remember about it.

Then Mr. Tilton came in.

After, you will observe, Mr. Tracy had been put in possession of the principal documents that are now relied upon by that plaintiff, and after he had been advised by Mr. Moulton that the charge of Mr. Tilton against Mr. Beecher was not adultery, and he was to come in to tell what it was, Mr. Tilton, coming in at that stage of the matter, begins by asking, as he was about to make a statement of his case against Mr. Beecher, whether the etiquette of the profession would allow Mr. Tracy to take up against him, and Mr. Tracy very frankly says, without considering the question of etiquette:

I shall not take up against you, Mr. Tilton, upon a case that you state to me now.

Then Mr. Tilton goes on with a paper which was of considerable volume, and which professed to be a narrative, with the documentary pieces either in it or spaces left for them, and which Mr. Tracy understands to be the preliminary studies if not the actual first draft of the "True Story," and this paper came in this form, "Exhibit No. 2," and Mr. Tracy says:

I know that Mr. Tilton either read or spoke in connection with that letter, a sentence complimentary to his wife for having resisted the amorous pleas of her pastor. I remember that phrase. I heard the document read——

This true story, or its equivalent. Then Mr. Tracy said to him:

Well, Mr. Tilton, what is your object in drafting such a document as that? He said he was trying to see whether he could frame a successful answer to the Woodhull publication. I asked, "With a view of publishing it?" He said that was to be a matter for consideration. If he could frame an answer satisfactory to himself, he proposed then to submit it to Mr. Beecher, and if Mr. Beecher would be satisfied with it, to publish it. "Well," I said, "do you think Mr. Beecher will be satisfied with such a publication as that?" He said he did not know; that was the question. "Well," I said, "I don't think he will." He said: "He will have to be satisfied with what is true." I said, "Certainly; but the question is, whether that is true. Your wife says in her retraction that your charge against Mr. Beecher is not true."

And that charge was of improper solicitations. Now, you have it fair and square, face to face, between Mr. Tilton and Mr. Tracy.

Now, the question, Mr. Tilton, is what is the truth? You have read to me a charge of improper solicitations as the sole charge made by your wife against Mr. Beecher, and you have read me her retraction, in which she says that charge is not true. Well, that question excited Mr. Tilton, and he spoke vehemently against Mr. Beecher for having obtained that paper from his wife. He said it was a mean thing; his wife was sick, unable to resist his demand; he took advantage of her weakened condition and dictated to her that answer with her signature to it. His wife had taken it back. Mr. Beecher had admitted that the charge which he had made against Mr. Beecher was true. I asked, "Has Mr. Beecher admitted that?"—that is the charge of improper advances—"Why, he says so in the letter of apology, in that letter or paper." I said, "Mr. Tilton, I don't think you can say that Mr. Beecher has made any such admission in that paper." I then took up the paper and went over it again, and I went over the Letter of Apology again carefully, and I said to Mr. Tilton, "the language of this letter or this paper is so general I do not see that you can apply it to anything specifical, and your wife has said that Mr. Beecher never made any improper solicitations to her." In that conversation, while he was excited in denouncing Mr. Beecher, he said Mr. Beecher was an adulterer and he could prove it; and I said to him, "With your wife?" and he said, "No; with another woman," or "other women;" I am not certain which phrase he used.

Now, Mr. Woodruff confirms the first part of this business that I am now upon; and that Mr. Tilton, in using that phrase, "was an adulterer," was asked the question, but he doesn't remember that Mr. Tilton said "No;" he doesn't remember that he said anything else; and neither Mr. Tilton nor Mr. Moulton denies this; they were both present.

After he had finished the reading of this paper, I said to him in substance—I don't remember the phraseology—"Your statement, Mr. Tilton, settles one thing, that you did not accuse Mr. Beecher with adultery."

Not that "you do not now," not that "for policy you do not now," but "you did not charge him." "That was not a charge you had against him?"

He said, "No; my wife is a pure woman;" I remember that phrase and that sentence occurring.

Then, further on in the conversation, Mr. Tracy then having nothing left but the question of the charge of improper proposals, means to sift that to the bottom and find out whether there is any proof of that, or any opinion that that is true. He has the charge that Mr. Tilton has made, that the wife it is said has made; but then she has retracted it, and Mr. Tracy says:

I asked him whether he didn't think there may have been misconstruction on the wife's part, or his part. Mr. Tilton contradicted what the wife said. He thought not; he thought there was no mistake about it. I said, "Mr. Tilton, do you want to say that Mrs. Tilton, in the language she has given you, quotes precisely the language which Mr. Beecher used to her?"

There is a lawyer's question, and a sensible man's question: "You say that your wife says 'Mr. Beecher made proposals to me to be his wife, with all that that implies?' Do you mean to say, Mr. Tilton, that that is the language that Mr. Beecher used to your wife?' 'Why, certainly,' says Mr. Tilton. I said, 'Do you say that Mr. Beecher said to Mrs. Tilton, "Mrs. Tilton I desire you to be a wife to me with all that that implies," did you say that Mr. Beecher used the phrase "with all that that implies" to your wife?' He said, 'I won't say that he used these precise words to her, but that was an inference from the suggestion that she was to be a wife to him.'" Well, you have got rid of "all that that implies" on its being an inference and not a statement of Mr. Beecher, so you have got it reduced down to this, that Mr. Beecher asked her to be a wife to him, and the testimony went on the inference that Mr. Tilton or Mrs. Tilton or somebody said, "with all that that implies." Well, it might be a just inference, but we would like to have the words if we are to be judged by them. "Well," I said "if that is an inference, Mr. Tilton, why may not all of it be by inference from what he said?" And he pressed that consideration with a proper and honest and just argumentation of it. Now, the question still being pressed, Mr. Tracy said, "You want to deny that publication, declare it to be a lie"—that is, the Woodhull publication.

"And destroy the document that you have here." Mr. Tilton at that remark of mine turned and said, "I will not permit the destruction of the documents—these doc-

uments. If these documents were destroyed, Mr. Beecher would turn and rend me." I said, "Mr. Tilton, I can conceive no possible object which Mr. Beecher could have to revive this scandal or this story. It seems to me that every consideration must lead him to wish it buried, and buried out of sight, and if it is once buried I can imagine nothing that would induce *him* to revive it for the purpose of spiting you."

That seems rational.

Well, he said, he thought he would, or if he did n't, members of Plymouth Church would. I said, "What have members of Plymouth Church got against you? What motive can they have for reviving this?" He said that the members of Plymouth Church felt that he had been slandering or injuring Mr. Beecher; and in that connection he stated that in 1871, I think it was, when this thing was discovered, he had spoken harshly of Mr. Beecher—that he had felt harshly toward him, and had spoken very harshly against him, and members of the church thought that he had been slandering Mr. Beecher, and it was these documents—I won't say that he said that—he said if these documents were out of the way Mr. Beecher would not restrain the members of Plymouth Church who wanted to attack him.

The Court then adjourned until 11 o'clock Tuesday.

NINETY-NINTH DAY'S PROCEEDINGS.

LAST WORDS FOR THE DEFENSE SPOKEN.

AN IMMENSE AUDIENCE LISTEN TO MR. EVARTS'S FINAL ARGUMENT—THE SESSION OF THE COURT PROLONGED TO ENABLE HIM TO FINISH—SOME OF MR. BEECHER'S LETTERS SCRUTINIZED—MRS. MOULTON'S TESTIMONY WEIGHED—MR. BEECHER'S ALIBI ON JUNE 2—MR. MOULTON'S FINANCIAL RELATIONS WITH THE PLAINTIFF SIFTED—GENERAL FEATURES OF THE CASE REVIEWED.

TUESDAY, June 8, 1875.

The close of the defendant's case was reached at last to-day, and the result of the great suit against Henry Ward Beecher was left, on the side of the defendant, by his counsel, to the judgment of the twelve jurymen, who, for nearly half a year, have patiently listened to the developments of this extraordinary trial. There were unusual circumstances connected with the close of the long argument of the senior counsel for the defendant. An immense audience assembled to hear it, the orator exhibited a power of reasoning and an eloquence that stirred the greatest enthusiasm among his hearers, and the session of the court was protracted far beyond the usual hour of adjournment in order to permit him to complete his peroration. The argument was closed at half-past 6 o'clock.

Mr. Evarts exercised the same power over his audience to-day which he showed during the first few days of his argument. Near the close he excited an interest which held the auditors in the perfect silence of unbroken attention, while his words were full of thrilling earnestness and his manner was solemn and deliberate. The jurors attended to the orator's words even more closely than the audience did. Mr. Tilton looked thoughtful, and Mr. Beecher and his friends who sat near him wore looks of rapt attention. Once or twice, when the orator spoke in praise of Mr. Beecher, a muffled sound of applause broke out, which could not be immediately suppressed by the court officers. Tears sometimes came into the eyes of Mr. Beeecher and his wife, as well as of many persons in the audience.

The final sketch of the career of Mr. Tilton was given with solemnity rather than severity, and it contained no violent denunciation of the plaintiff, and none of the keen thrusts of sarcasm which distinguished some of the earlier parts of the address. The alleged egotism of the plaintiff was dwelt upon at considerable length, and pointed out as the source of all his troubles. The parable of the houses built, one on the rock, and the other on the sand, was applied with all the skill in analogy for which Mr. Evarts's address has been remarkable, to the contrasted characters of Mr. Beecher and Mr. Tilton. Into his final words Mr. Evarts seemed to throw all the earnest feeling of his nature. He spoke in a low voice, which sometimes could not have been heard in the distant parts of the court-room, and occasionally there seemed to be tears in his eyes. Mr. Evarts addressed himself in complimentary terms to Judge Neilson and to the jurymen. As the last words dropped from his lips, the audience, unrestrained by the decorum of courts of justice, or the fear of the officers of the law, broke out into a perfect storm of applause which lasted for a full minute. Mr. Beecher, who appeared to be much affected, arose and pressed through the crowd toward Mr. Evarts, who was warmly congratulated by his friends.

The topics covered were Gen. Tracy's relations with the plaintiff and Mr. Moulton, the "ragged edge letter," the financial transactions between Mr. Moulton and Mr. Tilton, the yellow slip of paper that was alleged to have accompanied the Bowen check, the proof of the alibi for Mr. Beecher on June 2, 1872, and the evidence in contradiction of it, Mrs. Moulton's testimony, and the great salient features of the case.

THE PROCEEDINGS—VERBATIM.

GEN. TRACY'S TESTIMONY AGAINST THE PLAINTIFF'S.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts—The grave importance, the convincing weight, the natural attraction of absolute confidence to the testimony of Mr. Tracy, makes this point of our present attention more thoroughly conclusive in whatever depends upon oral statements, than whatever views we take in regard to the manifold interviews that have been given in one complexion and in another by opposing witnesses, could reasonably be expected for them. Now, the only remaining question is, when, if this scene is produced to you correctly it ends all controversy, in what degree is it reduced or disparaged by any counter proof on the other side? In the first place, it is of their own showing that the interview was invited by them, and for the purpose of laying out the strength of their situation toward the public, in consequence of the promulgation of the Woodhull publication, and that that situation pressed upon them so that it must be met by an intimate inspection and a thorough investigation of the whole area of this scandal, and every point and tittle of its proof; and as this interview would so require for their purposes, why, it necessarily involved a free and honest statement of Mr. Beecher's situation in these matters; and you have in the proposition of Mr. Moulton to Mr. Beecher, and in the frankness and readiness with which Mr. Beecher conceded the exploration and the unbosoming of the facts of the case, absolute security that neither Mr. Moulton nor Mr. Beecher had the least idea that it could be a permitted point in this merely incidental and external dilemma in which Moulton and Tilton were placed by the talk of the streets, to have a confidence and a disclosure of the wickedness of these many years, if there were any such wickedness in them. It is like a man, to avoid a whipping for some minor fault, exposing himself by his excuses and disclosures to be hanged for a murder. Then what do we find from these witnesses, at any stage of their testimony, in disparagement or reduction, I will not say of every word or phrase of the conversation as detailed by Mr. Tracy, but of every substantial trait and characteristic of it? Mr. Woodruff says that he did not pay much attention; whether he was asleep more or less of the time did not seem clear to his mind. Mr. Tilton does not say that he communicated to Mr. Tracy any fact to the contrary of anything that Mr. Tracy says. Moulton says the interview, after Tilton came in, commenced by Tilton's saying to Tracy, "You know all the facts, and have seen some of the papers." Now, when Moulton, Tilton, and Woodruff are recalled, after Mr. Tracy's testimony has been given, they deny only the following merely fragmentary parts of his testimony. Moulton denies calling the apology "notes or memorandums." Well, that might be a denial that was entirely consistent with his having used—I mean in this witness's fashion of telling the truth on the stand—entirely consistent with his having said, "Why, that is in the nature of notes or memorandum," or, "That is the statement I made from Mr. Beecher's mouth, as he said it." He gave some answer, I suppose, to the question, and gave some true description of how there happened to be a paper in his, Moulton's, handwriting, addressed to himself, unsigned by any letter writer, and intrusted to him in confidence. Mr. Moulton denies a part of Mr. Tracy's account of his, Tracy's, interrogating Tilton on the precise language of the charge in the wife's letter; but Mr. Tilton does not deny any part of it. They both deny that the "True Story" was read; but Tilton, on his cross-examination—his previous cross-examination—stated that he read every word of the "True Story" to Tracy during this same period, at some time or other, and there was not any other time to read it but this. And then we have every opportunity for evasion and prevarication between the "True Story" in its last and final touch and finish, and the "True Story" in its study or meditations which occupied a very considerable time, the object being, as Mr. Tilton has said, to turn it over and over, and consult with this and that friend, great men or small men—men who could give a fair index of what public opinion would be as to how this unpublished manuscript would strike the public, whenever it should be put in print; and under that insidious and cowardly mode, Mr. Tilton was poisoning this and that source and channel of public opinion with the concealed slanders against Mr. Beecher, that in that paper are contained. And they do not deny that the substance of it—the charge of improper proposals—was read at this interview. Mr. Tilton has a fashion of thinking that the absolutely perfected "True Story" included the letters of Mr. Beecher and his wife, which form its close, and which came into existence in the end of December; but in his testimony he has drawn the distinction between the "True Story" as it had advanced in his mind and in his composition, up to that point, and how that termination in regard to the recorded denials of Mr. Beecher and Mrs. Tilton formed the final close of the paper: and it is in that mere prevarication, a "True Story" as a completed paper, and "True Story" as it was prepared to take its completion, that the changes are rung and the excuses are found for saying the "True Story" was not read to this or that man when it answered that purpose, or it was read to this or that man when it answers that purpose.

Just as in respect of the Woodhull scandal, the effort has been made—the effort, perhaps, in argument, before you, will be made—that all this theory of the Winter and the Spring of 1872, not having brought into existence the

body of the Woodhull scandal, and its representations in slips ready for publication, then in the needs of Tilton required, is answered by the statement of Mr. Pearl Andrews that he did the final editing upon the paper as it appeared in November, 1872; but on his own statement you see the disclosure and the discovery that the body—the body of the paper exactly as it was printed—was ready, and that was handed to him as the matter on which his literary and philosophical genius were to operate in making a head and a tail piece, and he did make a literary and philosophical head and tail piece to it; but the body of the play was this drama as it had been in existence in slips for six months, and it was only the prologue and the epilogue of literature and philosophy that came into existence in October of that year. And yet by such feeble devices as that the prevarications of witnesses are to be sustained that the Woodhull article is shown not to have existed prior to October, 1872, because Mr. Andrews put these finishing touches to it. And so Mr. Tilton expects, when occasion needs, to impose upon you that the "True Story" was not complete at this or that stage, because the final letters were not ready to be inserted as its fit conclusion until the end of December. But Belcher makes that clear. We do not need to rest upon Mr. Tracy's knowledge and memory for that. Belcher makes that clear, and Belcher makes it also perfectly clear that any attempt to impose upon you that the reading of this passage: "My friend and pastor proposed to me to be his wife with all that that implies," comes out of some other piece of writing than this original accusation, by picking up a letter prepared under the husband's eye by the wife, and used with Dr. Storrs, which repeats this accusation in its terms. Any attempt to impose upon your understanding that that letter was the matter, in his wife's handwriting, which he copied—it would not help the substance of his case at all, but any attempt to confuse your minds or impose upon you in that regard must utterly fail, because Mr. Belcher tells you that in his interview, sought, compelled by Mr. Tilton, when the whole documents were read and read, and when Tilton was questioned and questioned about this slip of paper, whether the very language under his eye was in his wife's handwriting, or not, and the answer was: "No, it is in Moulton's possession, the original;" at that interview originated the idea of any consultation with Dr. Storrs. The question was asked of Mr. Belcher by Mr. Tilton: "Who is a good man to ask, a man of great authority, of great credit, a man of level judgment, of sober, circumspect thought?" and the suggestion is made to Tilton that Dr. Storrs would be a good man; and out of that, and after that, comes the interview with Dr. Storrs, and the letter prepared to introduce that interview, which was in itself the reproduction of this slip that was in the "True Story," and that had formed the gravamen and the text of the wife's accusation.

Now, Mr. Moulton does deny, on his rebutting evidence, that Mr. Tracy made a particular remark on the subject of the apology, implying an unsuccessful attempt on Mrs Tilton's virtue; and another as to the best mode of terminating all controversy as to the facts, and as to what could be done for Mr. Tilton—that is, about going to Europe, &c.—but on the main substance, that Mr. Tilton intelligently, faithfully, directly undertook honestly to perform the duty, give the service, for which he understood the real solicitudes and the real responsibilities of these parties had resorted to him in respect of, and that in that he dealt as *you* would do, as *you* would do, as *you* would do, as any man of common sense and clear purpose would do, pricking all these bubbles at once: "Well, what is that you charge Mr. Beecher of?"—and that is the charge. Well, a part of that is inference. "Oh! no; no part of it is inference." "Well, but that last part, 'with all that that implies'—Mr. Beecher certainly did not say to the woman, 'I want you to be my wife, with all that that implies.'" "Oh, well, that, to be sure." "Well, now, what is your purpose? Do you want to end this scandal, or do you want to keep it alive?" "I want to end it." "Well, then, the way to end it is to deny what the Woodhull publication says about your communicating, and which you say is all false; put an end to this matter, burn up all these papers and have it closed." Well, why should not that be done? But it could not be done; and why? Mr. Tracy says, "Well, why can't it be done, if you want to suppress it?" "Well, if these papers were destroyed, I having circulated various charges against Mr. Beecher, he would turn and rend me." "Well," Mr. Tracy says, "that is very absurd. Certainly, Mr. Beecher has no interest in having these matters made the subject of public discussion, merely for the satisfaction of pursuing you as a slanderer." "Well, if Mr. Beecher would not do it his church would." And so you find Mr. Tilton, for the first time brought face to face with an intelligent, an honest, a disinterested scrutiny about the matter, is obliged to retreat under the fog of a desire to suppress, but yet an unwillingness to give up the means of continuing; and that, gentlemen of the jury, has been the difficulty that Mr. Tilton has been in. He wished, indeed, never to be brought to the test that he has suffered in this trial before you. He never wanted the resistance of Beecher, and exploration, and weighing, and measuring of this matter — a man that had been so quiet as he tells you, under all the load of these injuries, under all the horrors of these wounds to his pride, his feelings, as that he slept undisturbed by his wife's side always; and when he came to Beecher's face wanted always only to be sure of Beecher's friendship. He says, when at a later stage to which I shall call your attention, Mr. Moulton had said to him: "Now, Beecher says he will stand secrecy no longer, he will have no more of this policy of silence in your behalf, broken ever by your promulgations at your will. Great as is

the terror and the evil of scandal which a man feels for the manifold complications in which he stands to others, and which he feels especially in the relation in which he stands to your, Mr. Tilton's, family, your wife, your children, this matter he will stand no longer. He is going to put himself directly at issue now, and by throwing down the challenge for facts, and stripping himself of all impediments of the interests, the feelings, or the pride of Plymouth Church, he is going to meet you as man to man." Then Mr. Tilton has all the lion roused in him, and says: "If he does that I will shoot him in the street." Now, that is a time for shooting; that is a time for spirit; that is a time for pride; and the threat that he had made—that of publication that Tilton had made, expecting that Mr. Beecher's solicitude for his (Tilton's) family, and for the great interests that surrounded him—would make him yield to some accommodation even in that, the threat to publish was at once withdrawn, and the matter came to an end. But I will not anticipate the details of that situation. I only show you throughout that Mr. Tilton, having a moderate (immoderate it might seem to Mr. Beecher) cause of offense and accusation, was always outrunning it in his tongue, outrunning it in his written letters, outrunning it in his printed slips, continually involving himself in the guilt and the shame and the treachery and the cowardice of these malignant, secret stabs in the dark; and whenever there came to be a question of disclosure and confronting the truth and each other before the public, then there was always a desire to have some concession from Mr. Beecher in his magnanimity, in his generosity, in his sympathies, that could save Mr. Tilton from the absolute discredit and disgrace of the discovery of his arts. Although Mr. Beecher did not know or suspect, and charitably refused to admit aspersions of bad faith, of whisperings of treachery, yet Mr. Tilton knew that whenever, under any examination, the daylight was let into this matter, all this treachery of Tilton and maneuvering of Moulton, brought in front of the boldness of Beecher, would leave no doubt in men's minds of the true nature of what had been going on for years.

GEN. TRACY AGAIN DEFENDED.

Now, gentlemen, I shall have occasion to comment upon some parts of Gen. Tracy's testimony in connection with wholly independent interviews and events in the year 1874. But now it becomes me to say what, I am quite sure after what has fallen from his Honor, the Judge, and from my learned brother, Porter, will be quite superfluous; yet very briefly to say what I say with great pleasure and entire frankness, on the subject of an imputation sought to be thrown upon Mr. Tracy in regard, not to his being a witness, for that everybody concedes was forced upon him by the course they take of making him represent Beecher in order to be admitted themselves as witnesses against Mr. Beecher—I mean his professional employment. Now you will observe, gentlemen, that the trust and duty of our profession is not one of personal inclination or choice. In general we may say that a lawyer is somewhat free to take or decline an employment as his convenience, his emoluments, his comfort, or his taste may indicate, but always upon condition that that refusal shall not prejudice the client who, either as plaintiff or defendant, or as accused before the criminal bar of the courts, has a right to the services of our profession. It is, then, not unfrequent that a lawyer in manifold engagements, and in a constantly changing succession of clients, now opposing one, and now acting for him in another case, has presented to him inquiries which he is not at liberty to discharge on the careless method of "Well, I don't propose to bother myself." There are rights and there are corresponding duties, and the moment these flippant commentators on the duties of our profession in regard to the espousal and maintenance either of plaintiffs' or defendants' causes, or of an accurate observance of duty, irrespective of possible evil comment, reduce the independence and intrepidity of the bar to that standard, the administration of justice will cease to be what it must and should be in a free country. For, how pitiable the condition of suitors in a court if their lawyers of their choice, and to whose service they have a right, are either to be taken from them by any trivial scruples, or torn from them by malicious interference of their opponents! And now look in the face of the situation, and see how utterly there falls to the ground any suggestion that Mr. Tracy was placed in any disability or relieved from any duty he was under in respect of sharing the professional responsibilities for his friend and this client, Mr. Beecher. Why, gentlemen, Mr. Woodruff approaches him with the idea that it is not a professional relation that he is to be called into. And Mr. Tracy begins by saying, "I won't go even into a friendly conference of advice unless it is understood that I go there as I am; that I go there as I am in fact a friend of Mr. Beecher, only to a conference that is supposed to be without hostility to him." And then, when he goes there under the idea of having the truth told him, his advice given, his relations determined upon the good faith, the sincerity, the completeness of the disclosures that are made to him, he is accosted at the outset, "Now, the whole truth is to be told you; if, on the case which you are to have the whole truth about, there comes to be antagonism, will the etiquette of your profession justify you in espousing Mr. Beecher's attack upon the fidelity of the truth as now disclosed to you?" Mr. Tracy at once says, "Whatever you give to me as the truth of your case to-day, without reference to any etiquette of my profession, I will not take up the opposite for a client;" and then they tell him the truth; they are under every obligation as towards him that it should be the truth. What! Are you going to engage

the honest and responsible friendly advice concerning the situation of a man who warns you in advance that he will hear nothing from you if it is to be of proposition of hostility against Mr. Beecher, and then, when that truth all being told, when the Bessie Turner, and the money, and everything that could make a fault against Mr. Beecher if it could make a fault against Mr. Beecher should have been told, when it is omitted, because there was no fault in it, but nothing which generosity and pity, and when, at the end, Mr. Tracy sees and says, "Why, there is not anything here that can be made the subject of a litigation, of a lawsuit, of an accusation," and dismisses the matter from his mind as anything that came under any professional exclusion from a controversy that had these dimensions, then when in 1874 the charge is to be changed and is changed, and notice sent by Redpath, "Don't believe if we go into court we are going into a libel suit, when all this talk of these minor difficulties may be the subject of judicial inquiry, but we are going to make it adultery"—and when Mr. Tracy is so advised then he originates to Mr. Tilton the proposition, "Well, Mr. Tilton, you must remember that if I gave you a promise concerning the case as you laid it before me, that I would not take up the opposite side, if you now mean to say that what you told me was false and an imposition, and you are going to make a different or other charge in which my professional duty and the rights of Mr. Beecher to my services if he chooses to ask them must not be impaired, I wish you to understand that that promise does not cover any opposite, any new case that you now bring into the light and into the courts."

Now, see how a little matter discloses a great deal. The narrative is complete, undisputed, and uncontradicted by Mr. Tilton, for it occurred in the presence of several witnesses before the Church Committee. Mr. Tilton, instead of saying, "I join issue with you on the question of fact; this is the case; it was the charge of adultery. This pretense of yours, that now the body and offense to be introduced is new, an afterthought, an invention, if you please, is all subterfuge, Mr. Tracy. In fact that interview did have adultery with my wife as the body and substance of it"—admits that the interview and the inquiry and the charge were different then, but says, "On the question of law and ethics I don't think that makes any difference in your proposition." What could there be from disinterested witnesses (for it does not depend upon Mr. Tracy's testimony, and Mr. Tilton don't contradict it—there were two or three witnesses that could speak of it)? but when we come to the previous statement between Mr. Tilton and Mr. Tracy alone at the club, why, then, Mr. Tilton contradicts that; that is only oath against oath. Now, gentlemen, you will see at once that Mr. Tracy, no doubt like every other lawyer, regretting that there should be a situation about which men's minds should differ, yet, with that clearness and decision which characterizes him, said, "Well, Mr. Tilton, you may not think so; I do. You called me into a scandal and said you told me the truth, and there was no adultery and no lawsuit in it. Now you are getting up an adultery and a lawsuit. Now, understand that nothing that you told me there covered anything of this kind, and I only undertook not to engage in a lawsuit that should arise upon the case as you thus solemnly prefaced your purpose of making a confidential and thorough statement of it." And so Mr. Tracy, when he acts, as he did, for the Church in their inquiries, merely directing with a sort of legal lead the investigations before the Committee, comes finally to reserve the question of whether he shall act as counsel, and submits it to his associates, in whom he had confidence, whether other people have or not; and their answer was decisive: "This entrapping, this delusion, this deception, this holding of what was, as they now say, not their case, as a terror and a confusion over you, in your professional duty and in the rights of your client in respect to your services, must not be tolerated for a moment." Whenever that libel suit that was talked about that night, that Mrs. Woodhull would bring against Mr. Tilton if he published that "True Story," or if he published an open denial—whenever that suit should have been brought into court, then it might well be said that Mr. Tracy should not take up for Mrs. Woodhull against Mr. Tilton. And so that matter, which has no other relation to any of the merits of this case than as it is sought to be an occasion of invidious suggestion in respect to a leader, if not the leader of the Brooklyn bar, your fellow citizen, well known to all of you, would not have received any comment from me, as it has nothing to do with the clew of the merits of the case.

THE RAGGED EDGE LETTER.

Now, gentlemen, there came to be a very curious and very curiously proved course of delicate maneuvers on the part of Mr. Tilton and Mr. Moulton, to force this $7,000 out of Bowen. And, curiously enough, we have in one of Mr. Beecher's letters that on its own merits, as it is supposed, has been treated as of very grave significance—we have in that letter the first underground movement toward what came to the arbitration and the demand of $7,000, first disclosed. The necessities of Mr. Tilton had then become complete. There was an interview in the cars which Mr. Beecher regarded as a friendly one, and it has been given by Mr. Beecher and by Mr. Tilton, and about which I shall not speak. If there is any gravity in it, it has escaped my attention. Whatever Mr. Beecher has said, whatever Mr. Tilton has said, is but an incidental running out of the views on one side and the other, if you please, of their then relations. But in the month of February Mr. Beecher spontaneously writes a letter to

Mr. Moulton—the letter of Feb. 5—sometimes called the "Ragged Edge Letter," which in some unaccountable way in men's minds, pardonable perhaps, while the truth and facts of these relations were undisclosed as they are now brought to light by the evidence, has been treated as evidence of guilt. But my present purpose is to show you how cunningly Mr. Tilton and Mr. Moulton were beginning to operate upon the sympathies and self-reproaches of Mr. Beecher in regard to his feeling of compunction and of duty, of aid and reparation in respect to Mr. Tilton. The letter shows you several other things besides that that I have now noted. It shows you the absolutely restored relations, in the open knowledge of Mr. Tilton and of Mr. Moulton, of Mr. Beecher, so far as he thought it judicious and useful to maintain either correspondence by letter or intercourse by visits with Mrs. Tilton.

Monday, Feb. 5, 1872.

I omit the mere introduction [reading]:

About three weeks ago I met Tilton in the cars going to Boston. He was kind. We talked much. At the end he told me to go on with my work without the least anxiety in so far as his feelings and actions were the occasion of apprehension.

That is to say, "Understand that the difficulties are all over; understand that there is reparation between me and my wife at home; understand that my affairs are such as satisfy me in the hopes and prospects before me."

On returning home from New-Haven I found a note from Elizabeth saying that Tilton felt hard toward me, and was going to see or write me before leaving for the West.

Right after this pleasant interview in the cars we see a prepared ebullition of the opposite kind.

She kindly added: "Do not be cast down. I bear this almost always—I bear the moods and tempers of this man almost always—but the God in whom we trust will *deliver us all safely*. I know you do, and are willing abundantly to help him."

Now, don't you see what the trouble was?

I know you do, and are willing abundantly to help him, and I also know your embarrassments.

Well, Tilton wanted help. Tilton indicated at home that Beecher was not doing as much as he ought to do to help him, and that he felt hard to him, and he was going to see him before he went off, and Mrs. Tilton writes him, and Mr. Beecher sits down and copies her letter to Mr. Moulton, and there you have the whole thing disclosed at the very beginning of the ripple that swells into the stream that dislocates the bowlder $7,000, and washes it into their coffers. Now, Mr. Beecher proceeds:

These were words of warning but also of consolation, for I believe Elizabeth is beloved of God, and that her prayers for me are sooner heard than mine for myself or for her. But it seems that a change has come to T. since I saw him in the cars.

Well, now that shows that Mr. Beecher's view of that interview in the cars was the correct one.

Indeed, ever since he has felt more intensely the force of feeling in society, and the limitations which environ his enterprise—that is, his *Golden Age*—he has growingly felt that I had a power to help which I did not develop, and I believe that you have participated in this feeling. It is natural you should. T. is dearer to you than I can be. He is with you. All his trials lie open to your eye daily. But I see you but seldom, and my personal relations, environments, necessities, limitations, dangers, and perplexities you cannot see or imagine.

Now, that is the only part of the letter that I have occasion to refer to at this moment and in this connection. Mr. Beecher testifies the reason he wrote that letter, was that he had observed that Mr. Moulton, in the visits he made to him, began to play the part of *offishness*, was polite but not cordial, not demanding money, not talking about money, but with the idea which inspires what Mr. Beecher says to him, Moulton, that he shared in these feelings that he, Beecher, did not help Tilton enough. And then Mr. Beecher spontaneously sits down and writes this long letter, full, no doubt, of strong feeling, but strong feeling, whenever a word of it is probed, that shows precisely the same warmth of sympathy and tenderness of heart, unmeasured self-reproach and compunction for any share he had in these misfortunes and these disasters. Then Mr. Moulton does not seem to answer this letter. We have not seen any answer to it. It certainly was a letter that, if there were any sincerity in Mr. Moulton's relations to Mr. Beecher at that time, and if he were not playing the part of getting Mr. Beecher ready to be affected in this generous disposition of his by the actual approach for money when it should be made, he would have answered; but it served his purposes and Mr. Tilton's to be thus frankly informed of Mr. Beecher's feelings, and then they were ready to take the next step, which was not to be an approach by Mr. Moulton or an approach by Mr. Tilton, but this circuitous introduction of the subject through Mr. Wilkeson, and the threat of the publication of the slips, and all that narrative which has been gone through with.

MR. MOULTON'S SHREWD FINANCIAL POLICY.

Now, let me take up Mr. Moulton's relations to money. The first time after this situation which he was nursing began, the first time he introduced the subject of money to Mr. Beecher was by the suggestion that Mr. Tilton was badly situated, and that he thought that the security of his home was of great importance to him, and that the mortgage on his house ought to be paid off, and the property ought to be settled on Elizabeth. "Well," says Mr. Beecher, "I am ready to do my share." And then Mr. Moulton dropped the subject, and you will find no introduction of any subject of money aid in which Mr. Moulton was to do his share, proposed afterward by him to Mr. Beecher, with one single exception, and then he did not make the mistake of proposing to Mr. Beecher

o do his share if Beecher would do his; but he brought the Bessie Turner bills and said, "I am paying a good deal for Mr. Tilton, and I think this is your share."

Now this $7,000 is a curious affair. I doubt whether even Mr. Tilton has fairly got at the bottom of it, and at the immense disinterestedness of Mr. Moulton in the business; for people have been puzzling their minds why this princely generosity of Mr. Moulton's should be troubling itself about little matters of a few thousand dollars. Have n't we heard that magnificent proposition of his, that he would rather pay Mr. Tilton the $7,000 out of his own pocket than run the slightest risk of Mr. Beecher's being disturbed for a moment by any agitations of the Bowen matters. But he knew there were no agitations of the Bowen matters that Mr. Beecher cared a snap of the finger for, and Mr. Beecher's answer to him was, "I care nothing about Mr. Bowen's charges, or his affairs;" so that stands as the magnificent front, nay, the whole body, of Mr. Moulton's generosity to Mr. Tilton throughout this business. "Hypocrisy," says Mr. Burke, "can afford to be magnificent in its promises; for, never intending to go beyond promises, it costs nothing." Well, they finally forced the arbitration to cover these difficulties and to get the money, and they got it; and Mr. Tilton could not refrain from a chuckle over the matter, which should move the cockles of Mr. Moulton's heart to laughter, and, as he was not in his presence, he wrote him this slip:

"Spoils from 'new friends' for the enrichment of old."

And there are the check and the tell-tale pinholes that tied that slip to that paper, and Franklin Woodruff seems to be the partner in that concern whose careless honesty, I suppose, brings his more crafty partners into trouble.

Now, just look what a heavy fall Mr. Moulton gave Theodore with this $7,000, and how the spoils from the new friends did go to the enrichment of the old. Mr. Tilton had a basis of capital and funds for the support of his *Golden Age* through its contingencies and experiments, which was just the same as if he had the money in his purse. There had been a subscription of $12,000—$3,000 by Moulton, $3,000 by Franklin Woodruff, $1,000 by Jeremiah Robinson, $2.000 by a Mr. Mason, $1,500 by Mr. Schultz, and $1,500 by Mr. Southwick. One-half, $6,000, had been paid and was spent, and the concern was in want of money and this *strike* comes, and the money is got. The other $6,000 of the $12,000 he had in the engagements of these responsible parties to hand him the cash whenever he wanted it, and his only obligation to them was to return it if he was ever prosperous or able. *The Golden Age* then was situated with this $6,000 unpaid as if it was in its till, and the moment that this $7,000 of actual cash comes into Tilton's hands, then Moulton and Woodruff seize $6,000 of it at once, and leave only the small pittance of $1,000 for his share of he spoils. It must have gone against the grain a little, that, to get back Moulton's $1,500, and Woodruff's $1,500, and Jeremiah Robinson's $500, which was $3,500, they also had to put back $2,500 into the pockets of Mason, and Southwick, and Schultz, whom they didn't care anything about; but "commercial honor requires that we shall make no distinction between ourselves and these co-contributors," and, so that the dullest understanding might appreciate it when it is exposed, Mr. Woodruff says to Mr. Southwick, "Well, Johnny, if you lost $750 by going in, you have made $750 by coming out." [Laughter.] Now, you see what a heavy fall poor Tilton had with his $7,000; $6,000, that he was under no obligation to return unless prosperity wafted his bark to the haven where it would be found, taken right out of him bodily, before his eyes, without his suspecting it, and he left to tide over the shoal, when he came to it, as best he might. And how did they tide him over it when it came, and these notes and this cash that he could have relied upon, had been swept away, and they had bagged this $7,000, and what there was was spent? Why, then, Mr. Moulton says to Mr. Beecher, "See what a generous spirit can contrive, to help a friend. Look at this letter! look at these notes! look at this cash! see what it is to be a friend to Tilton! But then, alas, the delicacy of this being accepted at the hands of a lady will compel Mr. Tilton to decline it, and, alas! alas! these generous purposes will be of no real service;" and poor Mr. Beecher goes off, not understanding the delicate approaches of Mr. Moulton, and says to himself: "Well, if there is need of this money to save the concern (as Mr. Moulton had intimated), if all is going to destruction for want of $5,000, I will mortgage my house;" and he brought the $5,000 in a check, which it was thought better by Mr. Moulton should be in bills; and so there came, out of Mr. Beecher's generosity, the replacement of the $5,000, as far as it went, for the $6,000 that Moulton and Woodruff and Robinson and their associates had subtracted from the Bowen money. Talk to me about generosity and princely friendship! I have not seen, from the beginning to the end, any such liberality.

These original subscriptions for *The Golden Age*, generous if you please, were shared by comparative strangers who had no such duty and no such closeness of relation to Mr. Tilton. But, then, the fertile ingenuity which should thus cunningly subtract from Bowen's $7,000, six thousand of it, and then cunningly replace it, to the amount of five thousand, by this overwhelming generosity of Mr. Beecher, certainly deserves admiration, and I do not hesitate to say, Sir, that no parallel to it can be found in the admirable career of the original Sir Philip Sydney. [Laughter.]

THE RAGGED EDGE LETTER ANALYZED.

Now, gentlemen, I will dispose of the rest of this letter. The existence of this letter, the existence of

other letters that will be brought to your attention, so far from possibly furnishing evidence of consciousness of guilt in any sense of criminality which the divine and human law and the public judgment denounce as infamous, and the knowledge or disclosure of which would bring defeat, dishonor, contempt, upon the writer—the very existence of these letters is complete evidence that there is no consciousness of guilt, and that they are not the vehicle of expressions of guilt, or confessions of guilt, of any just construction that could connect guilt with them. Observe, they are written spontaneously and to a person who knew what the length and breadth, what the alternative measures and character of this matter were, and written to him on a purpose and with a purpose, to wit, the explication to him of the utter absence of any just self-reproach in his (Mr. Beecher's) mind in regard to selfishness, want of alacrity or want of effort on his part, to help the misfortunes and distresses of Mr. Tilton, as he had abundantly professed his desire to do, and as Mr. Moulton had strenuously labored to urge him to do. And then the whole measure of this letter (and it is quite a long one) and all its contents have for their scope and purpose nothing but the representation to Mr. Moulton (to whom he undoubtedly did express himself as he would to his own heart) that it was wrong in him, Moulton, to have this unjust suspicion; that it was wrong in Mr. Tilton to have the idea that Mr. Beecher did not desire and was not trying to help him; that it was wrong for Mr. Tilton to indulge the feelings which afterward and in a few weeks, at the end of March, Mr. Tilton expressed to Mr. Wilkeson, that Mr. Beecher, who could lift him with his little finger, had not shown an adequate disposition to help him. So he goes on, and gives all his engagements and all his labors, and then the difficulties that attended him, the impossibility, if this policy of silence in protection of Mr. Tilton's secret, in protection of the wife's secret, in protection of his own, Mr. Beecher's, share in the misfortunes which he reproached himself for—if that policy is to be maintained (for all the while poor Mr. Beecher thought all this trouble was springing out of the ground; he did n't know that Tilton was scattering, as a tale-bearer, these mischievous suspicions)—the impossibility, concurrently with that policy, of using what Mr. Tilton might think were ready means and enginery at hand, to wit, the impulse and suggestion to this man, that man, and the other man to aid Mr. Tilton—it was in explication of that subject, introduced by the wife's letter, that Mr. Tilton did not think he was helping him enough, promoted by Mr. Moulton's coldness to him, as if he, Mr. Beecher, was insincere, neglectful, inattentive to his duties in this regard, he opens the whole matter, and after laying out the immense burdens of his constant occupations he then comes to this part of it, which is considered, I believe, as an indication of guilt.

My vacation was profitable. I came back hoping that the bitterness of death was passed.

Well, that is an epithet; he didn't convey any knowledge to Mr. Moulton by that; Moulton knew what Mr. Beecher's notions of the bitterness of death were, and of the occasion of them; for he had poured out his soul to Moulton on that Sunday afternoon. This gives no additional information. There is no measuring of Mr. Beecher's forms of expression, of his emotions of self-reproach, of commiseration for others, of solicitude that the mischief should not, by scandal and by brut, be made any more than it was.

"But T.'s troubles brought back the cloud"——

Now, what is the cloud?

For, all this Fall and Winter I have felt that you did not feel satisfied with me, and that I seemed, both to you and T., as contenting myself with a cautious or sluggish policy, willing to save myself, but not to risk anything for T.—[that is, to succumb to these limitations, and not be willing to exert a proper activity, and thus run some risks.]

I have again and again probed my heart to see whether I was truly liable to such feeling, and the response is unequivocal that I am not.

Then he goes on to enlarge on the difficulties that would show anybody that what seemed to them this sluggish, selfish policy—this selfish consultation for himself—was a necessary part of the main policy urged by Moulton, pressed by Tilton, insisted upon by all the moral proprieties of the situation, that there should not be publicity and scandal; and then, in the graphic language which he uses on all occasions, he says:

To *say* that I have a church on my hands is simple enough—but to have the hundreds and thousands of men pressing me, each one with his keen suspicion, or anxiety, or zeal; to see tendencies which, if not stopped, would break out into ruinous defense of me; to stop them without seeming to do it; to prevent any one questioning me; to meet and allay prejudices against T. which had their beginning years before this; to keep serene, as if I was not alarmed or disturbed; to be cheerful at home and among friends when I was suffering the torments of the damned; to pass sleepless nights often, and yet to come up fresh and full for Sunday;—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearing and grinding on the nervous system.

And that was a true description of what had been imposed upon him as the "policy of silence" by the urgency and entreaty of Tilton and the pressure of Moulton. Now, he says, "When you say that I am not as helpful as I might be, and that the channels and the agencies that with my little finger I could open for the aid of Mr. Tilton are not opened, just consider this, that I am under these suspicions, circulated somehow, God only knows how, and I obliged to maintain this situation." The letter proceeds:

God knows that I have put more thought and judgment and earnest desire into my efforts to prepare a way for T. and E. than ever I did for myself, a hundred-fold!

Then he says that he never loses an opportunity of trying to repair the evils, and with increasing success.

But the roots of this prejudice are long. The catastrophe which precipitated him from his place only disclosed feelings that had existed long. Neither he nor you can be aware of the feelings of classes in society, on other grounds than late rumors. I mention this to explain why *I know* with *absolute* certainty that no mere statement, letter, testimony, or affirmation will reach the root of affairs and reinstate them. TIME and WORK WILL.

If Mr. Tilton goes on with work—honorable, honest work—time and his work, showing his worthiness, will reinstate him, but nothing else can. With a self-sacrificing spirit, he says:

If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out. No one can offer more than that. That I do offer.

Just as in the next June, when the matter was pressing on him, he said, "Very well; I will resign. I will stand this no longer. If Mr. Tilton thinks I don't do all in my power to help him; if I don't do my duty; if he desires to terminate the policy of silence, and have the truth known, I am ready for it at any moment."

Sacrifice me without hesitation, if you can clearly see your way to his safety and happiness thereby. I do not think that anything would be gained by it. I should be destroyed, but he would not be saved. E. and the children would have their future clouded. In one point of view I could desire the sacrifice on my part. * * * * * I look upon death as sweeter-faced than any friend I have in the world. Life would be pleasant, if I could see that rebuilt which is shattered.

There his anxiety is for others, wholly for this family.

But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of sincerity and happiness, cannot be endured much longer. I am well-nigh discouraged. If you, too, cease to trust me—to love me—I am alone; I have not another person in the world to whom I could go.

Well, to God I commit all. Whatever it may be here, it shall be well there. With sincere gratitude for your heroic friendship, and with sincere affection, even though you love me not, I am yours, though unknown to you.

H. W. B.

Now, gentlemen, you can very easily see that if Mr. Beecher had had the consciousness of any of these measures of guilt, he would not have invited, as an escape from the suspicions and coldness of Mr. Moulton and of Mr. Tilton, and of this great oppression to him, that any body should charge him in the tenderest point with the want of solicitude, and want of effort to restore the fortunes concerning which he felt himself thus to be reproached. If he had had the consciousness that this seduction of a parishioner, this adultery with a communicant, that all these horrible imputations were the facts that were to come out, do you think he, for a moment, even in the excitement of feeling, would have doubted that he would rather have that than these anxieties and these suppressions and these appearances of prevarication and equivocation? By no means. Why, gentlemen, you may hold this to be a fundamental proposition of our nature, implanted in us not less deeply than any other form and duty and sentiment of self-preservation, that a man conscious of guilt never makes a record of it, never voluntarily writes it, never parades it through strong epithets in a voluntary, spontaneous repulse of mere coldness on the part of Mr. Moulton, and feeling of Mr. Tilton that Mr. Beecher was not doing enough for him. Why, gentlemen, the strongest selfish impulses that are likely to overpower a man will not bring him to confession or disclosure even in the sacred relation of penitent and priest, or in the necessary confidence of patient and surgeon or physician, or in respect to property and life and character between client and lawyer, until the law puts its protection over those confessions, and for the good of the soul and for the cure of the body, and for the preservation and defense of property assures to those confidences seclusion against the power of disclosure before the law. The penitent that would seek the solace of absolution or spiritual consolation will keep the secret to the grave rather than risk it to disclosure by the law. The wounded or poisoned man will carry in his blood and bones the venom, or the secret hemorrhage that will take away his life, before he will disclose to the surgeon or physician the source of the wounds or the inflictions that are to betray him; and the client will keep from his lawyer even what is to help his life and his fortunes, if at the same time it is a confession of guilt and of infamy that by any possibility could be disclosed through the source of his confession; and yet, when society, recognizing those deepest principles of our nature, has thus covered with its protection against the prying eye of justice and its punishment all these confidences, we are told that this lavish use of epithets is to be construed as confession of guilt. Why, gentlemen, we all know that if you will trust men to portray their feelings, their sympathies, their honest and creditable emotions, there is no limit to the profuseness of their confidences, and the strength and point of their reproaches and epithets; and all this letter, honest indeed, though overwrought, not wise, not the measure of a circumspect and careful thinker, but the outpouring of the unrepressed self-reproach that he, who had been working under impulses for the good of others, and had borne so much himself, and was himself so much impressed with the consciousness of fault that he had expressed to Mr. Tilton, and expressed to Mr. Moulton that he, knowing that he was not open to these reproaches should still suffer them, of coldness, I mean, and indifference, touched him to the very heart, and without a call, without the least occasion, and casting all these pearls under the rude feet of these men to be trampled on, and then to be turned on and ruined by them by this evidence of the treasure of his feelings, that indeed is a hard fate. You will see, gentlemen, that if Mr. Beecher is to suffer under the average judgments of men it will be because

they do not place themselves upon the level of feeling, of discipline of mind and heart, of long, long study of love and sympathy and charity as the basis of our religion, and as the very hope and duty of society. It is because he is tenderer in conscience to the least touch of self-compunction that these expressions of overflowing reproach, pity, and, if you please, despair at his inability to repress mischief which he has unconsciously done, that are taken up by other judgments and made the measure of crimes, as if they had been uttered by hardened and wicked men. But hardened and wicked men don't confess at all, and, if they do confess, they don't dwell on the circumstances nor exaggerate the fault, but yet exaggeration is the truth of this and of the other letters. It is exaggeration of feeling, and not exaggeration of fault.

MR. BEECHER WRITES AGAIN IN A HOPELESS STRAIN.

Now, there are two other letters that connect themselves. When the movements were going on which ended in March with getting the money, Mr. Beecher writes a very cheerful letter, apparently to Mr. Moulton for the most part, but it contains a phrase that has been thought to indicate something of the nature of confession of guilt.

MY DEAR FRIEND: I sent on Friday or Saturday the portrait of Titian to the store for you. I hope it may suit you.

I have been doing ten men's work this Winter [this was the end of March], partly to make up lost time, partly because I live under a cloud, feeling every month that I may be doing my last work, and anxious to make the most of it. When Esau sold his birthright, he found "no place for repentance, though he sought it carefully with tears." But I have one abiding comfort. I have known you, and found in you one who has given a new meaning to friendship. As soon as warm days come I want you to go to Peekskill with me.

I am off in an hour for Massachusetts, to be gone all the week.

I am urging forward my second volume of "Life of Christ," for "the night cometh when no man can work" [quoting the Scripture text].

With much affection and admiration, yours truly,

H. W. B.

Now, you will observe that this is a continuance of that same feeling, greatly modified, to be sure, and he refers to the selfish sorrows of Esau, for they certainly were selfish sorrows, that he had sold his birthright, and that he did not find, although he sought, a place for repentance—or whatever it is—"a place for repentance, though he sought it carefully and with tears." In other words, "My position, my fault, my misfortune of this character, known to you, known to me" (for there is no explanation about it) "is one, it seems, that I can't expect entire relief from. But I, too, must expect to have this sorrow attend me, and to perform my labors under it." But it is sorrow; it is not crime.

We have afterward a letter written in June, 1872, which has been referred to but really has no connection, that I can see, with this matter of Mr. and Mrs. Tilton, and it has been very much commented upon. Now, it seems that Mr. Bowen, as soon as he had got his "Tripartite Agreement" and unfortunately had to pay the money, and got back his Woodstock letter, though he seems to have been playing the same part that he did when he had made a settlement once before with Mr. Beecher in the beginning of 1870, and then had gone around talking about how he could blow the roof off of Plymouth Church or something of that kind, and drive Mr. Beecher out of Brooklyn. Mr. Beecher writes to Mr. Moulton about Mr. Bowen and about his affairs, it seems to me, entirely:

On the way to church last evening I met Mr. Claflin. He says that Mr. Bowen *denies* any such treacherous whisperings, and is in a right state.

Moulton, I suppose, had heard some of Mr. Bowen's treacherous whisperings, or what is supposed to be his treacherous whisperings, and mentioned them to Mr. Beecher:

I mentioned my proposed letter. He likes the idea. I read him the draft of it (in lecture-room). He drew back and said: "Better send it." I asked if B. had ever made him a statement of the very *bottom* facts; if there were any charges I did not know.

Well, now, this letter has always been quoted as if those bottom facts that Mr. Beecher showed some consciousness of in the first place had to do with the Tilton matter; but you see they had nothing to do with that, and it was not any bottom fact that Mr. Beecher had any consciousness of, in regard to the Bowen slanders, or their basis, that he is talking about. "I asked him if Mr. Bowen had ever made him a statement of the very bottom facts." This is what Mr. Bowen supposed to be, and claimed to be, the bottom facts. for he repeats the idea in this phrase, that explains it at once: "If there were any charges I did not know." Has Mr. Bowen got to the bottom of his charges? Has he told you all of them, or are there some that I have not heard of and don't imagine? Is there a depth in Mr. Bowen which is no lower depth of slander and imputation? That is the point. Let us know what it is, because what is the use of having a tripartite agreement, having to cover up everything, and these careful words of friendship, of accord, of withdrawal of charges, and then have Mr. Bowen whispering around? Is it the same charges or are there some bottom facts in Mr. Bowen's budget that nobody yet has ever heard of, I don't yet understand. "He evaded and intimated that if he had, he hardly would be right in telling me. I think he would be right in telling you." Mr. Bowen knew of nothing to conceal, that is his captain would not be left to tell these confidences of Mr. Bowen, so he says, "Go and tell Moulton I have not sent any note, and destroyed that prepared." Well, the rest does not seem to be of any importance. This last letter does

not seem to carry a date of its own, but the memorandum of its date on which we have proceeded and noted on is June, 1872.

MR. WILKESON'S HELPING HAND.

I now come, gentlemen, to a position of considerable interest in this case, though I am quite sure, upon exploration, it will cease to be of any great importance—but of considerable interest in this case, because it introduces a year later than the period I have been just talking about—the situation in which there comes to be, for the first time, an open indication to Mr. Tilton and to Mr. Moulton that Mr. Beecher was not going to be kept under any of those impositions of silence, if, as was the object of the whole, and without which it was wholly unprosperous, the effect of silence was not to be accomplished, but there was to be a continual threat, or fear, or need, of some publication or other on the part of Mr. Tilton. I mean the situation that showed itself about the end of May and the beginning of June, 1873—a situation important and interesting in itself, and also made somewhat fresh by its introduction of a new witness to speak concerning it in the person of Mrs. Moulton; for it is wholly upon that point, and at that date, that Mrs. Moulton comes at all into play. Now, I must very briefly attract your attention, and, perhaps, with some fear of obscurity, if your minds do not recall the situation as clearly as mine does, to what preceded that 1st of June. On the 20th of May Mr. Tilton had procured, permitted, winked at, or seen the publication of the Bowen letter, or *The Golden Age* slip. The 20th of April the Bowen letter, or *Golden Age* slip, had got into print, and you remember the testimony given by Mr. McKelway and Mr. Harman as to what passed in the way of Mr. Tilton's intrusting that paper to their discretion in some sort and how finally it got into print. Then there came, of course, from this publication in the papers of your city of this long budget of infamous accusations against Mr. Beecher, put upon Mr. Bowen by Mr. Tilton in the form of a letter by Mr. Tilton to Mr. Bowen, some certainly quite moderate but still some considerable excitement. Somehow or other Mr. Bowen's budget of accusation did not seem to have attracted public confidence. If Mr. Tilton states them correctly they are very specific, they are quite numerous, they are quite heinous, and they ought to have some support or else not be charged. But, yet, his accusations seem readily to sink of themselves, and don't disturb people's confidence or set their tongues even much agoing. But there it was. Then, in the end of May following, May 30, Mr. Wilkeson—a pretty intelligent man, one of the most benevolent men that Dr. Nott ever educated, and one of the most prominent of lawyers and of public men if he hadn't had the misfortune to have had property—Mr. Wilkeson has learned even to mark the course of a serpent on the rock, and he sees in this trait of Mr. Bowen and Mr. Tilton the purpose to make public, while they are shutting Mr. Beecher's mouth under obligations of privacy in their interests, and he publishes the "Tripartite Agreement." Then, what does Mr. Tilton do? He was quite easy about his *Golden Age* slip getting published, although he had used it to get the $7,000, and it was supposed that the copy in the custody of Mr. Claflin was the only copy preserved. However, that didn't disturb him; he didn't think there was any reason for trouble about that; but when the "Tripartite Agreement," to which Mr. Tilton was a party, was published, and the newspapers dared to comment upon him, Tilton (and I would like to know who they don't dare to comment on), then it was *scandalum magnatum*, a thing not to be endured. The safety of society didn't permit that. He could not bear a newspaper paragraph in *The Express* newspaper about him. It touched his honor. There must be an instant refutation of this idea that Mr. Tilton had received any favor or consideration from Mr. Beecher, and it occurred to his ingenious mind that the best way to heal that publication, would be to publish what is called Mr. Beecher's "Letter of Contrition" or his "Apology," that that would be an admirable mode of making a clear statement to the public. If there was one paper that could do that it would be this Moulton memorandum of Mr. Beecher's conversation on Sunday, and that that would be an excellent thing, and he prepared a card on the 31st, and had the effrontery to propose it to Mr. Beecher—"I am going to put that in *The Eagle* this afternoon." What had become of his anxieties about his wife and children, of his solicitude lest instantly out of the Bowen matter there might arise a careless introduction of the Tilton-Beecher business? It was all Bowen so far, was it not? It was all his letter to Mr. Bowen that had started the trouble, and that was about the Bowen budget, and the "Tripartite Agreement" had been published to meet that, and there was not any imputation of Mr. Tilton in that publication at all, and yet he says, "My answer to this will be the publication of that paper;" and then Mr. Beecher says, "If you publish that, that is what I am going to publish. I have held for two years a position of silence on the matter of this calumny, to protect the fair fame of a family. I now resign my position of pastor of Plymouth Church and I will meet it," and Mr. Moulton hurries down stairs when Mr. Beecher shows him that and says, "Why, Mr. Beecher is going to answer your slanders, your seizure of confidence and betrayal of it in this paper in my hands, that you have had so far as I was concerned, the means of publishing, and that you are going to publish; that is the way he is going to answer you. The game is up. The truth must come out. Your misfortunes, your troubles will be reduced to their true dimensions, and you cannot

make a bullet-mold of your mouth any longer to make weapons to assault Mr. Beecher. All mystery will disappear. The tenderness of his heart, the tenderness of his conscience, his immeasured self-reproach will be shown to have related to what we all know it relates to, and no longer be capable of being fashioned into deadly weapons of destruction at your will. "Well," says Mr. Tilton, "I won't publish," and he didn't publish, and that was the end of that. That threat came to an end. He would shoot Mr. Beecher in the street. That didn't stop Mr. Beecher. Mr. Tilton was the man that stopped.

The Court here adjourned until 2 o'clock.

MR. BEECHER'S SPIRIT AROUSED.

The Court met at 2 o'clock, pursuant to adjournment.

Mr. Evarts—Now, gentlemen, on Saturday night, the 31st of May, Mr. Beecher having confronted the situation which Mr. Tilton said was to be secured by his printing something, and having drawn out the strange threat that if he, Mr. Beecher, published anything that indicated that the policy of silence had grown out of regard for others and was now ended, and the proposition to the public of Mr. Beecher, "Now, I am a man, free of all interests so dear to me, so dear to society, so dear to the world," Mr. Tilton at once saw that there was not any necessity for his publishing anything, and said, if Mr. Beecher would publish something that would be enough; and the minimum of it was that, if he would publish something that would put a correct and truthful view upon the matter, that Mr. Tilton was not to be regarded in the matter of these slanders that had now become published, and of the concession and settlement of them of the "Tripartite Agreement," as necessarily the person that had done an injury and been forgiven, and have the thing rightly put, why Mr. Moulton thought that would do. But, that was not settled Sunday night; and finally the adjustment of the publication on the forenoon of Monday, the 2d of June; and on that Sunday there passed a letter from Mr. Beecher to Mr. Moulton, and a reply from Mr. Moulton, both letters undoubtedly of very great significance, and they follow after the parting on Saturday night in which Mr. Beecher had said, "I am going to meet this matter in this way," and the interview of consternation between Mr. Moulton and Mr. Tilton from that announcement. Consternation, I say, because it was a termination of this unilateral policy of silence, a putting of an end to a secret and malicious circulation of slanders, while an honorable and upright man's mouth was closed even against confidence with anybody else but themselves; and Mr. Beecher writes this letter, in regard to which—although I understand from public comments, and it may be expected that it will still be insisted upon—may be still insisted upon before you, that it is a letter carrying some evidence of guilt—a letter which, with the answer of Mr. Moulton to it, written then immediately and sent, utterly precludes any idea that there was in the common consciousness of those two men—Moulton and Beecher—any other state of facts, any other situation or occasion of chagrin, mortification, self-reproach on the part of Mr. Beecher, than what, in every man's mind that is worthy to be called a man, would arise upon the situation and the truth as Mr. Beecher then conceived it to be, and as he has represented to you that he then conceived it to be. Accept the situation of Mr. Beecher's sentiments concerning his responsibility, his association, his share in the troubles and misfortunes of this family, and all you need is to give him credit for being a gentleman, a man of honor, a Christian, and affected with right sentiments as to his high calling, his great responsibility for the maintenance of a proper relation in the families of his parish, and of himself in particular in his special attitude toward Mr. Tilton, Mrs. Tilton, and their family—all you need is to concede the one situation of facts as Mr. Beecher then conceived them, and to concede right feeling, proper character, just sentiments of a man of honor and of pure life, and you fill out every word in these letters with—I will not say a justification of them, but with an appreciative applause of them as suitable to the situation as he admits it, and to the sentiments that he ought to have felt. I have always wanted to have Mr. Beecher tried outside of any special circumstance of his position. I have desired to strip him as a defendant from any other attitude for your construction than what belongs to him as a man, standing on the same level with all of us; but by saying that, I do not mean to say that he should be judged as a brute, as a profligate, as a selfish, sordid character that cares nothing for anybody but himself; I mean that he shall be judged as a man, with the culture and moral sentiments, the experience of life, the tenderness for others, and the appreciation of the terrible consequences that have fallen upon that family, and for which he was to blame, and of the more terrible consequences that were to diffuse themselves, eating ever deeper and deeper into the heart of that family, and eating also into the heart of society, if publication and promulgation should necessarily be brought about. Now, after parting on Saturday night, Mr. Beecher originates this letter; and do you think that a man that was going to dare the conflict, and have the dimensions of his guilt known and ascertained, and that chose that as an alternative to having this constant picking at him, this constant oppression about him—do you think that he on that Sunday morning would write a fresh evidence of guilt, in order that it might be measured against him as the guilt of seduction and adultery? Do you think a man would do that? And yet it is supposed that a letter written that Sunday morning to Mr. Moulton after the parting Saturday night, which had defied them, and said, "I will

meet it," that then he sets down against himself evidence of guilt. Well, there is n't anything said in any of these letters about guilt, but they say that in setting down evidence of your appreciation of your fault you have set down evidence that the common judgments of men must estimate as an appreciation of your guilt in the coarse and heinous form; and that is the whole argument. Now, listen to the letter. Remember the attitude in which the parties stood when they parted the night before.

My Dear Frank: The whole earth is tranquil and the heaven is serene, as befits one who has about finished his world-life. I could do nothing on Saturday—my head was confused, but a good sleep has made it like crystal. I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt changes, and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves.

In other words, "I am going to have this matter now brought to the test. I deplore, I lament, I reproach myself to the quick for the mischief and the misfortune that have sprung out of my relations to this family. I have, under this policy of silence, submitted to what I regarded for their good, and for the good of everybody. I will persist in it no longer. Whatever injury, whatever punishment comes from a just knowledge of what I am responsible for, might as well now be met as at any time. All the ideas that Mr. Tilton has an honest purpose of shielding his wife, his family, and preserving from the mischiefs of public scandal interests so dear to him, however there may be a temporary feeling in his mind, are utterly untrustworthy. There can be, there is no assurance that after every sacrifice that we make, intolerable to feeling, intolerable to pride, and accomplishing nothing, we are not every moment exposed to having the same caprice of his involve not only the explosion of the guilt or injury, or fault or injury—whatever you chose to call it—but of the frustration of all the efforts that have been made in this supposed great interest, an interest, I believe, perfectly honest which every man will feel, which no man will be reproached for feeling; and all this interest, and everything, will be at an end."

It is only fair that he should know that the publication of the card which he proposes would leave him far worse off than before.

That is the card that contained the apology, and of course set everybody to talking about what it was an apology for.

The *agreement* [that is the tripartite agreement] was made after my letter through you was written. He had had it a year.

That is, the letter he was going to publish; that is the memorandum, whatever you choose to call it; it is the Sunday previous.

He had condoned his wife's fault. He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife or leave his children to a blight. I had honestly and earnestly joined in the purpose.

Now, that lays the situation distinctly before you. The fault of his wife he had passed over. Everything had been reconciled. These interviews had taken place, in which there was a restoration "of the relations between me and his wife and himself." All that had been done, and then when he sees in print, as the letter proceeds to say, a statement or publication of what he had done himself, he is irritated, offended, and inflamed into some responsibility to the natural and necessary construction of the situation.

Then this settlement was made and signed by him. It was not my making.

And you will observe in all that "Tripartite Agreement" there does not seem to have been the least desire, or activity, or spontaneous movement of Mr. Beecher toward it; and he tells Mr. Moulton here:

This settlement was made and signed by him. [That is the "Tripartite Agreement.] It was not my making. He revised his part so it should wholly suit him, and signed it. It stood unquestioned and unblamed for more than a year. *Then it was published.* Nothing but that. That which he did in private when made public excited him to fury, and he charges me with *making him appear* as one *graciously pardoned by me!* It was his own deliberate act, with which he was perfectly content till others saw it, and then he charges a grievous wrong home on me!

And you see that that is a just description of the situation given by Mr. Beecher; this irritable man, who in his own mind is always the subject of the gaze of the world, and yet he has not become accustomed to it. One would suppose that under this eternal sunshine he might have been tanned and toughened a little, but he has not. Touch his egotism, touch his pride and pomp before the world, and he feels a blow at his heart, but debauch his wife and he can bear it with the utmost patience.

My mind is clear. I am not in haste. I shall write for the public a statement that will bear the light of the Judgment Day. God will take care of me and mine. When I look on earth it is a deep night. When I look to the heavens above I see the morning breaking. But, oh! that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity, your disinterested friendship. Your noble wife, too, has been to me one of God's comforters. It is such as she that renews a waning faith in womanhood. Now, Frank, I would not have you waste any more energy on a hopeless task. With such a man as T. T. there is no possible salvation for any that depend upon him. With a strong nature, he does not know how to govern it. With generous impulses, the undercurrent that rules him is self. With ardent affections, he cannot love long that which does not repay him with admiration and praise. With a strong theatric nature, he is constantly imposed upon with the idea that a position, a great stroke, a *coup d'état* is the way to success.

Besides these, he has a hundred good things about him, but these named traits make him absolutely unreliable.

Therefore, there is no use in further trying. I have a strong feeling upon me, and it brings great peace with it

that I am spending my *last Sunday* and preaching my last sermon.

Dear, good God, I thank thee that I am indeed beginning to see rest and triumph.

Does a seducer and an adulterer feel thus at the approach of death?

The pain of life is but a moment; the glory of everlasting emancipation is wordless, inconceivable, full of beckoning glory.

Now, gentlemen, what do you find of guilt in that letter? He was going to write a statement that would bear the scrutiny of the Judgment Day. When they had declared their purpose to put him to the trial of this grave charge of adultery and seduction, first brought up in 1874, he was equally undismayed. He said, "I will write a statement that will bear the light of the Judgment Day. I will declare all things as my conscience affects me with responsibility, and as my heart feels that it should bear the pangs of my wrong, of my fault."

MR. MOULTON'S CONFIDENCE IN MR. BEECHER'S CASE.

And, what did Moulton say to him, writing him back after getting that letter. "My Dear Friend," he starts off and then crosses it out.

MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning.

So there was nothing new there; it was mood, it was the oppression on his feelings and the determination that what was so contrary to his nature as concealment should be ended, and the truth should be known.

"If the truth must be spoken," Moulton says, "let it be. I know you can stand if the whole case was published to-morrow."

Well, now, did anybody in his senses suppose that in this community of ours, in this Christian church of any denomination, from the great mother Church of all, through all the dissensions and divisions, that it could be said that if the whole truth were published, as it is claimed the truth is and has been proved, and as your verdict is asked for by this plaintiff to make it, and asked for on the evidence of this Moulton that wrote that letter—is there a man in his senses that thinks a man can stand and hold up his head in the streets of Brooklyn, in the Church of God, in Christendom, even among those of lower estimates of manliness and honor, if the truth was seduction and adultery? That is an accusation, then, of our boasted society, or else it is a simple statement of the fact.

I know that if this matter is brought out as we all know the facts are, you can stand it, and stand to-morrow as you stand to-day.

But he says:

You can stand if the whole case was published to-morrow, and in my opinion it shows a selfish faith in God to—[and then he stops and he begins again.] My Dear Friend: Your letter makes this first Sabbath of Summer dark and cold like a vault.

He has a little rhetoric instead of starting right off at the substance of the thing:

You have never inspired me with courage or hope, and if I had listened to you alone my hands would have dropped helpless long ago.

Yes, they would have dropped helpless long ago if Mr. Beecher's wishes, if his desires, if his conceptions of dealing with this matter had been adopted. Moulton's hands would have dropped helpless long ago, and they never would have got into Mr. Beecher's pockets. [Laughter.] Ah, what a wretched exhibition and play upon the great heart and the noble nature of an honest man! And how there is disclosed here that there has been no policy of silence, and no disposition to cover things on Mr. Beecher's part. It was the keeping open of slander and the indefiniteness of imputation that kept alive the machinery of silence accompanied with the enginery of tale-bearing.

You do not begin to be in the danger to-day that has faced you many times before.

Well, I think that Mr. Beecher was clearly in a shape then of getting out of all danger.

If you only look it square in the eyes it will cower and slink away again.

The danger was that Tilton was going to publish a card. He did look it square in the eyes and said to Mr. Tilton: "Publish, publish; and then we will have the whole matter published, and we will have your false accusation, and the dilapidated morality which you have infused into your family." "Look it square in the eyes; it will cower and slink away again." He had looked it square in the eyes the night before and it had cowered and slunk away, and this was Moulton's mode of telling him that fact:

You know that I have never been in sympathy with, but that I absolutely abhor the unmanly mood out of which your letter of this morning came.

Was it an unmanly mood to say he was going to publish the whole truth, to say that the anguish it would inflict upon himself and upon others he was going to bear, and that he was going to appear at the judgment seat with rest and triumph? Does that mean suicide? Is that the way a man affronts by taking his exit from the world in defiance of the will of God? Ah, no. But the mood was this, this oppression, this disaster, this peace, is the passing away of earth and the final rest of heaven.

This mood is a reservoir of mildew. You can stand if the *whole case* were published to-morrow.

"*Whole case*" underscored by Moulton. Yes; that is exactly what Mr. Beecher was going to stand. Tilton wanted to publish a piece-meal paper for insinuation and for comment; and Beecher's remedy was the whole case.

In my opinion, it shows only a selfish faith in God to go whining into Heaven if you could, with the truth that you are not courageous enough with God's help and faith in God to try to live on earth.

"Live on earth," is it? "Truth"—well, "with the truth that you are not courageous enough to try to live

on earth!" Well, that is bad rhetoric; but still, it has some meaning, doubtless.

You know that I love you; and because I do I shall try, and try, and try, as in the past. You are mistaken when you say that Theodore charges you as making him appear as one graciously pardoned by you. He said that the form in which it was published in some of the papers made it so appear, and it was from this that he asked relief.

Just as it was about the Bacon letter, that the comments that the papers made touched this thin-skinned man so that the man ruined his wife and family.

I don't think it impossible to frame a letter which will cover the case. May God bless you; I know he will protect you.

MR. BEECHER'S LETTER TO THE EDITOR OF THE EAGLE.

Well, now, gentlemen, if anybody can find evidence of a guilty appreciation of the relation of Mr. Beecher and the family of Mr. Tilton in any other sense than that which Mr. Beecher has always admitted on the stand in his statements to the jury and otherwise ——. Let us see—Mr. Beecher made no answer to this letter of Moulton—he left the thing for them to settle; and the way that that night—Sunday night—they proposed to settle it by a card suggested, which Mr. Beecher took home with him that night, and which, with such alterations as he made in consultation with Mr. Kinsella the next forenoon or Monday, was actually published. I give you now the publication on Mr. Beecher's part that took the place of the necessity of Mr. Tilton's publication when Mr. Tilton found that that was to put an end to the property he had in unmeasured and undefined imputation with the public. "Dear Kinsella" [this is proposed for Mr. Beecher]:

I have maintained silence under the continual slanders that have for some time followed me. I do not now propose to defend myself. The recent publication of a document which bears my name among others was made without consultation with either Theodore Tilton or myself or our authorization. If that document should lead the public to regard Mr. Tilton as the author of the calumnies to which it alluded, or any other slander against me, it will do him great injustice. Mr. Tilton's course toward me has been that of a man of honor and integrity.

Mr. Abbott—That is Mr. Tilton's proposed card.

Mr. Evarts—I said so; that is what he proposed, and you will see whenever Mr. Tilton proposes anything, either beginning, middle, or end, there will be some certificate to his honor. [Laughter.] Mr. Beecher did n't publish any such card. And now I read you from the newspaper in evidence what he did publish. It is in the body of an editorial in the morning edition, printed at 12 o'clock—1 o'clock—of *The Brooklyn Eagle*.

Mr. Morris—Two o'clock.

Mr. Evarts—Printed at 2 o'clock—that is, published at 2 o'clock; issued at 2.

Mr. Abbott—Yes.

Mr. Evarts—Issued at 2 o'clock; but the editorials, &c., are written and set up in good season for the inside page.

In a recent interview between the editor of *The Eagle* and the Rev. Mr. Beecher, the latter gentleman took occasion to regret, etc. In vindication of Mr. Tilton, and in confirmation of our statement of Mr. Beecher's views, we publish the following note, received this morning, from the pastor of Plymouth Church: "I have maintained silence respecting the slanders which have for some time past followed me."

He takes the first sentence Mr. Tilton had proposed to him to say, "I do not now propose to defend myself." That Mr. Beecher does not say. He omits it; he substitutes:

I should not speak now but for the sake of relieving another of unjust imputation. The document which was recently published, bearing my name, with others, was published without consultation either with me, or with Mr. Tilton, nor with any authorization from us.

That is a simple statement in fact, and follows in substance, though not in actual words, what is contained in the proposed card.

If that document should lead the public to regard Mr. Tilton as the author of the calumnies to which it alludes it will do him great injustice.

But Mr. Tilton had proposed that he should say:

If that document should lead the public to regard Mr. Tilton as the author of the calumnies to which it alludes, *or any other slander* against me"

—and that, "or any other slander against me," Mr. Beecher does not certify to. He says, "If reading that 'Tripartite Agreement' makes you think that Tilton is the author of Bowen's slanders against me it will do him great injustice." But Tilton wanted a certificate from Mr. Beecher that he, Tilton, had not uttered any other slanders against him, and that Mr. Beecher refuses.

I am unwilling that he should even seem to be responsible for injurious statements whose force was derived wholly from others.

That is, that he should be held responsible for the Bowen slanders. And Mr. Beecher omitted this certificate:

Mr. Tilton's course toward me has been that of a man of honor and integrity.

And yet Mr. Tilton had to be satisfied, because he had to take that alternative or the alternative of the exposure of the whole situation and of his complicity in the movements and operations, which to be sure Mr. Beecher knew but little of, but which Mr. Tilton and Mr. Moulton knew a great deal of, and knew that an investigation such as we have had here would expose.

MR. BEECHER'S STATEMENT TO THE COMMITTEE.

Now, gentlemen, I will read you the statement that Mr. Beecher solemnly described then in June, 1873, as to be prepared by him, and then in July, 1874, as to be prepared by him that would bear the light of the Judgment Day, and which, because Mr. Beecher

refused all efforts in 1874 to have any further suppression against an absolute investigation and publication, he did prepare. And you, gentlemen, are to judge upon the evidence of this cause whether this is not such a statement as will bear the Judgment Day and scrutiny of the All-Seeing God, if it is not a statement that would bear to be the confession in the closet. And having heard it, you will then determine whether you have any difficulty in assigning to these various letters of Mr. Beecher that are introduced as evidences of guilt any other possible meaning than the overflow of his feelings at finding himself responsible to the degree of responsibility that he expresses in this statement for the Judgment Day.

WEDNESDAY, July 15, 1874.

DEAR BRETHREN: When at length the time came that I could break the long silence of four years, I thought it proper, and in accordance with all the principles which Plymouth Church has defended, that I should speak to you, and through you to the Church, the only ecclesiastical tribunal whose authority I recognize as binding upon me. I asked the appointment of a large committee of able and impartial men, because though my own statement was to be in my judgment the chief element, yet there were many incidental and collateral questions which I desired to have investigated and finally determined. I do not propose to enter upon the details of a history running through four years. I shall state the facts which concern the original troubles, and leave alone the tangled sequences.

You may remember that the Committee had asked from the clergyman, as a preliminary basis of their inquiries into the tangled sequences, or whatever else might be forced upon their notice, a statement from him upon the simple point of what in truth and in fact were the relations between him and Mrs. Tilton, and this paper is confined to that.

My acquaintance with Mrs. Elizabeth Tilton dates from her childhood; my intimacy in her family from about 1862-3. Her nature was strongly devotional. She had a genius of religious sentiment. Had she lived in other days, and in the Catholic Church, she has always seemed to me to be one of those who would have inspirations and ecstatic visions. My interest in her increased and she deserved the respectful affection which she won from me. I loved her as one would his own child. She had grown up under my teaching, she had never known any other religious teacher, and she had associated with my name, and illumined it by her imagination, whatever was worthy of affection and trust. Nor did I dream for a long time that in such a gentle and appreciative nature my admiration might beget an enthusiasm which would mar the entirety of the love which a wife should cherish for her husband. It was at length the sight of the unhappiness disclosed in the family and the indignant reproaches of the husband, that aroused in me the full sense of the wrong done, in winning any part of that affection which belonged to her household. Leaving to others the unwelcome task of refined moral criticism upon this gentle, pure-minded woman, it is for me explicitly to defend her from any charge of criminality of conduct, and to dissipate even the shadow of a reproach upon her untempted honor, and to join with her husband, who has again and again, with loyal affection, and with justice, defended the personal purity of his wife.

Although the sincere affection which grew up in me for Mrs. Tilton was honorable in intent, I none the less condemn myself with unsparing severity for bringing upon the most sacred of human institutions—the household—great harm and distress, which have since flowed like a river. I do not measure the blame by a light standard. That our relations were not criminal in the ordinary and legal sense of the term does not exonerate me from blame, nor does it relieve me of the sharpest pangs of sorrow. My age, my experience, my knowledge of her sensitive nature, should have been a shield to her. When the full realization broke upon me of a household deeply wounded by my imprudence, of possible and threatened divisions and scatterings, and the long train of evils that might befall father, mother, and the beautiful group of children, and that, instead of happiness, I had brought upon two persons, with whom I had been on the most affectionate relations, a torrent of misery whose influence might widen indefinitely—my distress passed all bounds. To a mutual friend I poured out my soul like water. I did not measure words. I took upon myself immeasurable blame. I wished him to convey to Mr. Tilton, in language overcharged with feeling, my profound regrets, and apologies. The apology was accepted, a reconciliation was made, and kind social relations were for a time continued—and would have continued until this day, had not malign external influences interfered, in various unlooked-for ways, and spread abroad exaggerations, perversions, and falsehoods, whose direct evil was aimed at me, but whose indirect influence was to place Mr. Tilton in a false position, as one attacking me, rather than as one injured by me.

Nor can any one who only looks upon affairs at the present stage of development be in a situation to judge of the motives and influences which have acted at various stages of a history, essentially private and domestic, and which, for the sake of society, of the family, of childhood and of womanhood, should have had the privilege of seclusion, which those most injured most earnestly sought. The policy of silence has failed. But it was the right one, and ought to have succeeded.

I was called, at the earliest moment in this history, to determine my duty in other relations. I was pastor of a large church, the editor of a religious journal, and was engaged in important literary enterprises, besides the multifarious public and private duties of a miscellaneous kind, not strictly clerical, which fall upon clergymen in our day.

Profoundly suffering, it would have been an unspeakable relief if I could have laid down my burdens. It was not honorable or right to others to seek personal relief at their expense. I therefore determined to accept my sorrow as a schoolmaster sent of God, and to let no one know that I carried burdens, but to rise to every emergency, not only, but to grow stronger by the severe discipline laid upon me.

It was in this mood that I wrote the "Life of Christ," which may well be called "Benoni"—child of my sorrow. I was led by my suffering to a profounder sense of moral evil, to a pity and sympathy for those doing wrong that I had never before known. The divine nature, in its compassion and in its healing power, which before was only as a star, has grown to the orb of a sun. And in no part of my life has my ministry sprung from so profound a sense of God's mercy, nor gone forth with such an unspeakable compassion for the sorrowing, struggling human kind. It does not befit me to speak of my own work, but it is

right to explain why I continued it under circumstances of very great trouble. I did not think that because I had done wrong I ought not to do right.

I ought also, solemnly and gratefully, to bear witness to the mercy of God. Every hour of anguish has opened at length into peace. The strife of tongues, the sorrow for others, the suffering for myself, have brought to me the God of all consolation, and he has, from time to time, ministered a peace which passeth all understanding.

In conclusion, I am yet in vigor of health, with powers unimpaired. I have no use for myself, except to labor for the best interests of my country and my kind. If it please God, I shall make the Autumn of my life as energetic as my earlier years. But in what fields, or through what channels, I leave to the Divine Providence.

And Divine Providence has cared and will care for the fields and the channels in which he shall fill out the life that thus far is distinguished from other men's life only by its superiority, and never more than by its superiority in dealing with this sorrow, this fault, this misery, this self-reproach, which, while it would have crushed most innocent men in the calamity of public depreciation and assault, and which, if there had been one sense of conscious guilt in the view that is sought to be impressed upon you, would have crushed this defendant or any one else, but which he met with that noble, faithful sentiment to the Great Master of his life, "I did not find any warrant in the fact that I had done wrong, that I should not do right."

Now, gentlemen, I do not need to criticise the language of any particular letter; I have laid before you in the proof, the course, the conduct, the consciousness, and the sentiments that followed from that course, that conduct, and that consciousness. If you believe that character and life are not as great, as truthful a product as the looms of Time ever wove, you may think that this vile patch of calumny represents a part of the woven tapestry of Henry Ward Beecher's life; but you know, *you* know, *you* know [addressing individual jurymen], and I know that if there is anything in the world that transcends all truth as a product of this sublunary life, it is the truth of action, of conduct, of the very life itself that men live, and when you are asked to impose these years of wickedness, of treachery, of baseness, of misery, of trampling upon the feelings of others, defying the law of Sinai, and taking in vain all the solemnities of our common religion—when you are asked to impose five or six years of that wicked life upon the character of Henry Ward Beecher, you are asked for a credulty that no evidence except of the senses could ever for a moment force into the mind of an intelligent and upright man.

MRS. MOULTON'S TESTIMONY.

Now it is said that on Monday morning, when all this thing is over, there occurred an interview between Mr. Beecher and Mrs. Moulton, whose external circumstances and limits are very exactly defined. I am sure I should be very glad to leave the matter of this lady's testimony, its explanations, charitable or severe, to the general situation of a wife adduced as a witness in a husband's behalf, and in great part that does explain the whole; but yet, I am required to search this testimony itself and expose to you the internal traits of it, which would rob it of all credit, and to show you the external circumstances that make its occurrence impossible. Now, I am sure everybody would have been glad to have welcomed this new witness, a woman, with the same hearty acceptance and the same confident reliance with which we all met the frank, intelligent, scrupulously upright testimony of Mrs. Ovington, a witness in whose face you saw absolute frankness, and in every word of whose testimony you heard the careful appreciation of the solemnities of truth, and who, besides this noble testimony to the character of her evidence, carries off the palm of having overpowered the lawyer by a single phrase, and having won a concession that we tried and practiced advocates and cross-examiners do not often make to a witness—having obtained the triumph of making him lose his temper and give her an opportunity of more radiantly presenting hers. Now, Mrs. Moulton comes here with closely retentive lips and furtively glancing eyes, and she has many things not to say, and she has more things to say, I think, than are to be easily explained, except by the ready substitution, in remote occurrences, of images for facts. But she comes here with an interview on Monday, and without, apparently, the least notion on her part, or upon the part of the counsel who called her, that the situation of Monday had entirely been cleared from the fears, anxieties, solicitudes, that occupied Saturday and Sunday, and without the least appreciation of the fact, that the foe had been fronted, and looked in the eyes by Mr. Beecher, and that he had slunk and cowered, as Moulton said he would, and that this simple, bold proposition of Mr. Beecher was master of the whole affair, and all that had happened was that what had been previously arranged and completed, except as to the mere phrase of the letter, which was finally composed between Mr. Kinsella and Mr. Beecher through the forenoon of Monday—that excepting that, all solicitudes were gone, all notions of perplexity or trouble were dispelled, and all there was present in Mr. Beecher's mind or in the mind of his family was that they were to get their pleasant excursion to Peekskill and their fortnight's vacation in Boston and its vicinity. But such are the inexorable exactions of testimony that if you are going to give an interview and fill it with a long series of conversations and implied or conjectural confessions, some time and some place must be assigned for it, and so, in seeming forgetfulness of the considerations I have mentioned, this first Monday of June was pounced upon as apparently an unoccupied day, one where there

might be an opportunity for what confessedly never happened but once, a visit made by Mr. Beecher to Mrs. Moulton alone, and for her own sake, and a visit long enough to bring in a series of conversations to which there could be imputed the meaning of implied confessions, by the way they talked together. So that day was fixed upon. Now, you will notice that you have substantially at the outset, an admission from this lady that during the previous two years and upward of the visits of Mr. Beecher to that house, he had never made her the confidante of any confession, until that 2d of June, 1873, and why under heaven he should begin then, nobody can understand. Why should he begin with a person that he understood knew the facts of his case already, unless it was for the pleasure of rolling this subject of adultery as a sweet morsel under her tongue and his? She says to you that, either in the Spring or the Fall of 1871, this very decorous and proper conversation had occurred between Mr. Beecher and herself: that, meeting her one morning, I think it was in the parlor, before seeing her husband (which was the object of his errand), he said, when she shook hands with him, kindly: "Do you know of this great sorrow of my life?" Well, that is a very mild form to describe seduction and adultery. She said she did. Then Mr. Beecher says to her, "Frank has told you the facts, then?" Now, Mr. Beecher knew what he meant by *the facts*, and she said Frank had told her the facts, and Mr. Beecher therefore supposed that Frank had told her the facts as Mr. Beecher knew them, and as Frank knew them; and I suppose he had, though I am not quite sure of the construction that Mr. Moulton would put upon human conduct in a man so entirely different from himself, as Mr. Beecher was. Now, you will observe how that interview carries no impression in the least of Mr. Beecher's imagining that Mrs. Moulton ever knew or had heard of any other than the facts in the case of *the great sorrow* in which he, Mr. Beecher, had become involved by this mischief in the family of Mr. Tilton, growing up as I have stated, and as has been exposed to you, and as is avowed in the paper that was prepared to "bear the light of the Judgment Day."

MR. BEECHER'S ALIBI.

From that time onward until June, 1873, there is not any profession or pretense that Mr. Beecher sought, or that Mrs. Moulton received, any statement at all, in the way of conversation or otherwise, that was in the nature of confession, express or implied, or that any conversation was assumed as existing except what might be described as his "great sorrow," and the facts as Mr. Beecher conceived them to be. Now, you will see that a great many things may be said in the way of conversation between people, one of whom, years afterwards, undertakes to recollect what was said and to impute to words, not remembered of course, for the moment a witness says he remembers every word in a conversation of which no memorandum was made and which was not treasured up you discredit him—to impute to the conversation a meaning, made out, not of what the party talking said, but of what the party hearing imagined or supposed, and what her mind accepted as the basis of the conversation, and if you accept that kind of testimony you are involved at once in the midst of error. In the case of Derby agt. Derby, to which I have already referred, so great an authority as Chancellor Zabriskie says:

> The whole effect of the testimony of this witness depends upon her recollecting the words used by the defendant. If she afterward, from talking with Derby and others, drew a conclusion as to what the affair was, she would naturally construe this conversation to support it, and, in fault of recollecting the words, would, and might honestly, use such as would express that meaning.

Now, then, this lady coming, as she said, after the resentments awakened against Mr. Beecher and in her husband's behalf by the declared hostilities of 1874, undertakes in 1875 to give you an interview. In the first place, gentlemen, it is proved beyond dispute, I think, that no interview occurred between Mrs. Moulton and Mr. Beecher on the 2d day of June—certainly no interview of the dimensions, the beginning and the end, that she assigns to it, and there is nothing firmer in her testimony than her assurance that it was an interview begun after 9 o'clock, lasting three or four hours, and ending at the hour of lunch; that point is made firm by her recollection that her own usual hour of lunch had arrived, and that Mr. Beecher on leaving said: "Mother [that is his wife] will expect me at lunch," and that he could not stay and lunch with her. So, too, we have an idea that this occurred surely after she had received the note on Sunday, and a recollection that it occurred just before another interview, when Mr. Beecher came back, as he had led her to suppose he would, to bring her some mementoes, you remember before he finally took poison. So, that you have got fixed.

This is the occasion, the only visit to herself alone, and purposed, and there never was another, assigned that length of time to draw out these long conversations, arguments, reproof, advice. confession, expostulation; and we find that the evidence shows that Mr. Beecher went in the 2 o'clock train to Peekskill, and therefore he was not here at 2 o'clock; that he must have left here at 12 o'clock, to have lunched and taken the 2 o'clock train; and so there go two hours of this lady's limit. Then you have the evidence of Mr. Cleveland that Mr. Beecher was over in New-York from 10½ to settle up the affairs of his newspaper for his expected prolonged absence, which would bring it to 10 o'clock on leaving this side; and then his own statement that he was not out of the house, but was

occupied all that morning with Mr. Kinsella in deliberations about this card; then the date, and Mr. Kinsella's statement that I have read to you, in the newspaper, to that effect, in the publication itself, as a part of the publication that forenoon after coming from Mr. Beecher; that a telegram was sent off at half-past 8; that there were no servants in the house, and that therefore Mrs. Beecher took the telegraphic message to the office, Mr. Beecher remaining in the house—all that makes up a perfect run of the occupations of Mr. Beecher himself, and an actual *alibi*.

But when you come to look at the situation you will see that the moral *alibi* is even more complete. There was no place or chance for the feelings or for a resort to their expression on that Monday morning in the vein and tone that Mrs. Moulton portrays them; and then when I come to show you her evidence you will see that, upon her own showing, it is impossible that her narrative of the time can be correct by its own reference to things as conjectural and future that had already occurred. Now, gentlemen, against this *alibi* the only evidence adduced is, first, Mrs. Eddy, the very respectable daughter of our most excellent friend, Judge Sutherland of New-York, and I have no doubt the excellent wife of a very respectable bookkeeper in the employment of the Robinsons. But it is hard on Mrs. Moulton that the only possible witness to sustain her interview with Mr. Beecher has to part with three hours of it to start with. Mr. Beecher was coming away at an hour quite early in the morning, as she says, when she went around to see her friend, according to her custom; and it could not have been later than 11 o'clock, upon any fair estimate of her testimony, that Mr. Beecher had got through with that interview. Then, we have another witness who undertakes to give you an impression, at least, of a possibility of Mr. Beecher having gone to Mr. Moulton's house on Monday morning; I mean this young Mr. Janes, who remembers, as he thinks, that somewhere about or after 9 o'clock, as he was going his usual route to take a ferry-boat—an every-day occurrence—to go to his business in New-York, he saw the side of Mr. Beecher's face; and though they passed one another at right angles, and were never in any other attitude while near to one another than that, and although Mr. Janes does not seem to have stopped or followed Mr. Beecher, but kept right on to the descent by those cavernous stairs, that nevertheless he did have time to slow (as they say of a steamboat) and to look around; and, seeing around the corner or through the walls, that Mr. Beecher was going to Remsen-st! I don't think that Mr. Janes really exhibits any of that certainty as to his movements and examination before his descent by those stairs that were to hide him from the possibility of looking back, even of that wariness with which a woodchuck always looks around before he pops into his hole. Now, I don't think Mr. Janes came here for anything but to advertise himself and the Butler Health-Lift Cure, and Mr. Beecher as a patron of it. And certainly all Christendom knows those facts, because Mr. Janes (not an ill-meaning young man), when put to the point, has no means of association except that the 2d of June was his wedding day, and that he, in pursuit of a celebration of it, like John Gilpin:

> "Although he on pleasure bent,
> Was of a frugal mind,"

and he lengthened his day of labor, as I understand it, in order to make the celebration satisfactory to himself and his wife. He went over an hour sooner to New-York, and only got away half an hour earlier. Well, now, the point was this (as you saw at once), that there was a week there; that he had some occasion in his business, running from about the 29th of May (I think, he says, on for a week), to go over to New-York earlier than usual; and that on some one of those mornings he saw Mr. Beecher. Well, now, Mr. Beecher did go around to Mr. Moulton's on Saturday morning, as everybody knows, as Mr. Moulton says, and as he says, and about this time. So, I don't think we can hang much on Janes. Well, then, Mrs. Eddy, though sure that some day or other, at 11 o'clock about, she met Mr. Beecher coming out of the Moulton mansion, has no mode whatever of fixing the 2d of June; and so declares to you. So that you will perceive the external alibi is wholly unshaken by these witnesses.

Now you will observe that on Saturday Mr. Beecher went to the Moulton house about nine or half-past nine, or somewhere about that—had the interview with Mr, Moulton—occupied with him—[To Mr. Abbott]—Was Mr. Tilton there?

Mr. Abbott—Mr. Tilton was down stairs.

Mr. Evarts—Mr. Tilton was down stairs when they had this talk about the threatened publication, though Mrs. Moulton formed no part or party in that conversation. Yet, the external facts of going to the house and coming away would satisfy Mr. Janes and Mrs. Eddy; and, for aught we know, that may have been the day or any other day, for there were frequent visits to that house by Mr. Beecher.

THE INTERVIEW OF JUNE 2.

Now, gentlemen, in regard to Mrs. Moulton's testimony (which I must be pretty brief with), she gives you to understand that the nature of this interview was of this kind:

> This is probably my last conversation with you. I feel that if Mr. Tilton publishes my letter of apology it is useless for me to try any longer to live this down.

Well, that was not the situation on Monday. Mr. Tilton had withdrawn from the publication of the "Letter of Apology" when he was advised by Mr. Beecher, through Mr. Moulton, "the moment you do that there is an end of the policy of silence, and I am going to have the whole truth." So that had disappeared, and there is the first moral alibi that out of this lady's own mouth

displaces the occasion of any possible future talk of the kind that she narrates. Then this lady says:

There is something better for you to do than that. You might as well go out of life. It is useless trying to live it down.

I think she seems to have taken it as a deliberate threat of suicide, in that mild form of statement that "it would be useless to live it down."

I think that would be a very cowardly thing for you to do. Go down to your church and confess your crime. They will forgive you.

Well, now, gentlemen, if the crime, as this phrase interposed into a conversation where it never occurred—if the crime was of the nature that Mr. Beecher has disclosed (and that you must find upon irrefragable evidence is the only fault he committed), you can understand how a lady might say to Mr. Beecher at some conversation or other exactly what her husband had said in writing on the 1st of June: "If the whole case is made known you can stand." Bring out the publicity! Why, that is the very thing that Mr. Beecher had threatened to do on Saturday night; and that was a bombshell in the camp of Messrs. Tilton and Moulton. "Well, well," he says; "no, no; it would make trouble—could not stand it." "Well," she says, "you could write for your paper; you could go to your farm and write." And when Mr. Beecher deprecates that, and says, "No; my position is that of a spiritual and moral teacher; if I can no longer hold that position, then there is nothing left for me." Now, he comes out with a distinct announcement:

I am resolved to take my life; I have a powder at home on my library table, which I have prepared, which I shall take, and I shall sink quietly off as if going to sleep, without a struggle. I have not any desire to live, I have nothing to live for; in fact I pray for death as a happy release from all my trials and troubles.

Did he pray for a release, by his own hand to commit the final crime of impiety to God and of cruelty to his family? "And I feel that if I publish now a card in *The Eagle*"—if I publish now a card in *The Eagle!*—"it will only be a temporary release;" and the card was set up and in print already! It was not a future publication that could be made the subject of conversation in the forenoon of the 2d of June.

"Well, I felt very much grieved; begged him to go down to the church."

And now, see how this lady encouraged this clergyman:

"I said, 'Mr. Moulton will still stand by you; and, no matter what comes to you, I will always be your friend; and I am convinced that the only way out of this trouble for you is by telling the truth."

Well, now, that is rather sensible. If the truth was as it is, and she understood it to be so, you might talk in that way. I think there is a little inconsistency in this lady's ideas as she expounds them herself. Her reasoning is a little bad, and gets mixed before we get through the interview, because here she says to him: "The church will stand by you, and, if they don't, I will—I approve of you; you may count on that; I will stick to you anyhow." [Laughter.] And, then, afterwards, she says: "Well, now, Mr. Beecher, it may be that all the rest of your church will stand by you, as I have said they would, but as for me I cannot. You are like an open grave to me. I never see you or think of you without horrors and terrors and disquietude of mind; I cannot come there; I cannot take the communion; I have lost my faith in all men, because I have lost it in you." Now, I am afraid that this lady does not accurately remember the course of reasoning that she pursued through those long hot hours of June, with this gentleman who was on his way to Peekskill. Then, in another form, she says: "Well, Mr. Beecher, the only way you can cover this matter, is to go and make confession of it." Well, that is rather a mixed expression. The only way you can cover your fault is by going and proclaiming it, and don't commit suicide; better confess, as if everybody didn't know, at least since Mr. Webster said in the famous White trial: "For guilt there are no alternatives but suicide or confession, and suicide is confession." The only way suicide could escape the construction of confession, and of the most enormous guilt, burying Mr. Beecher's family and church and everybody else in terror and confusion would have been by a resort to this subtile poison which, if unmolested by the children, would be always accessible to him, that he might seem to have died a natural death; but to guard against that saving of his reputation, and the feelings of his family, he went around to tell Mrs. Moulton that he was going to take the powder and kill himself from his grief at his sins. Well, a nice witness Mrs. Moulton would have made at the Coroner's inquest. [Laughter.] Gentlemen, there is but one inscription suitable to the portals of this evidence, as you are asked to believe it, not only from this witness, but from Mr. Tilton and other witnesses of the plaintiff, except this: "All ye who enter here leave common sense behind," and, if you will only do that, then you will get through any amount of oral statements of long-past interviews now brought out in this confused manner. Well, I won't say any more about this interview.

MRS. MOULTON'S CONVERSATIONS HELD UNDER A MISAPPREHENSION.

Now, there is one very curious thing about this. "Now, if you have only a mind to take this case into your own hand you can settle it by confession. Your people will stand by you. They believe in you. They will forgive this one crime that you say you have committed"—she didn't feel entirely sure, you know, that he had—"which you say you have sincerely repented for, and you believe you have been forgiven, and you feel that you are better able now than ever before to

do great good in this world if you can only be allowed to go down to the end of your life without all the particulars of this case being made known." Then he was to go down and confess without stating the facts. Well, gentleman, I don't know that I can insist upon asking your attention, in the brief period in which I can be allowed or tolerated in trespassing upon your patience beyond the hour, but you will find that in all these random conversations this lady tells you that Mr. Beecher never told her the facts of the case. She was talking about some facts in her mind, and Mr. Beecher naturally supposed they were the same facts that were in his mind, and it is odd enough. Now, in all these conversations there is no word that professes to be a statement of any particular form or degree of crime except one, and that don't come out of Mr. Beecher's mouth, but out of this lady's, and I ask your attention particularly to that. "I don't see," she said to Mr. Beecher, "how you can stand in your pulpit and preach to the young men against the sin of adultery when you are implicated in it so deeply yourself." Well, now, gentlemen, you see she don't say to him, "You have been guilty of adultery with Mrs. Tilton." She says: "How can you preach to these young men against these external sins, when, according to your own showing, you have been interfering with the affections of wife and husband, and have produced this misery?" or, if she accepted what she no doubt had heard of, the wife's accusation of Mr. Beecher—if she had accepted that as being a truthful charge, to wit, that Mr. Beecher had invited a wife to commit adultery with him, that would sustain every word of what Mrs. Moulton puts into her own mouth on the subject of adultery: "I don't see how you can stand in your pulpit and preach to young men against the sin of adultery when you are implicated in it yourself, to the extent of having tried to get a woman to commit adultery with you and not succeeded."

So, here, as everywhere else, when you undertake to give definite form and pressure to these conversations, from whatever mouth they are rehearsed here, you see a fault and defect which belongs to anything like precision and definiteness and weight and force.

MRS. TILTON ADVISED BY MRS. MOULTON.

Now, there are in regard to this lady's testimony but two other matters to which I wish to direct your attention, though a fuller exposition would more fully satisfy my purpose. One is a very peculiar interview that she says she had with Mrs. Tilton, in which, as you remember, at a period in 1873, I think it is——

Mr. Abbott—In the Fall of 1873.

Mr. Evarts—In the Fall of 1873, when there were inquiries about an investigation into Mr. Tilton by the Church that would bring up this matter, and Mrs. Moulton had an idea that her husband and Mr. Tilton were going to betray Mr. Beecher, or, as she does not admit that very word, they were going to make public certain charges against him, and she felt a solicitude to know what must always be a subject of anxious inquiry as to the purposed conduct of a wife—she wanted to know whether, when the stress came of public investigation, this woman who had accused Mr. Beecher of improper proposals, and had retracted that accusation, and had explained her retraction, and had undoubtedly placed herself in this position, she wanted to know when the stress comes of adhering to the truth, "Are you going to stand by Mr. Beecher and tell the truth, or are these men, Mr. Moulton and Mr. Tilton, going to make you take the position that you have once taken of being clay in the hands of the potter and supporting your husband;" and she felt deeply, and she was moved to tears, and she went to bed and to pray, and to urge Mrs. Tilton to stand by Mr. Beecher with the truth, and not to yield to the position of a wife of supporting her husband, and now, that being the motive, that being the occasion, and that being the confession, that that was her purpose, her zeal, her interest, her desire, that Mrs. Tilton in any threatened investigation by the church should stand by Mr. Beecher in the truth, and not be swerved by a wife's presumptive fealty and submission to the interests and will of her husband, she goes down there and she tells you the story, true enough, intelligible enough, honest enough, honorable enough, if you will treat it in that sense, and then makes her errand useless by what she would have you think was the result of it, by what was equally useless in its purpose if the truth would not sustain Mr. Beecher. What did she go down to Mrs. Tilton's for in that stress between a wife's duty to her husband and a woman's duty to truth, if she did n't know that standing to the truth on Mrs. Tilton's part would uphold Mr. Beecher? and when she goes down there she gives you all the color and all the surroundings of this situation, admits her zeal, admits her purpose, admits her tears, and admits her entreaties, and then she superadds to Mrs. Tilton's statement that she should tell the whole truth, "deny these base charges against Mr. Beecher," and that though it brought her in direct hostility to her husband, which, in a woman's natural reasoning, was a great distrust as well as possibly a lack of fidelity to her husband, yet when the question came between fidelity to a husband's wishes or fidelity to truth, to Mr. Beecher, to the Church, to the interests of religion, she, a wife, might well be excused for opposing her husband and maintaining the proof, and when that manifestly was the whole object, and zeal, and rational explanation of Mrs. Moulton's process, she then tells you this impossible story that Mrs. Tilton said to her that she should deny these charges, and her duty to God, to the Church, to the truth would require it, and she would tell a lie. Well, now, gentlemen, you must not

lay aside your common sense; you must not allow this woman, Mrs. Moulton, under any strange hallucinations so to transform and stultify that interview as to make her presence there, her entreaty there, her desire to protect Mr. Beecher absolutely foolish, and to make Mrs. Tilton, this excellent, pious woman, in the stress of her inquiry as to whether her duty to her husband should override her duty to truth, to tell Mrs. Moulton she was going to adhere to Mr. Beecher, and not obey the commands of her husband, and then add, "And it will be all a lie." Well, now, when I read you the passage you will see the opportunity for escape and the opportunity for the substitution of words. But take it in the sense that the woman tells it, it is utterly absurd, what meant to save Mr. Beecher and meant to tell this woman from the Moulton house, that it would be a lie, that would help Mr. Beecher with a vengeance. Going to brave a husband by telling the truth against his importunities and his interest and furnish him, in advance, evidence that it was all a lie. Now, I don't profess to know much about the recesses of the female heart—

[A juror here suggested to Mr. Evarts that it was after 4 o'clock. Mr. Evarts replied that he knew it was, but he was compelled to finish his argument to-night.]

Mr. Evarts—I don't profess to know much about the recesses of a woman's heart, but I cannot understand that interview between Mrs. Moulton on Mrs. Tilton's version of it, and I can understand it if you leave out one interpolation that the woman makes to take off the terrible force against her husband of her visit and this result, if the truth is reported. Now, let me read you. Now, all this came out on the cross-examination of Mrs. Moulton by me.

Q. Do you remember that interview?

She did. She told it.

Q. Do you remember asking her whether she would support her husband in a charge against Mr. Beecher, or whether she would not, and her answer being made to you, that if there ever came a controversy she should speak the truth? A. No, Sir; I never remember that.

Q. Now, did you urge her at that interview as to what she should do? A. I cannot remember that I urged her. I can tell what I said to her.

Q. Did you speak to her on the question of which side she should take? A. Yes, Sir.

Q. And did you express an opinion as to which side she ought to take? A. I don't remember that I did.

Q. Were you at that interview very much excited and distressed? A. I think I was; yes, Sir.

Q. Did you show in your manner great distress? A. Yes, Sir. I think I did.

Q. And weep? A. Very likely, Sir.

Q. Now, did you in that interview express to her great distress lest Mr. Beecher should be betrayed by Mr. Tilton and your husband? A. Not that he would be betrayed by them, but that the truth would be known—made public.

Q. And by them? A. Oh! yes, by them.

So that is a verbal criticism on "betray."

Q. Now, did you in that interview, in expressing that opinion of what Mr. Moulton and Mr. Tilton would do, beg her to stand by Mr. Beecher? A. So long as she could without sacrificing herself and the truth.

Q. Did you beg her to stand by Mr. Beecher? A. So long as she could without sacrificing the truth.

She did then beg her, and that was the object, to stand by Mr. Beecher and tell the truth.

Q. And did she not then tell you that whenever the inquiry came she would tell the truth? A. No, Sir.

Q. Did she tell you that she should not tell the truth? A. She told me distinctly that she should sacrifice her husband—deny everything for Mr. Beecher.

Well, now, that is all right. That is exactly what Mrs. Moulton, in her knowledge of the truth, wanted to be sure that she was going to deny everything, which would be standing by Mr. Beecher, and not submit to the control of her husband, and then she says this lady told her, in order to rob what she said of any importance, that, under the circumstances, she would be justified in telling a lie.

Q. Now, madam, are you quite sure, in addition to saying she would sacrifice her husband and defend Mr. Beecher, that she added she would tell a lie? A. Yes, Sir; I am. I cannot say as to the words—that she used the word "lie," but she said she would deny everything.

And that is exactly what was the truth, and there was the very point, whether she was going to deny or whether she was going to support the charges of the husband. Now, having got that, then I wanted to find out further.

Q. But did she add that she should lie about it? A. If she didn't use the word lie, she said "falsehood."

Q. Did she say that she would tell a falsehood? A. Yes, Sir; one or the other.

Q. Did she flatly tell you that she would tell a lie, or a falsehood? A. Yes, Sir.

Q. Did you go to your house satisfied that your errand had succeeded? A. I have never felt that any effort of mine has ever been successful.

How many sorrows in her memory about this business does that expression cover?

Q. In this business? A. No, Sir; never any errand successful in this business.

MRS. MOULTON CALLS ON MRS. WOODHULL.

Now, gentlemen, this lady, whose testimony of the character that I have given to you is, I think, to every candid mind and every intelligent mind, robbed of all value, is placed in this somewhat singular attitude before you. She says to you that this lady, Mrs. Woodhull, was a frequent visitor at her house, having been there at least a dozen times during the period of these associations. She says—and she volunteered it; that is, her own counsel brought it out—that she had been as many as three or four times to Mrs. Woodhull's house, and brought her to hers. She then tells you the particulars of three of those visits, and presents this most extraordinary statement of the condition of things. she says:

I went to that house three times and brought Mrs. Woodhull to mine!

"Do you remember of any of them being in the daytime? No. All may have been in the night? Yes. What time did you go—what hour did you return? I cannot remember." In each instance she suppresses and puts the best face on what in any disclosure she would have felt to be uncomfortable in the fact, but it stands thus definitely fixed before you, that three times she went to Mrs. Woodhull's house and brought that woman in the night time for conference with Mr. Tilton and her husband, lasting, as she says, two or three hours, and whether she (Mrs. Moulton) took Mrs. Woodhull back or not, to her own house, she does not remember. That one of those visits was made with her and Mr. Tilton in the night season in a close hired carriage, running from Brooklyn Hights to Thirty-fifth-st., and making a visit in that salon, and a return together in the later hours in the same close carriage. That at another time Mr. Tilton and Mr. Moulton, both being at Mr. Moulton's house, and both in health and strength, sent that woman on the errand away up to Thirty-fifth-st. in a hired carriage to bring Mrs. Woodhull there, and she went and did it, taking a little boy of nine years old for an escort, and on another occasion, under the same behest of these two full-grown men staying at home in Mr. Moulton's house, she went again in the night time to fetch this lady in the night time for another three hours' conference with Mr. Tilton and Mr. Moulton, and that she took Mr. Moulton's mother as her escort then. Well, now, gentlemen, I don't know what domestic life in this city is in reputable circles, but I can see in that narrative the most abject subjugation of a wife to a husband, and a most defiant tyranny of a husband over a wife. I need no other evidence than that to understand that the relation of a husband and wife in that couple had assumed the force and character of master and slave. Figure to yourself, figure to yourself, or yourself, or yourself, a dismissal in the night time in a close carriage of your wife to Mrs. Woodhull's house to bring her to see you—you in health and strength. I don't know much about the notions on Brooklyn Hights of starting in hired close carriages a married lady in the company of Mr. Tilton for an errand of that kind at the behest of a husband. I know that this plaintiff and his lawyers would give a good deal for a drive in a close carriage in the night time between Mr. Beecher and Mrs. Tilton, up to Mrs. Woodhull's and back. I was aghast at this exposure, and I placed no misconstruction—I put it entirely upon the coarse and brutal selfishness of this man that treated an honest wife in that manner. Then, when I have proved these intimate facts in the family out of the mouth of the wife, and when I have proved out of the mouth of Mr. Moulton, the husband, in the testimony of Mr. Armor, that he would make it hotter than hell for anybody that testified against him, I don't need any further specific facts to lead you to think that the story of Ananias and Sapphira is likely to show itself whenever there comes to be that attitude that the wife must swear for the husband or swear against him to his ruin, and live with him afterward. I might be satisfied with the generalizations by which our law has covered, as I read to you, this relation of husband and wife with the common sense intelligence that the law and the administration of justice never should bring husband and wife into that terrible dilemma of being against husband or against the truth, and when I have shown you, in this particular marriage, the subjugation of the wife to be an errand-girl in the night time up to Thirty-fifth-st. to bring Mrs. Woodhull for a three hours' conference with these grown men, Mr. Tilton and Mr. Moulton, at her house—a private conference from which she, the wife, was excluded—and when I have shown you the particular disposition of this particular husband to make it hotter than hell for anybody that testifies against him, I have at once evidenced the wisdom of the law in its generalization, and I have given you the strongest possible instance in the experience of life for its being the rule, if it never had been before.

Now, gentlemen, at the end of 1872 there comes to be, in the most solemn form, a final suppression of any possible imputation that a charge against Mrs. Tilton's chastity——

THE LONG-SUFFERING JURY INDIGNANT.

Mr. Carpenter (foreman of the jury)—Can you give us this in the morning? One of the jurors feels unable to continue any longer.

Mr. Evarts—Of course I would prefer to take half an hour or an hour to it in the morning myself.

Judge Neilson [to the jury]—I think you ought to sit until it closes.

Mr. Carpenter—Some of the jurors don't feel well enough to sit any longer.

Mr. Morris—Mr. Beach has left with the understanding that Mr. Evarts would close this evening, and he will be disappointed in the morning if he finds Mr. Evarts has not concluded. I think it would be putting him at a great disadvantage.

Judge Neilson [to the jurors]—You can take an intermission, and Mr. Evarts will finish perhaps in a short time. If you prefer to take some exercise in the air you can do so.

Mr. Evarts—I am submissive to your Honor and the jury. The jury seem to indicate a strong preference to adjourn.

Mr. Carpenter—I should prefer myself to wait until 6 o'clock, if necessary, but some of the jury wish to retire for a few minutes.

Mr. Thayer (a juror) to the foreman—If you prefer to sit until 6 o'clock, why did n't you go on on Saturday? We adjourned on Saturday to accommodate you. I am willing to go on. [To Mr. Evarts.] Go on, if it takes all night. Go on as long as it lasts. [To the foreman.] I think I have got you there tight enough.

Judge Neilson—It may not be necessary to take a recess.

Mr. Evarts—I can limit myself quite strictly to-morrow, and confine myself to less than an hour. I say this only in reference to the jury's wish.

Mr. Morris—That will place Mr. Beach at a very great disadvantage.

Mr. Evarts—Settle it with the jury. I am not asking any favor to myself, but I only said if I went over to to-morrow I would take less than an hour.

Mr. Morris—The jury indicate that they would like to step out for a few moments.

Mr. McMurn (a juror)—Go on, if you have to go on all night to finish it.

Judge Neilson—Suppose you take a recess for 15 minutes.

Mr. Evarts—It is for these gentlemen to determine, subject to your Honor's direction. I am not a party to the inquiry at all.

Mr. McMurn—Let him (Mr. Evarts) go on until 12 o'clock.

Judge Neilson—I think the jury can very patiently hear you out.

Mr. Taylor (a juror)—I could not hear you to any advantage to-night.

Mr. Evarts—A juryman puts it on the ground that his attention cannot be commanded any further. His name is Mr. Taylor; he has just said so to me.

Mr. Morris—Your Honor can see that if Mr. Beach commences to-morrow, after a short speech by Mr. Evarts, it will be placing him at a great disadvantage. He left with the distinct understanding that the case was to be closed to-night before he left, and I submit it would be unfair. Mr. Beach and we have been here thirteen days now, listening to the other side, and he has gone away with the distinct understanding and a pledge that he should commence to have the ear of the Court and the jury in the morning, and I submit that it would be unfair not to close to-night.

Judge Neilson (to the jury)—You see how that is. If you want an intermission of 15 minutes I will give it to you cheerfully.

Mr. Evarts—That would be so much time lost.

Judge Neilson (to the jury)—You ought to hear him (Mr. Evarts) without any constraint or pressure whatever.

Mr. Evarts—I don't want to have anything to say in this; fifteen minutes would be so much time lost.

Mr. Fitter (a juror)—If we had an intermission of 15 minutes I think we could sit an hour.

Mr. Evarts—I am not a party to this. I am trespassing on your patience and your indulgence, and it is only a question for you to determine, to which I, with great repect, shall submit. I shall submit with entire personal comfort to any disposition you make.

Mr. Morris—We have, I submit to the Court, something to say in this matter.

Judge Neilson (to the jury)—Gentlemen, retire with an officer for 15 minutes and take the air, and you will find yourselves comfortable when you come back. Take a walk around the block.

Mr. Evarts—What do you want that 15 minutes for?

Judge Neilson—Those that wish to walk out for 15 minutes will walk out, and those that don't will remain.

Mr. Evarts—Perhaps the jury would find it convenient to begin at half-past 10 in the morning.

Judge Neilson—Then we will let it go until then.

Mr. Morris—You can see the disadvantage of that.

Judge Neilson—Yes. If the jury wish a recess we will take it; if they do not we won't. If they wish to walk out they can.

Mr. Taylor (a juror)—I will walk out and be back in two minutes.

Judge Neilson—I wish the audience to keep still. Gentlemen keep their seats. [To the jury]: I have very often worked all day with a jury and kept them until as late as 9 o'clock at night without complaint. I think this delicacy of not being able to hear counsel an hour or two longer without complaint, is not called for at all.

Mr. Thayer—I beg your Honor's pardon. I have given way to them altogether. We gave away every Saturday, when this young man and I would willingly stop. Every Saturday we have given away in their favor. In fact it was not the programme on my part.

Judge Neilson—I wish those gentlemen who can't keep quiet would please retire. They seem to think that it is time to adjourn. It would be a great comfort to us if they would retire, and go home.

After an intermission of about 15 minutes, Mr. Evarts proceeded with his argument as follows.

MR. TILTON'S "TRUE STORY."

And now, gentlemen, at the close of 1872, as the final conclusion of the debates then held, and in which Mr. Tracy figured also, when there was this double purpose of not ending the power of malicious imputation against Mr. Beecher, and yet of keeping within the truth and preventing being forced into the false accusation that has now finally triumphed, in their purposes, and been made the subject of this inquiry, in the most solemn form Mr. Tilton makes a narrative which, by a singular perversion, from his intent in its preservation, has been brought to your eyes; I mean what is called the "True Story." And I say to you, gentlemen, that on Mr. Tilton's narration as there given, and on Mr. Beech-

er's letter of the 15th of July, 1874, as read to his Church Committee under the solemnities of his purgation of his conscience, as before God—on those two instruments your verdict could repose with absolute assurance, and no verdict can be given that contradicts those two papers, without assuming an imperfection in those pieces of evidence themselves, that they by themselves are not subject to the charge of. I say this only for argument; for the flood of testimony, and the absence of any testimony that the law regards, or common sense regards, as of importance in maintaining this issue for the plaintiff, I do not pass from your minds or from my own; but I say that on that True Statement, made and read, proposed to Tracy as the whole truth, exhibited by Mr. Tilton as the whole truth, being really more than the truth as against Mr. Beecher, though he gave the retraction of his wife, to be sure, in it, and left people to judge whether her first charge was with or without foundation, on that paper preserved by one of the tricks that Mr. Tilton took to have it published irresponsibly, and so made a means of keeping alive his imputations and assaults upon Mr. Beecher put in Redpath, the reporter's hands—on this truthful statement, and honorable statement of Mr. Tilton, "Well, I can't give it to you to publish, but you can see where I put it, and you can take it, and then what you do won't be at my responsibility, and it will be published, and I shan't be responsible for its publication, and I would like to have it published, but not be responsible for its publication." Redpath takes it, and Redpath undertakes a reproduction of it by the rapid process of shorthand writing, until he gets down a considerable length in it; and then, he being a pretty shrewd, common sense sort of a man, he sees that there is not much in it, that there is not much substance in this business about Mr. Beecher, and he stops, and then Mr. Tilton—Mrs. Tilton, as Mr. Tilton says, I think—tears up the greater part of the paper, because even in this form it was not true; it contained her false accusation of Mr. Beecher, and a record of it, to wit, of improper proposals, and she destroyed all but some pages which seem to have escaped destruction, and that formed the close of that paper, and are produced here upon our call, and the whole is put in evidence by us, there being a gap in the middle which is not produced, and no attempt has been made to supply it by Mr. Tilton's memory, or from any sources of its reproduction.

This story sets forth with a distinctness as if the slip were produced before you that was used that night of the 30th, this statement:

In the Summer of 1870, Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher, which to use her own words, lest I should wrong him by using mine, she afterwards noted down in memorandum, as follows:

"She made me a communication in July, which communication, made in July, afterward she noted in writing;" not "When she afterward made me a communication in writing," but "She made me a communication in July, which afterward she noted down in a memorandum," as follows:

Mr. H. W. Beecher, my friend and pastor, solicited me to be a wife to him, together with all that this implies. I borrow the above from my wife's handwriting.

Now, gentlemen, that is the charge, and the only charge that either in July, if you believe him, or ever, was the extent of this imputation, and the wife withdrew it the next day after she had made the writing, and noted it as what she had said in July; and after going through with the whole and refuting all calumnies against his wife's good name, and his own honor, in the publication of the Woodhulls, Mr. Tilton closes in this way.

To complete the chain of documents belonging to this case, I now insert the two of chief importance, namely, the direct testimony of Mrs. Tilton, and of Mr. Beecher, as to the alleged criminality of their relations.

"To close forever this case of scandal against Mr. Beecher and against Mrs. Tilton, having shown you the charge, its retraction, its explanation, and the various course of interviews on the subject, I now close it all by giving you the documents of chief importance, the direct testimony of Mrs. Tilton and of Mr. Beecher as to the alleged criminality of their relations." Mrs. Tilton says to Mr. Moulton:

For my husband's sake, and my children's, I hereby testify with all my woman's soul, that I am innocent of the crime of impure conduct alleged against me. I have been to my husband a true wife. In his love I wish to live and die. My early affection for him still burns with its maiden flame, all the more for what he has borne for my sake, both private and public wrongs. His plan to keep back scandal, long ago threatened against me, I never approved, and the result shows it unavailing.

She did not approve of this policy of suppression at one hand and constant publication and exaggeration at the other.

But few would have risked so much as he has sacrificed for others ever since the conspiracy began against him two years ago. Having had power to strike others he has forborne to do it, and allowed himself to be injured instead. No wound to me is so great as the impression that he is among my accusers. I bless him every day for his faith in me, which swerves not, and for standing my champion against all adversaries.

ELIZABETH R. TILTON.

And the husband that sets forth that as the important and direct evidence of his wife on the subject of the relations, now seeks at your hands a verdict that there is no truth in her statement. And Mr. Beecher's statement he publishes as also with his authority, and his approval, and with his wife's, as the final quietus upon this scandal of improper relations. Mr. Beecher says to Mr. Moulton:

I promptly comply with your suggestion of giving an explicit denial of the stories which connected my name criminally with Mrs. Tilton. The very thought of being

obliged to say anything to clear her fair fame shocks me, and I have hitherto acted under advice in refraining.

Very truly, HENRY WARD BEECHER.

Now comes the denial:

BROOKLYN, Dec. 29, 1872.

I solemnly deny the scandalous charges made against me and Mrs. Elizabeth R. Tilton. Especially and emphatically I deny that there has been any criminal intercourse, or any color of a reason for such a charge. My acquaintance with Mrs. Tilton has inspired me with the highest esteem for her modesty, propriety, and womanly graces. I authorize her, or her husband and children, to make use of this declaration, and I desire to state, in addition, that Mr. Tilton, during the whole of this shameful scandal, has uniformly spoken in the highest terms of his wife, and has shown to me the highest proofs of friendship.

Now there is a complete denial, and you will find that there is a somewhat frequent use in the covert imputations of Mr. Tilton, of a phrase not known to the law, and not known to any definite sense of imputation of unchaste (in the sense of guilty) sexual relations; I mean a phrase, "criminal intimacy." Now, "criminal relations," or "criminal conversation," or "criminal connection," or "sexual connection," we all understand; but "criminal intimacy" admits of a solution of improprieties of intimacy, unsuitable, but not of the character covered by the other phrase. And Chief-Justice Coburn, in the celebrated case of Robinson and Robinson, in the 1st of Swabey & Tristram, 361-398, draws the distinction:

The words "criminal intimacy" are often used to denote a culpable intimacy short of adultery, and in contradistinction to it.

And yet the cunning of this word-fancier has undertaken, as in the West charges, in his communication of "criminal intimacy," to cover himself if he is to be accused of slander, by pointing to Chief-Justice Cockburn, and the settled doctrine of the law, that criminal intimacy means culpable intimacy, distinguished—not meaning adultery, and used in contradistinction to it.

THE INTERVIEW GEN. TRACY WAS NOT ALLOWED TO DESCRIBE.

Now, gentlemen, there came to be in 1874, the final determination; after the submission to the inquiry of the Church Committee had resulted in the unanimous and full vindication of Mr. Beecher, this lawsuit was introduced; but in that accusation before the Church Committee the purpose was formed of enlarging the accusation to adulterous intercourse and seduction; and the message by Redpath, and the admission by Tilton in not contradicting Mr. Tracy when Tracy told him before the Church Committee, "When you changed your charge I was liberated from my promise," indicated to you distinctly the point of time, and the motives under which this final choice or alternative of submitting to infamy of slanderous and calumnious imputations—of being the author of slanderous and calumnious imputations against an upright and respected man like Mr. Beecher, or having an attempt, at least, to breast a full trial, was resorted to. and Mr. Tracy tells you that he had a conversation with Mrs. Moulton—as Mrs. Moulton had said before there was a conversation—and Mr. Tracy said, "I am here to give evidence only on matters that have already been introduced. This interview has not been fully introduced. I will not speak to it. This lady had a right to suppose that her conversation with him, although no expression of its being confidential, was that between a gentleman and a lady; I will not repeat it." And the counsel for the plaintiff said: "Oh! Mrs. Moulton, we are going to call to that." Mr. Tracy says: "Very well, she must open her mouth first about that conversation; I will not." And it passed, and the lady was not called to that conversation. She never was brought to the stand on that conversation. My learned friends found that the hasty boast that there was no conversation between Mr. Tracy and Mrs. Moulton that they did not desire exposed, would not bear the sober discretion of an inquiry into it, and that conversation was never brought to your notice again. And yet the lady came back and talked about the interview in respect to the alibi part of it, to help along Mrs. Eddy's testimony, and she was withdrawn then with the statement that she was coming back to speak definitely in important parts of the case, and then she never came back to the stand, and the only thing they asked to put in as if she were present was a denial that she had told Mr. Beecher at the time she kissed him that she believed him to be a good man. She had admitted before that she said she believed there was a good deal of good in him, enough I suppose to justify a kiss, and there did not seem to be very much substance in that denial; and when Mr. Beecher had given a full narrative, which you remember, of the course of his interviews, and his conversation with Mrs. Moulton, Mrs. Moulton does not come back to the stand either to contradict him or to introduce that conversation with Mr. Tracy, which his delicacy and sense of what belongs even to implied confidence in a conversation between a woman or a man and another person always cover, unless the absolute interests of justice require the production of it.

THE TWO IMPORTANT WITNESSES EXCLUDED BY THE LAW.

Now, gentlemen, there have been two persons whom the law excludes as witnesses, and yet who, from their relations to this party plaintiff as wife, and this party defendant as wife, would, no doubt, in matters of detail, in matters of substance, perhaps, be possessed of knowledge that would disclose truth; but the law inexorably has excluded them both. Mr. Beecher must lose all the confirmation of his wife's intimate

and private knowledge, as the practical and careful preserver of all dates and facts and knowledge, in memory, of all difficulties attendant upon her husband, to which she could be a witness; and Mrs. Tilton, equally excluded in the law, is under even a greater disability, if the absolute exclusion had been overridden by statute, as in respect of the husband, it is supposed to have been done—that is, the exclusion of all matters that passed by confidence between husband and wife. And yet my learned friends, entirely aware of both of these rules of law, first the absolute exclusion of the wife, Mrs. Tilton, and second, her exclusion from testifying as to what passed privately between herself and her husband in any of the long intercourse of their life, have chosen to put themselves upon a forensic demonstration, after our case was closed, that if we wished to call Mrs. Tilton to make our case stronger against them, they would not object. Well, gentlemen, we had a very early discussion of this subject before Mr. Tilton was called, and of the absolute exclusion of Mrs. Tilton, and her necessary exclusion; and my learned friends put themselves upon the law, and insisted upon it as being the law, but that it did not follow that Mr. Tilton might not be a witness; and they carried their point. Now, why did not they then say something, at that stage of the cause, about their willingness that Mrs. Tilton should be a witness? Why, gentlemen, they did not want Mrs. Tilton to be a witness, but they wanted to say, after our cause was closed, under a rule of law that made it impossible for us to produce her—they wanted then to say that they would not interpose an objection. Well, gentlemen, if they thought that Mrs. Tilton's evidence would be agreeable to them, the way for a lawyer to do, an honest, straightforward thing in that behalf was to call her themselves. and put upon us, not an exhibitory responsibility, but an actual responsibility, of saying that we objected; and she was the plaintiff's wife, and he knows all about her, and she, if you will believe him, has been the source, and, on the evidence, has frequently been made the means of making, to be sure, not a charge of adultery, but a charge of improper solicitations; and the great proposition which public policy insists upon, and on which it excludes a witness in that conjugal relation, irrespective of consent of any kind, to wit, that a wife shall not be called against her husband, does not apply when the wife is called for the husband, for then the law looks upon it only as a ground of objection that interest concurs, and interest is an objection that may be waived without sacrificing the policy of the law. But, gentlemen, I pass that by. You understand what the law is, and you heard the form of the proposition. But on our part, why, we have an absolute and repeated exhibition by this plaintiff of this wife's denial of there being any truth in his charge; evidence binding on him, produced by him, and in the solemnest forms, one of which I have just read to you, given by her, and indorsed by him as true; and through a multitude of forms, first, in the retraction; second, in the letter to Dr. Storrs; next in the solemn and truthful declaration that the Woodhull libel was preposterous and a wicked slander; next in the letter of denial, known as the Griffith Gaunt letter; and I might bestow a passing observation on the 4th of July letter, five days afterward, which was really a postscript to the Griffith Gaunt letter, and which contains the phrase, "I hope," referring back to their experience—"I hope you may not be misled by a good woman, as I have been by a good man," having in the Griffith Gaunt letter five days before shown exactly the extent to which she had been misled, and which was not of impurity of person, but of divided unity of affections, as is the plot and the character of the Griffith Gaunt novel. Tilton's testimony that she denied having violated her marriage vows; her denial to Bessie Turner, testified to by Bessie Turner when she said to the horrible accusations about Mrs. Tilton's adultery, which in a sort of frenzy Mr. Tilton made, accusing her of having, under his own eyes, repeatedly consummated the act, and with three or four, I think, different persons. "How can you tell this girl such base lies?" her solemn denial to Mrs. Ovington as produced in the faithful testimony of that lady; her denial before the Committee; Mrs. Bradshaw's statement in her letter, which they introduced, which says in the end of 1873 Mrs. Tilton never confessed any fault to her; and, too, Mrs. Davis and Mrs. H. B. Stanton's denials, published by this plaintiff and read to you yesterday, in which they had not confidences with Mrs. Tilton—all these things, coupled with the fact that the wife's testimony, given on the 6th of July before this Committee, had denied the whole and that the husband received her to his bosom and cohabited with her after that, and she was as happy as a queen until the coarse and violent conduct of Mr. Tilton about her to the Ovingtons at their house made the wife see and feel that there was no trusting this treachery any longer, and that a kiss meant nothing with him when a stab comes to be the suggestion of his changing passions, or the interest of the moment. And then she left, and she stayed away. Now, as you will see, beyond this there was nothing that the wife's testimony could have disclosed, of any interest to you, or to me, except in a field of confidences between husband and wife, which the law would have shut out, and which no man respecting the law ever would seek to contravene. So much for that.

MR. BEECHER'S BEARING UNDER FIRE.

Now, gentlemen, this survey of the evidence, no doubt more cursory in some topics than could have been desired, has yet brought before you, as I trust with

entire candor on my part, a very considerable survey of the general bulk and force and true logical effect, as it has been presented. It is, of course, on the part of the defendant, a defense against charges which are to be proved against him, and which stand for naught until they are proved. And the evidence therefore is mainly in contravening and confuting false or mistaken evidence against him, or such substantive facts if there is need of explanation, always adding the great purgation of the defendant by his own mouth, submitting himself to your observation, your criticism, your judgment, and to the cross-examination of your learned opponents under all the suggestions which Mr. Tilton and Mr. Moulton can furnish from the long association and observation, neither honest nor good-natured, to which they have subjected him for these several years. I do not hesitate to say that whatever criticisms may be made against incompleteness of memory or misconception of isolated and incidental facts, if any such criticisms can be made, that the cross-examination does not reduce the direct examination, and that the direct examination is as ample, as clear, as definite, a denial of every form and degree of impure conduct with this lady as it is possible for language to furnish. And you know that this witness, of all others, knows what the truth is, and he knows that his story is not unchallenged, that it is not secret against the misconstructions of men's minds, and of men's tongues, for it is in the face not of witnesses who know the facts, but in the face of witnesses who have not hesitated to present to you out of Mr. Beecher's mouth what they call contrary statements and confessions. And therefore I have presented to you this man of great intelligence, of an absolute integrity—save so far as this very matter is inquired nobody questions it, and I have seen no evidence of double dealing or of prevarication or of falsehood in any of the acts or acquiescences of Mr. Beecher that are brought in evidence against him. And here he stands with the absolute right to your credit, and with no escape from that credit except your absolute conviction of him as a perjurer exposing himself to the punishment of men. Now, many a man has been frightened from the truth by fearing the falsehoods of people against him. But Mr. Beecher has stood throughout this matter, confident in his conscience and its approval, confident in his faith in God, confident in truth, and ready to take at the hands of false witnesses, if need be, punishment of men, but not willing to tell a lie to his own conscience, or to God, or to refrain from the truth in any respect. And when a man thus presents himself as the sole witness knowing of the facts and as a man with unquestioned character for truth and duty in every department of life and through the long series of years that he has lived in the notice and under the burning criticism of men, there is nothing in our trust of justice if that does not end as matter of evidence, this case. But, when we find against him, only, as I have said to you, evidence not of a physical and direct observation of the senses, but remote moral reasonings from the strength of the phrases in his letters, that degrees of disquietude, of compunction, of self-seproach, of commiseration of distress, are to be turned into evidences of definite and heinous guilt, when we find that that is the only resource and only pretense, why, we at once see that all the prolixity, and all the ingenuity of argument that has been resorted to on our part, really we should have been saved from, whenever it came to be admitted that there was no evidence of impropriety of conduct between these people, and that there was nothing in the direct form of admission of the guilt or form of the crime charged. It is *their* flight from the common level of common sense and actual evidence into this remote region of argument of a moral nature which the law rejects, that has led us in this long chase of exposure which has satisfied your minds, and the minds of all those who intelligently have watched the course of this trial, that the true force of moral evidence is an absolute exclusion of the possibility of guilt, and an absolute and definite exaltation of the character of Mr. Beecher, as a man of these sentiments of honor and of duty that have filled him with anguish, that has embittered life, that he should have been led into an exposure and an injury of the happiness of a family by his heedlessness and inattention.

THE LAST PLEA FOR MR. BEECHER.

Now, gentlemen, a jury brought in any doubtful issue, even, or balance of testimony, to a determination which carries a verdict for one side or the other, and if it be a verdict that carries to the defeated party an injury or a loss, so that the measure of benefit to one is distinctly measured also by injury or loss, or deprivation to the other, finds itself under some stress. But here you have observed, from the outset, that the ordinary distraction which might divide the sentiments and feelings of a jury, so far as sentiments and feelings might be indulged by honest men in regard to a decision of the truth, are here wholly absent; for in giving your verdict for the defendant, Mr. Beecher, you give a verdict of safety and of honor to the two families of Mr. Beecher and of Mr. Tilton. You uphold the wife, you save the family of Mr. Tilton, and you save him in his permanent and definite honor. Alas! you cannot save him in his truthfulness, for he has told opposing stories on every definite and important fact in this cause. Your verdict, then, for the defendant, is a verdict of safety and honor to everybody whose safety and honor have been involved in this long examination. Your verdict for this plaintiff strikes into the heart of his wife, and to the

destruction of his children; breaks the heart of this noble wife of Mr. Beecher, and destroys the happiness and honor of that family; strikes a blow at the credit of our communities; brings dishonor upon the name of our common Christian religion, however we may be divided in sects, or sentiments, or creeds; and, in fact, is a blow at the dignity and credit of human nature and the civilization and purity of American life. And you are asked to do that in the absence of a single item of proof of crime committed, upon the absolute and direct exhaustion of the possibility of his guilt by the only person who knows all about it that the law permits to testify, and upon affirmative evidence shaken and reduced both in the credit of the witnesses, Mr. Moulton, Mr. Tilton, and the feeble supporting evidence of Mrs. Moulton, and met on great facts, not only by the discredit of the speakers, on their side of the testimony, but the direct refutation of the facts themselves, by witnesses who are obliged, on their own statement of the matter, to confess a line of statement under the most responsible obligations to speak the truth, and under the most direct forms of asseveration through a series of years, that there is not a word of truth in the present charge, and of course whatever of loose and vague perplexity or obscurity might be left in the mind of any man in this jury or out of this jury, there is not any doubt of what the duty is under the rules of law that require you in finding an affirmative verdict for this plaintiff, a verdict against this defendant, to put it upon affirmative proof that excludes from your mind a reasonable doubt of the innocence of this defendant. And in that state of duty and of law, and on this state of evidence which I apprehend must necessarily command from you, each one of you, an absolute conviction of the actual and complete innocence of Mr. Beecher, and an actual conviction (with whatever charity you may choose to cover the faults of the accusers or their supporting witnesses) that this accusation and this support of it in your case is in the nature of a conspiracy growing, and growing, and growing, having no desperate purposes at the first but in a continual disappointment of the objects that they expected to accomplish by their frustration, by the perversity and folly of Mr. Tilton has finally come to an accusation against the honor and the moral life of this great man. You cannot doubt, you do not doubt, but if any one of you does doubt, that doubt itself must give the verdict for Mr. Beecher.

And, now, gentlemen, character is always felt to be, in difficult and uncertain inquiries, an object of most solicitous interest on the part of every judge, and every tribunal, and every juryman that has to pass upon it. Ah! how sad is the condition of a stranger and a foreigner who comes to be brought into question and put on trial in a land where he is found alone, with no knowledge of his past character, no friend to judge him as belongs to his people, and their customs, and their nature! And how benevolently the English law provided for this sad condition of the stranger that was put on trial, by giving him the best support possible, in filling the jury one-half with men of his own country, that, at least, he might not be judged by men all foreigners to him, and he might have in the knowledge of one-half of the jury some means of restoring what he missed by being put on trial in a strange land where nobody knew him, or his surroundings, or his character. Now, sometimes character is spoken of as a matter that is to be thrown in as a weight in doubtful situations. I prefer to find in character that direct means of refuting false evidence upon the external principles of truth that every fact matches every other fact; and when a particular course of conduct and of crime is imputed against a stranger and you know nothing of his past life—or an obscure person — and nothing can be learned, how solicitous a jury are to see if they can eke out of the evidence something that will stand instead of this knowledge that they miss, so that they can have the support of feeling that the conviction that they feel bound to give is not at variance and not at violence with his character. It is on that principle that character, when known and understood, and not open to mistake, when the vice and fault is of the heart and nature, when it goes through years of corruption and depravity, as this charge (if there be any truth in it) does go for Mr. Beecher, that you want to know whether it matches his character. If it matches, it will fit somewhere. If it don't fit anywhere, it does not match. And when the whole case against a man is not of witnesses who have seen a murder, or seen the approaches of adulterous lewdness, or seen the opportunities and seen the deviation from proprieties and secrecy, then it is all moral evidence that he said so, or that it is to be drawn from his letters—the question is, Does it match? Why, the housewife, when she wishes to match a garment, either in color or in texture, has no difficulty in determining that crimson and scarlet do not match with purple or with white, or that woolen fiber does not show itself to have come off of the same piece with the linen texture. And when you have this character woven in lineaments that no man doubts of, and this life in its whole period from boyhood to the present day, open and public and generous and kind, elevated, noble, and true, you do not need to spend much time in finding out that the scarlet guilt of adultery, and the coarse, selfish pursuits of seduction do not match with the generous heart, the loving kindness, and the nobility of Henry Ward Beecher. [Applause.] But then they say, too, "Ah! but all this long association, and all this simplicity of

imposition, and all this difficulty of extrication, and all this entanglement of the sequences—that does not match with Mr. Beecher's intelligence." Well, gentlemen, it matches with all the knowledge that you have of him in regard to his worldly wisdom, or his suspicion of others, or his harboring evil constructions of any man. Up to the very end of his testimony he overflows with kindness toward all his accusers, and with charity for every evil falsehood they have spoken about him. Ah! gentlemen, it does match with Mr. Beecher, as it is apt to match, I am sorry to say, with so many good men when they come into the toils of ill-disposed, contriving, managing, plotting enemies. Why, if your Honor please, it long ago was but the expression in an epigram of this recognized principle of human nature:

Tam sæpe nostrum decipi Fabullum quid miraris, Olle? Bonus homo semper est tyro.

Why do you wonder, Ollus, that the excellent Fabullus is so often deceived by fraudulent impositions upon him? The good man is always a schoolboy to the arts of fraud.

And such is the experience of human nature. And who would wish to lose innocence by becoming thus the victim of impositions till he had lost faith in human nature? No, Mr. Beecher will be a school-boy to the arts of fraud, hereafter as heretofore. It does match with his nature, which all men know, and which has been described in a single word by witnesses here, "that he is a great boy." Now, Mr. Tilton, gentlemen, presents to you an extraordinary character in the common sphere of the everyday life to which we are accustomed. And yet nothing can be clearer than that all the imputations we are forced to make against him, his motives, his evidence, are quite in consonance with his character. While Mr. Beecher has gone on from his early marriage and his early labors in the life of a man who has constantly worked, and worked for the good of others, and has taken, without arrogance and without pride, such meed of popular approval or the enthusiasm of his friends as followed from his conduct, you find that Mr. Tilton, beginning in the same faith, with the same piety, started upon the same career with the support of that most useful aid, a wife of equal or greater piety, wrapt up in Christian faith and Christian duty as the end and object of life, while he pursued that path and was favored by the friendship, by the earnest and enthusiastic support in his rising career, of Mr. Beecher, that, finally, becomes, in the arrogance of his nature, and extravagance of his selfishness and egotism, to discard all these principal and supporting elements of useful life, to reject Moses and the prophets, to trample upon Christ and the apostles, to treat with equal scorn and contumely the thunders of Sinai in the commandments and the compassions of Calvary as the dependence for human hope, and on and on in what is regarded by feeble intellects as an exaltation of independence and of manhood, and it ends in this proud career which rejects priestcraft and religion and the bonds of society and the duties of life, in taking out his tablets in the salon of Mrs. Woodhull to record the revelations made in a mediumistic fit! Such, gentlemen, is that career. And whenever the egoism which is the preference of one's self before everything else, which is defined to be "a passionate love of self, leading a man to consider everything as connected with his own person, and to prefer himself to everything in the world," when a man becomes thus a worshiper of himself, when he has rejected faith and worship of a Divine Being, when he degrades himself in his relations to society, he puts himself almost in the condition of one morally insane, and he never is, by the immutable laws of our being, left to stand still on that plane of self-worship. If he does not hold on to the exaltations of the spirit he drops lower and lower in the degradations of the body. The moral government of this world is not permitted to stand upon a defiance of the sanctions by which virtue and faith and piety have their place in that moral government, and assume and preserve for every counter-passion of selfishness and degradation the same position in the moral world that is taken for the good and the faithful and the true. And thus it has long ago been noticed by those who study the exhibitions of human nature in its morbid forms that "Egotism, adopted as the rule and the guide, depraves and destroys the moral nature."

"Notwithstanding prejudices to the contrary," says a great writer on this moral deformity, "there is a disorder of mind in which, without illusion, delusion, or hallucination, the symptoms are mainly exhibited in a perversion of those mental faculties which are usually called the active and moral powers, the feelings, affections, propensities, temper, habits, and conduct. The affective life of the individual is profoundly deranged, and this derangement shows itself in what he feels, desires, and does. He has no capacity of true moral feeling. All his impulses and desires, to which he yields without check, are egoistic. His conduct appears to be governed by immoral motives, which are cherished and obeyed without any evident desire to resist them. There is an amazing moral insensibility. The intelligence is often acute enough, being not affected otherwise than in being tainted by the morbid feelings, under the influence of which the persons think and act. Indeed, they often display an extraordinary ingenuity in explaining, excusing, or justifying their behavior, exaggerating this, ignoring that, and so coloring the whole as to make themselves appear the victims of misrepresentation and persecution. Their mental resources seem to be greater sometimes than when they were well, and they reason most acutely, apparently, because all their intellectual faculties are applied to the justification and gratification of their selfish desires. Moreover,

the reason has lost control over the passions and actions, so that the person can neither subdue the former nor abstain from the latter, however inconsistent they may be with the duties and obligations of his relations in life, however disastrous to himself and however much wrong they may inflict upon those who are are the nearest and should be the dearest to him. He is incapable of following a regular pursuit in life, of recognizing the ordinary rules of prudence and self-interest, of appreciating the injury to himself which his conduct is. He is as distrustful of others as he is untrustworthy himself. He cannot be brought to see the culpability of his conduct, which he persistently denies, excuses, or justifies; has no sincere wish to do better. His affective nature is profoundly deranged, and its affinities are for such evil gratifications as must lead to further degeneration and finally render him a diseased element which must either be got rid of out of the social organization or be sequestrated and made harmless in it. His alienated desires betoken a real alienation of nature."

MR. EVARTS'S PERORATION.

Now, this morbid self-worship with which Mr. Tilton has elevated himself above the restraints of religion, of morality, of duty to wife and children, and to society, wherever there was put in competition even the infliction of a pang to his self-applause, is the final and conclusive explication of how what seems so strange in his career finds in it the natural development of moral alienation from faith and duty, which finally brings confusion of ideas as to what duty and morality are, and ends in the evil gratification of the selfish appetites, regardless of any disaster to those who are nearest, and, in the language of this writer, should be the dearest to him. And now, gentlemen, there is nothing new in this, if we will only admit the solemnity, the sincerity, the Divine authority, of the great oracles of our religion. Mr. Tilton gratified himself by sonorous verses that described his downfall, but there is, on higher authority, and in much simpler phrase, a beautiful description of the downfall, accompanied with the moral reason why it exists: "Now, he who heareth these sayings of mine and doeth them, I will liken to the wise man that built his house upon a rock, and the rain descended and the floods came and the winds blew and beat upon that house, and it fell not, for it was founded upon a rock." Did ever the rains descend, and the floods come, and the winds blow about the fabric of a man's character and life as now for these four years upon the character and life of Henry Ward Beecher? And does not every one know that the reason the structure did not fall was that it was built upon a rock of faithful belief in the sayings of the Founder of our religion and of faithful adhesion in the work of his life, to those sayings? "And he that heareth these sayings of mine and doeth them *not*, I will liken him to the foolish man who built his house upon the sand, and the rain descended, and the floods came, and the winds blew and beat upon that house, and it fell, and great was the fall thereof."

Your verdict, as all things true must match, will match that decision, made for all such men for all time and under all circumstances. Indeed, a more apt, a more impressive instance in the experience of human life, that He who said these words needed not that man should testify of man, for He knew what was in man, was never furnished in this world than in this comparison between this defendant, whose life and character were built upon a rock by hearing *and doing* the sayings of Christ, and this life and character [turning to Mr. Tilton] that dared to try the experiment of hearing the sayings and doing them not.

And now, if your Honor please, we must acknowledge with respectful deference the disposition and the order of this solemn trial, so interesting to these parties, to this community, to all the present life in Christendom, to all the future of history, and to acknowledge that if there be any miscarriage of justice, your skirts will be clear of it; and also to admit that in the actual experiences of the course of things in the trial, the anxieties and solicitudes that made us so urgent to have the limits secured by definite orders of the Court, under the assignment of particulars of the charge, have proved to be unnecessary, for we have not had any evidence at all of any time or place, by any witnesses going outside of the charge, and none, as I think, within it.

And you, gentlemen, have done your duty as faithfully as citizens ever do it. You have been taken from your employments, your profits, and in some instances, perhaps, in some degree from your livelihoods, and every day and every hour, from the beginning to the end, you have given to the witnesses and to the counsel the honor of your patient, interested, indulgent attention; and in your verdict you will find, and *we* shall find with joy, that truth matches all 'round, and your verdict will be no exception. [Loud applause.]

The Court then adjourned until Wednesday at 11 a. m.

ONE HUNDREDTH DAY'S PROCEEDINGS.

SUMMING UP FOR THE PLAINTIFF BEGUN.

MR. BEACH ENTERS UPON THE CLOSING ARGUMENT FOR MR. TILTON—INTEREST AND APPLAUSE ATTENDING THE ORATOR'S EFFORTS—MR. BEACH'S ORATORY—INFLUENCE IN BEHALF OF THE DEFENDANT DENOUNCED—POINTS IN JUDGE PORTER'S ARGUMENT ANSWERED—ALLEGED MISREPRESENTATIONS IN BEHALF OF THE PLAINTIFF TAKEN UP.

WEDNESDAY, June 9, 1875.

The beginning of the summing up for Mr. Tilton by his senior counsel, Mr. Beach, drew together to-day in the court-room one of the largest audiences that has been seen since the trial began. Every part of the room was filled long before 11 o'clock, and hundreds could not obtain admission. Some of the spectators seized upon the seats reserved for reporters and declined to give them up, until obliged by the court officers to do so. A remarkable feature of the audience was the great number of strange faces in it. The plaintiff, or at least his counsel, apparently did not lack friends in the court-room, and Mr. Beach and Mr. Fullerton were loudly applauded when they entered. Mr. Fullerton has not been present before since the summing up began. He sat facing Mr. Beach, and hardly allowed his attention to the orator's words to flag for a moment during the day. Several times he handed Mr. Beach marked passages of the evidence.

The Plymouth party did not appear to be as large as usual. Mr. and Mrs. Beecher came in a few minutes after the orator began speaking, pushing their way through the crowded aisles with some difficulty. Mr. Beecher appeared thoughtful as he listened to the argument, seldom smiling or whispering to those around him, as it is his frequent custom to do. Mrs. Beecher watched the orator very intently, sometimes smiling derisively, when he spoke with more than ordinary emphasis of manner and statement; and Mrs. Stowe, who seemed to be amused as well as interested, whispered to Mrs. Beecher and others of the Plymouth party.

The address of Mr. Beach was eagerly listened to, and several times he was applauded, but these outbreaks of feeling were promptly suppressed. Twice during the day Judge Neilson found occasion to rebuke the audience for this kind of disorder. Mr. Beach felt somewhat unwell all day, and he was unable to bear the least draught of air upon the back of his head, so that the windows behind him had to be closed. He was suffering from neuralgia, and he sometimes stopped at the end of a sentence, as if to conquer pain. He was also slightly hoarse, but most of the time his utterance was distinct. Mr. Beach's manner is very vigorous. He speaks loudly, and in a rotund and sonorous voice, which fills the room. His words are uttered more rapidly than those of either Mr. Evarts or Judge Porter, and his gestures are very powerful and expressive. His features and manner are stern, while his piercing gray eyes give great severity to his look, when speaking very earnestly. During the morning session, when the air was close and warm in the court-room, the orator's exertions threw him into a profuse perspiration, and his eyelids looked red and swollen.

The oratory of Mr. Tilton's senior counsel is full of stirring passages, which are delivered in a manner that seldom fails to stir enthusiastic interest among his hearers. His notes appear to be very brief, although numerous, and his address is evidently largely extemporaneous. He often throws down his notes, and seems to speak on the inspiration of the moment.

One of the most interesting portions of the address was an eloquent description of the feelings of a husband whose wife's honor has been stolen away. This was of course applied to Mr. Tilton. The manner of the orator, who seemed to concentrate all his powers in this effort, was so effective that the audience clapped their hands loudly, and the bewildered court officers had difficulty in restoring order.

There was also a stir among the spectators when, in describing the support which Mr. Beecher has received from his friends during the trial, the orator cried out in an earnest manner, "I have seen the zealots and the parasites gathering around Henry Ward Beecher in this trial, and shedding their influence both in and out of this Court in his favor."

The opening words of the argument were remarkable. Addressing the foreman of the jury, Mr. Carpenter, Mr. Beach referred to personal appeals which he said had been made to him (the foreman) by the counsel for the defendant. He then spoke of Mr. Carpenter's having stated that he entertained opinions favorable to the defendant at the time when he was examined for a place on the jury. An appeal to the jury to decide this case according to their oaths followed.

The argument proper was mostly confined to answering Judge Porter's summing up for Mr. Beecher. Mr. Tilton was praised, but the orator said he should

not indulge in denunciation of Mr. Beecher. The publication of Mrs. Tilton's letters was explained in a way favorable to the plaintiff, and various points touched upon by Judge Porter were gone over in detail. Mr. Beecher was asserted to have been a party to the "policy of silence." The anticipations of triumph which were indulged by the defendant's counsel, called out severe denunciation from Mr. Beach. He asserted that he knew what means they had of forecasting a verdict, and what power the party of the defendant possessed. Mr. Evarts, he said, had more than the hundred eyes of Argus, which he had wished for, more than the hundred arms of Briareus, and also the gold of Midas, which had been placed where it would have the best effect. Mr. Evarts seemed to be much amused at these assertions, and whispered laughingly to his fellow-counsel.

THE PROCEEDINGS—VERBATIM.

MR. BEACH'S ARGUMENT FOR THE PLAINTIFF.

The Court met at 11 a. m. pursuant to adjournment.

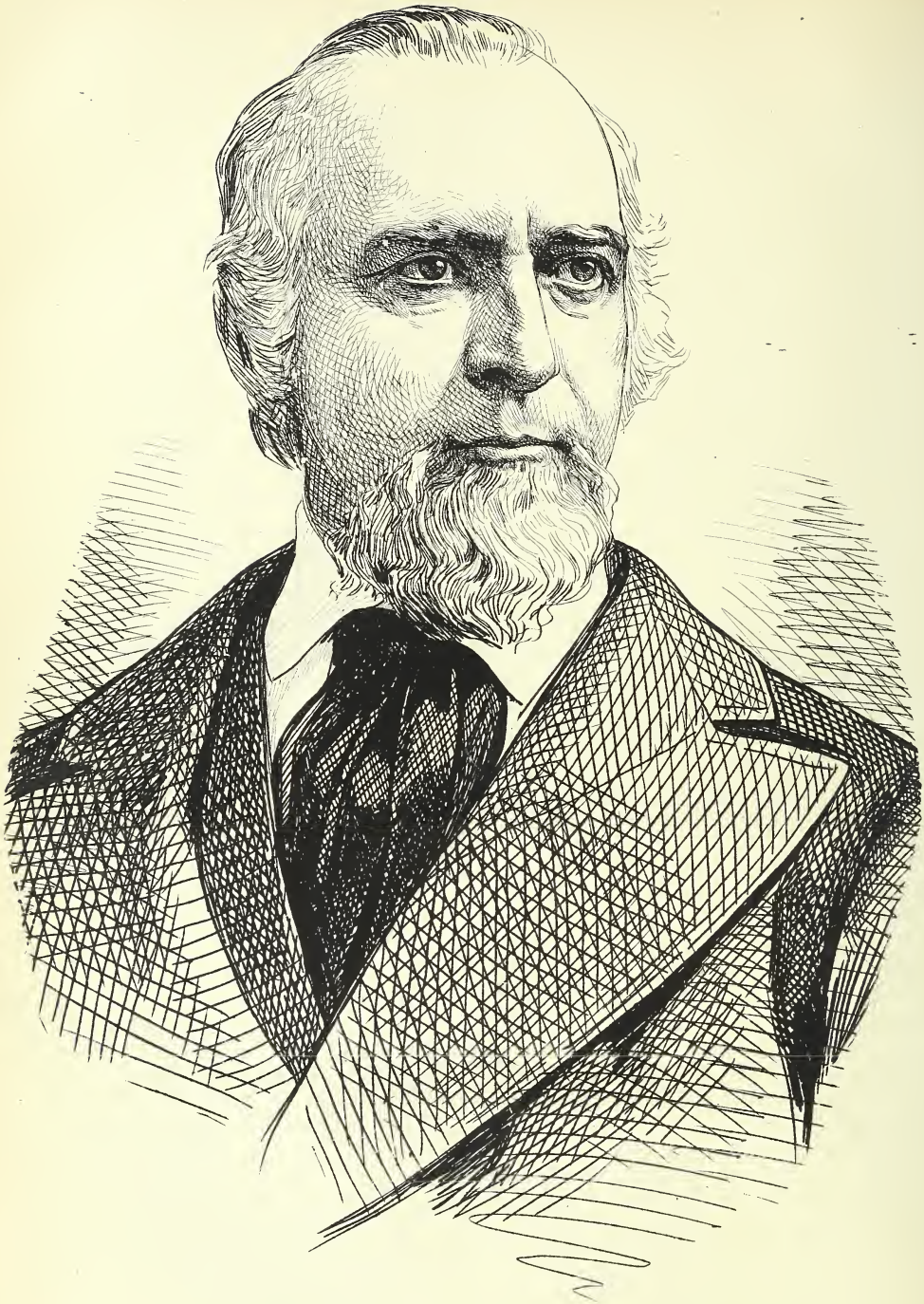
Judge Neilson—Gentlemen will perceive that we must have perfect quiet, and I have no doubt we shall be obliged to-morrow morning to lessen the number of persons in attendance. And gentlemen in the gallery will find it quite necessary to be quiet, otherwise the gallery will be closed to-morrow morning. It is very desirable that citizens should hear the discussion in this case.

THE VERDICT OF THE CHURCH COMMITTEE.

Mr. Beach then began his argument for Mr. Tilton as follows:

MAY IT PLEASE YOUR HONOR: At last, gentlemen, Theodore Tilton has the opportunity of a vindication in a court of law. It is the first opportunity. Environed with difficulties, and beaten upon by a tempest of calumny and reproach unparalleled in severity and in effect, pursued by the power of a man whom the genius of Samuel Wilkeson has discovered to be the greatest man on all the earth, aided by the organized persecution of a great church, Theodore Tilton was hounded to his ruin. The only judgment ever passed upon his case, the only hearing ever given to it, was before a tribunal selected from Plymouth Church by this defendant, with great care, with great perception, with great regard to the qualities and the relations of those judges; and before them the cause of Theodore Tilton was tried, and he was condemned. And it was imagined that that condemnation would be the permanent acquittal of Henry Ward Beecher. It was supposed that a private tribunal thus constituted of the friends of the accused, instructed and guided throughout all its deliberations by the counsel of the accused—it was supposed that that judgment would be decisive and permanent. But every one saw that Theodore Tilton was deprived of a hearing before that Investigating Committee, his evidence shut out, the testimony of important witnesses evaded, those known to have the most material and intimate acquaintance with the merits of that controversy unsummoned, a hasty and a snap judgment pronounced in a case of this character, and between men like Henry Ward Beecher and Theodore Tilton.

It is not wonderful that public judgment was unsatisfied; it was not surprising that the public clamor demanded a more thorough and complete investigation of this most unfortunate transaction: and the result has been, gentlemen, this trial; and in my judgment the great and important question upon this trial is, whether the system of influence and denunciation and clamor which for a year has invested this case, is to intrude itself with success upon the deliberations of a court and a jury. The question is whether here, in this, what is called the temple of justice, in the presence of that pure spirit of right and equity which is supposed to prevail in this presence—the question is whether here the organized power of Plymouth Church, aided by the ingenuity and the eloquence of counsel, is to overcome that sense of fair play and equity which is the spirit of our administration of the law. If this cause is to be won, gentlemen, by bold assertion and clamorous appeal, and by confident and insulting predictions, I yield the palm to my learned adversaries. If the judgments of this jury are to be controlled by a stream of invective and vituperation, by a repetition of scandalous and dishonoring epithets, repeated until they have pained the ear and surfeited the taste, I have neither hope nor care to influence your deliberations. I suppose that I speak to men properly estimating the prerogatives and responsibilities of their position. Believe me, gentlemen, this power of judgment is a great and responsible power. To-day you hold in your control, as my friends upon the other side say, the destinies of the greatest preacher in all the world. To-day you hold in your hands the destiny and the reputation of this plaintiff; and more than that, you hold in your hands the power of vindicating the witnesses produced upon this witness stand, or consigning them to imperishable dishonor and infamy. It is a great power; and whence do you derive it? Not by any natural right of judgment. What enables *you* to say to Theodore Tilton, to Francis Moulton, to Mrs. Moulton, "You are perjurers;" to the two first, "You are adulterers and infamous. You have no place in a court of justice. Although no man in this broad community has impeached your character for integrity and veracity; although you stand among the most reputable and honored of this



community, yet by our verdict you shall be scouted from this court-room, branded with our judgment of infamy?" A fearful responsibility to such a power.

A PERSONAL APPEAL TO FOREMAN CARPENTER.

The law has selected you as twelve intelligent, honest and lawful men, to decide the great questions involved in this controversy, and to you has committed this cause, freighted with these immense and permanent interests. You have been appealed to, Mr. Foreman, personally by my friend Mr. Porter. He has assumed to know the sentiments of this jury-box. He has assumed to say that he knows what the verdict of this jury will be. I know he has large facilities for obtaining that information, facilities which are denied to this plaintiff; and I know the influences which have surrounded this trial. I have seen these ominous and noisome shapes hovering about the outskirts of this investigation. I know the power and the influence of the organization which has surrounded this defendant during this trial. My friend Mr. Evarts wished for the hundred eyes of Argus; he has them, and more, too. And the hundred arms of Briareus; he has them, and has had them, and more, too. And there was no need of his wishing for the gold of Midas; he has had that too, dispensed with great liberality, with unbounded generosity, and always placed where it will have the best effect. But it seems to me a most astonishing assumption of prophetic power upon the part of my learned friend that in a court of justice, before gentlemen sworn to be impartial and true, an honored and distinguished counselor, before the plaintiff is heard, should assume to say, "Gentlemen, I know what your verdict will be." [To Mr. Carpenter.] Sir, you occupied that stand. You avowed that you had formed opinions favorable to the defendant in this case, but you said, in the presence of that God whom you worship and revere, that you could nevertheless decide this case impartially upon the evidence. Are you to prejudge it? Is there any counsel in this case who can appeal to you personally, and say he knows what the verdict of this jury will be? Aye, that it will be acquittal of Mr. Beecher, without leaving your seats? By what authority does the gentleman speak? If I am addressing gentlemen of that character, gentlemen whose judgments will be carried by epithet and calumny and abuse, unsupported by evidence; if the eloquence and the oratory of counsel can move the conclusions of this jury, I have no hope of success before you, gentlemen. I am not an orator as Brutus is. I have no calumnies to utter; I have no epithets to apply. I have a plain, simple, logical argument to present to you upon the proof in this case. If there be not evidence enough, if there be not proven facts enough under the ordinary administration of the rules of evidence, abiding by those lessons of wisdom and of truth come to us from the past—if there be not enough to satisfy the minds and the consciences of twelve impartial and unprejudiced men, I want no verdict in this case. I want no untruthful judgment against Henry Ward Beecher. I ask for no perversion of the law. I ask for no surrender of the consciences and the pure and intelligent judgment of this jury. But if I bring to them those proofs approved by the law, justified by the history of the law, those evidences which the law pronounces as sufficient to convict even of guilt in the presence of all the charitable presumptions of the law, then in the name of that law, and its justice, I demand a verdict. And, gentlemen, I have a right to demand it. I have a right to ask you, before Tilton shall be disbelieved, before Moulton shall be discredited, before Mrs. Moulton shall be defamed by your verdict, before the letters of Henry Ward Beecher shall be misconstrued, before the confession of Mrs. Tilton shall be disregarded, accepted and approved as it was by the defendant in this case—before all the prominent and convincing elements of this proof shall be disregarded—I have a right to ask from you a consideration far more elevated and truthful than has yet been given to these evidences. I know the wonderful power of my learned friends upon the other side. I have felt its influence. I cannot say that I am even yet relieved, with all the firm convictions impressed upon my mind in regard to this case—that I am yet relieved from the power of their ingenuity and oratory.

THE CLOSING ARGUMENTS FOR MR. BEECHER CRITICISED.

Why, gentlemen, in the history of the justice of this country has there ever been such an exhibition as has been presented in this court-room within the last 13 days? Have you ever heard such a storm of invective and abuse? Have you ever heard a loftier exhibition of the power of oratory than has been given by both my learned friends? Have there ever been in any cause efforts so extended and so marvelous? And yet my learned friends say to you, "The plaintiff never had any case." Why, my friend Mr. Evarts says to you there is not the slightest evidence in this cause of the guilt of Mr. Beecher. Why, when the plaintiff rested he ought to have been turned out of court; he had no cause; there was no proof; and my learned friends with all the arts and the powers of oratory have spent 13 days to convince you of that, gentlemen. They have given very strong proof of their sincerity; they have given to you very strong evidence of their conception of this case. With a skill and adroitness unexampled in our courts, they have endeavored to escape the consequences of that evidence. They have resisted it by but one witness, and that is Henry Ward Beecher. The amazing declaration was made by my learned friend, Mr. Porter, that Tilton and Moulton were contradicted by 34 witnesses. Why, gentlemen, it is the most astonishing declaration which

could have been made in this case. And it can be met only by a clear and explicit denial. On the contrary, I hope to demonstrate to you that Tilton and Moulton, upon any of the material facts in this case, have been contradicted by no single witness except Henry Ward Beecher. Most of the time has been occupied in this case by the examination of immaterial and unimportant collateral questions. It is said that we have occupied your time, when you must recollect that all this long investigation, a hundred of days, has been directed, not to the question of the guilt or the innocence of Mr. Beecher, but to an unsustained and abusive attack upon the character of Tilton and Moulton and the other witnesses upon the part of the plaintiff.

Gentlemen, I cannot pass to the consideration of this case without a single further remark upon the address of my friend Mr. Porter. It was a most remarkable effort. For thirty years that gentleman and myself have practiced together in the courts. There is no gentleman, in or out of the profession, for whom I feel a more unfeigned esteem and respect; none in the profession whose qualities as a lawyer I more admire and respect I have been accustomed to see him in the fore rank of professional controversy, claiming and maintaining the loftiest honors of our profession. And I am pained and grieved that upon this occasion he has lost that position, and appears here as a subordinate and secondary adversary. In that there is no humiliation, gentlemen. No lawyer of our profession, eminent even as Mr. Porter is, would be disgraced by following the leadership of a gentleman as eminent as Mr. Evarts. It is not that. But the humiliation consists in the ignoble and unworthy service he has undertaken, to abuse and denounce and calumniate, and, by fierce and furious epithets, to drive this plaintiff from the respect of this jury, and from the consideration of this Court. Mr. Tilton is said to be theatric—"hollow and theatric," I think, was the term; and singularly enough that accusation comes from my friend Mr. Porter, who has given the most distinguished evidences of the possession of the highest histrionic ability. Why, you remember, gentlemen, with what display of theatrical power, with what violence of gesture, with what intemperance of speech Mr. Tilton was assailed. It began to be somewhat alarming; for, when my learned friend Mr. Porter was flourishing his fist so furiously in the face of Mr. Tilton, and in his sonorous and impressive tones crying out, "Down, down, down to hell, and say I sent thee there," I felt some anxiety for the safety of my client [laughter], and I looked around with some amazement to see what had become of him. [Laughter.] It was very gratifying to me to find him there sitting composed and unalarmed, rather amused at the grotesqueness of the performance, and wondering really what my friend Porter thought of himself. Well, Sir, are you to determine this case upon such arguments? Is a party in a court of justice appealing to the impartiality and equity of the law, asking from his fellow men a legal consideration of his claims and his rights, to be hunted from court?—and by epithets and denunciation! What sort of a cause is it which demands this advocacy? And how happens it that a gentleman capable of the loftiest legal efforts, a gentleman claiming more than a due share (and deservedly too) of professional renown, instead of a temperate, logical argument upon the evidence, spends five days in a violent assault upon the opposite party and his witnesses? If Henry Ward Beecher is innocent he needs no such clamorous and foul defense. If Theodore Tilton is a perjurer and an adulterer, a cold and shameless debauchee, it can be proven from the evidence; and where is it, gentlemen? I shall have occasion to ask you more particularly that question. But let your recollection run over this proof, find if you can the evidence which thus impeaches the moral character of Mr. Tilton, which, in the presence of his demonstration upon the stand in court, can stand an instant against the open honor and honesty of his character. But it is the necessity of this defense. Tilton must be destroyed, Moulton must be discredited, Mrs. Moulton must be struck from the ranks of honorable womanhood, Mrs. Bradshaw must be disbelieved, Richards must be calumniated, and all the others who have uttered a syllable of reproach or of fact against the character or standing of Henry Ward Beecher, must be destroyed; and if this is not accomplished, this defense fails, and my friends know it. And the effort of both of them—with persistent eloquence, with an ingenuity almost devilish in its conceptions, both of them have striven for 13 days not to demonstrate the innocence of Mr. Beecher, but to destroy his accusers, and from that demand a verdict from the hands of this jury.

Well, there is a singular inconsistency in the modes of argument and in the conceptions which my learned friends indulge in regard to this case. Tilton is not only a perjurer and an adulterer, a man of most base and infamous character, the seducer of a young girl intrusted to his honor and care by his wife, but according to Mr. Porter, he is the cunning, adroit, subtle conspirator who has organized this deep-laid and long-prosecuted conspiracy against the pocket and the character of Henry Ward Beecher. And my friend Mr. Tracy, on the contrary, has a very low opinion of his skill and sagacity and forecast. He denounces him as having a genius for blundering. All admit that he is a man of intellect. My learned friends agree that he is a rhetorician and elocutionist. Henry Ward Beecher praises him for his intellectual powers, rather commends that genius which, early in life, lifted him to "the loftiest editorial chair in America," as Mr. Beecher says. You have seen him upon the stand. There has been no irritation, no malevolence,

there has been no departure from the demeanor which becomes a man of intelligence and honesty. I undertake to say, Sir, that his relation of his life, as it was examined by the searching inquiries of counsel, and the history which he gave of that life and of this episode in it, attracted your confidence and belief. In the whole history of his acts with reference to this domestic tragedy, he has never uttered a word of reproach or of censure against the woman who betrayed him. To the honor of manhood, to the honest emotions and love of his own nature he has been true, even under the temptation of this case. With a fidelity unexampled, with an exercise of Christian magnanimity and forgiveness which has been ridiculed in this court of justice, and before Christian men, he forgave what Henry Ward Beecher swears he believed he thought was the grossest outrage that could be practiced against a husband and a father. If I am not mistaken, I will show you that in all the emergencies and vicissitudes of this strange case, Theodore Tilton has never departed from his manhood, from the sincerity of his forgiveness, as toward his wife and Mr. Beecher; that he adhered to his honor and his plighted word under every circumstance, until goaded and driven by wrongs which could not be endured, to the presentation of his case to this Court and this jury. And why is that man to be slandered as he has been slandered? Why are all the terms of the vilest vulgarity and abuse in this court of justice heaped upon Theodore Tilton? What has he done? Fabricated a charge; organized a conspiracy; himself sunk into the lowest depths of depravity, hoping to raise himself to position and character by the destruction of Mr. Beecher, subsidizing the honesty of his friends, corrupting the integrity of womanhood, suborning perjury, marshaling the hosts of perjurers into this court of justice, with devilish skill and unprincipled purpose—this is Theodore Tilton according to my learned friends. Will you recall the letters that have been read to you of Mr. Beecher? Will you remember his exclamations—"I wonder if Elizabeth knows how generous Theodore has been?" "Is it possible that we three can again be reunited? Theodore will have the worst to bear."

Mr. Fullerton—"The hardest part."

Mr. Beach—"The hardest part to bear." And through all these letters, until with the fatuity of guilt Mr. Beecher reached the position where by his church he was driven into active hostility, through all the letters and declarations of Henry Ward Beecher, he bore truthful and honorable testimony to the manhood and sincerity of Theodore Tilton. Moulton—where, in the whole range of friendship, celebrated as it has been by the noblest philosophers and poets, can you find anything equal to the tributes which Henry Ward Beecher has paid to Moulton? I shall ask your attention to that by and by particularly. But in passing, I ask you to consider these testimonials originating from Henry Ward Beecher in favor of the men and women whom his counsel have so bitterly and loudly denounced. Ah! gentlemen, there is the difficulty in this case. It is just the difficulty which originated in the first place the charge of blackmail. I agree that Henry Ward Beecher is a great man, great in intellect, and great in many noble and distinguished qualities, and I shall not attempt at all to reduce the estimate of him by his counsel, by this jury, and by the world, except that when my learned friends elevate him to that degree of perfection that he is utterly good and sinless, I take exception to the statement, and I shall attempt to show you in the course of the argument I have the honor to present to you, that there are some exceptions to be taken to the character of Mr. Beecher. For however great and good he may be, he is not yet sinless and perfect, and the whole argument of our learned friends is based upon that proposition, and that proposition alone, that he is too elevated and good, his life too pure and stainless, the law of his nature too pious and worthy to permit the imputation of sin and offense. But this man, so great, so good, has borne invariable testimony to the integrity and fidelity of the persons assailed in this court by his counsel. And the difficulty, as I said, has been that Henry Ward Beecher surrounded by the influences which envelop him, governed by the interests which control him, not his own, influenced by considerations which spring not from his own nature, and his own consciousness—the difficulty has been that those who were interested in Henry Ward Beecher have been continually fighting against the generous and magnanimous impulses of his nature. Why, you remember that description by Mr. Beecher of the controversy between him and Mr. Tracy and Mr. Shearman upon the question of blackmail, a most amusing but an illustrative example of the influences which have controlled Mr. Beecher, in the first place in his prosecution of Mr. Tilton before the Examining Committee, and now in his unworthy and insincere defense against this action.

HOW MR. BEECHER OBSERVED THE POLICY OF SILENCE.

Gentlemen, you believe me, I hope, when I say that the task I have to perform is a most unwelcome and painful one. It is not pleasant to speak ill of others, especially of a man so eminent and gifted as this defendant. I would gladly escape the necessity of this discussion. The subject of this action is not one agreeable to consider. In my judgment, it is one which, except under the most imperious necessity, should not have been disclosed to the public ear. It belongs to the domain of private social life, and all the parties to this case so considered it, and for years so acted upon it. Tilton and Beecher and Moulton and Mrs. Tilton, Tracy, Woodruff—everybody who by any necessity of circumstances became

acquainted with the truth of this scandal—all agree that it should have been preserved within the strictest possible limits of silence and secrecy. You will perceive that when Mrs. Tilton had made communication of this wrong, not to her husband alone, but to others, and when under circumstances which necessarily required the intervention of friends under the seal of confidence, the same communication was made by Mr. Tilton, you will at once perceive that there were sources of discovery and disclosure which could not be controlled by either of the immediate parties to this controversy. The secret necessarily leaked out. But yet all the minds interested agreed upon the policy of silence. Mr. Evarts ventured the declaration yesterday or the day before that Mr. Beecher did not agree to this policy; that it was forced upon him; that he saw no necessity for concealment upon his part; that he was only anxious for the interests of the family who had been unconsciously, unintentionally disrupted or disturbed by his influence, that he was ready at any time, except for that consideration, to meet the issue and the consequences of this secret. Well, it is pretty evident from the testimony that when in January, 1871, immediately following this memorable month of December, 1870, Mr. Tilton proposed to publish his letter to Bowen—it is pretty certain from the testimony that Mr. Beecher begged then for silence. It is pretty certain it is uncontradicted. It appears from the written words of Henry Ward Beecher that when Mrs. Morse wrote to Mr. Beecher that Theodore Tilton had told twelve persons, it is quite certain that he approved the policy of silence, and begged for silence. It is pretty certain that he was striving for concealment when he sent Mr. Bell to Mr. Halliday to suppress a church investigation. Mr. Bell is a gentleman upon whose intelligence and integrity both of these parties rely, and who has commended himself to you by an exhibition of intelligence and of candor upon the stand which marks him as an entirely trustworthy and reliable gentleman, and he tells you that that was the mission imposed upon him by Mr. Beecher. When, in reply to his nephew, Perkins, Mr. Beecher wrote to him to put his foot upon the hot embers of scandal, &c., he advised the policy of silence. When, in that letter so queerly construed by my friend Mr. Evarts, and to which I shall ask your attention by and by, called "the bottom facts" letter, Mr. Beecher said that the real point was to avoid an appeal to church and council. Why, assuredly that was an effort for silence and for concealment. When, in that letter which he wrote to Mrs. Tilton which he sent by the hands of Mr. Tilton, and which he requested to have returned by the hands of Mr. Tilton because there were subjects spoken of in it and facts revealed which should not run any risk of disclosure by miscarriage, he evidently looked to silence and concealment. And I suppose the execution of that "Tripartite Covenant" was a device for concealment, for the suppression of this scandal, for its limitation within the immediate circle to which it had already been communicated. And you will remember that in one of his letters Mr. Beecher uses the expression, "If the papers will hold off for a month we will outride the gale," and I suppose, gentlemen, that when he wrote that, and when he wrote to Theodore Tilton advising him to resign from Plymouth Church for the purpose of suppressing the pressure of the West charges and avoiding investigation, Mr. Beecher was striving for concealment. Well, there are expressions in the "ragged edge" letter, as it is called, when he alludes to the efforts he makes and has made for the purpose of preventing any questioning on the subject, and how he should stop a ruinous defense of himself—it reads how to stop "a ruinous defense *of me*," and I noticed that yesterday or the day before, in reading it, my friend Evarts omitted the words "of me"—I suppose that in that letter Mr. Beecher was contemplating concealment. There is a very remarkable letter, too, in which he speaks of "stultifying all the devices by which we have saved ourselves." What were those devices? What was their object, if not concealment, secrecy, suppression? But the most notable instance to my mind whereby he evinces his desire to conceal and to suppress investigation is when that lady, Mrs. Bradshaw, under the pressure of a necessity to appear as a witness before a Church Committee, writes him, and his answer begs concealment, advises the policy of silence, and refuses to communicate any information to her, upon the ground that it is a subject that should not be disturbed. And when, gentlemen, finally, in his statement before the Committee, he declared that "the policy of silence ought to have succeeded," I think he not only rendered pretty emphatic adherence to that idea of silence and to the propriety of that policy, but made a confession that he was a party to that scheme.

MR. BEECHER NOT ENTITLED TO THE PRESUMPTION OF INNOCENCE.

Now, gentlemen, before I pursue the argument which I design to submit to you, and which I supposed could have been concluded at the most in a couple of days, it becomes necessary for me to consider some of the assertions and some of the propositions which have been presented in their very able arguments by my learned friends. If your Honor please, my friend Mr. Porter has advanced the proposition that the jury in charge of this case are to assume, for the protection of the defendant, the presumption of innocence, and that they are to extend to him the benefit of all doubts which may arise upon the proof. I think, Sir, my learned friend misapplies a doctrine of evidence more appropriate to investigations under the criminal law than to a civil action at law for the recovery of damages. I know there are cases, such as fraud,

and where, perhaps, as an incident in the case, great wrong or criminality is imputed to a party—I know that in exceptional civil cases of that character the presumption is also indulged; but in this case I respectfully submit to your Honor the doctrine has no application. Mr. Beecher is entitled to no presumption of innocence no more than if this was an action upon a contract or upon a promissory note. He is sued for seduction in an action for criminal conversation. To be sure, the action in itself imputes personal impropriety, moral wrong, yet, I submit, not of that character, nor of that degree either, Sir, which justifies the application of this presumption. But if it were so, what is the result when evidence—satisfactory evidence—is given upon the part of the plaintiff of the claim which he presents? When evidence is presented to your Honor which you pass to the jury as *prima acie* proof of the offense charged against Mr. Beecher, what becomes of the presumption? It is overcome; it is destroyed.

More than that, your Honor, the presumption then changes. Concede that in the commencement of this investigation we start with the presumption of innocence and the benefit of doubt shielding and encompassing this defendant; when that shield is broken down and that defense is trampled down by overpowering evidence of the truth of the charge and the claim, then he stands upon his defense, and he has to prove by satisfactory evidence that the claim is unfounded, that he is innocent of the accusation, and he assumes all the burden of the issue. Now, I refer your Honor, in support of these propositions, to "1 Greenleaf on Evidence," who is pronounced by my learned friends the ablest American commentator upon the general law of evidence:

In civil cases where the mischief of an erroneous conclusion is not deemed remediless, it is not necessary that the minds of the jurors be free from all doubt; it is their duty to decide in favor of the party on whose side the weight of evidence preponderates, and according to the reasonable probability of truth. But in criminal cases, because of the more serious and irreparable nature of the consequences of a wrong decision, the jurors are required to be satisfied beyond any reasonable doubt of the guilt of the accused, or it is their duty to acquit him, the charge not being proved by that higher degree of evidence which the law demands. In civil cases it is sufficient if the evidence, on the whole, agrees with and supports the hypothesis which it is adduced to prove; but in criminal cases it must exclude every other hypothesis but that of the guilt of the party. In both cases a verdict may well be founded on circumstances alone, and these often lead to a conclusion far more satisfactory than direct evidence can produce.

In the case of The People agt. Schriver in 42 N. Y., which was an indictment and trial for homicide, the Court say:

Now, what is the rule of evidence as to the burden of proof, not in a case where the prisoner is attempting to show that the homicide is manslaughter instead of murder, but in a case where he is attempting to show that an admitted homicide was justifiable under the statute? In civil cases where the mischief of an erroneous conclusion is not deemed remediless, it is not necessary that the minds of the jurors be free from all doubt; it is their duty to decide in favor of the party on whose side the weight of evidence preponderates, and according to the reasonable probability of truth.

And then, Sir, follows the remainder of the doctrine which I have recited from Mr. Greenleaf—without quotation marks, but with a reference to Mr. Greenleaf's work. It is the rule applicable to criminal as well as civil trials:

"I ought to read, if your Honor will pardon me, a little before that—"Reasonable doubt, is defined by Chief Justice Shaw, in 'The Commonwealth agt. Webster,' to be that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. This degree of certainty is never required in civil cases; but is required in criminal cases by reason of the humane regard which the law has for the life and liberty of persons put upon trial for crimes. The People, in every case of homicide, must prove the *corpus delicti* beyond a reasonable doubt; and if the prisoner claims a justification, he must take upon himself the burden of satisfying the jury by a preponderance of evidence; he must produce the same degree of proof that would be required if the blow inflicted had not produced death, and he had been sued for assault and battery, and had set up a justification," &c.

Now, Sir, apply that rule of the criminal law to this case. When in a criminal case the *corpus delicti* is proven, and a justification is set up, the burden of proof changes; and so, in a civil action when a plaintiff produces evidence to maintain the issue on his part, sufficient to carry that question to the jury, the burden of proof changes, every presumption changes, and the question then becomes a general one upon all the proof. The jurors must exercise their reasonable judgment upon the whole of the evidence, and from that determine not beyond a reasonable doubt, not with that certainty required in a criminal case, but as intelligent, sensible men judging from all the probabilities of the evidence, whether the plaintiff's claim, upon the whole, is established.

THE PUBLISHING OF THE WIFE'S LETTERS.

A very severe philippic was uttered by Mr. Porter and in substance repeated, but not with the same violence of language, by Mr. Evarts, against Mr. Tilton for the publication of his wife's letters. Well, I don't know, gentlemen, that you or I would be willing to apply such severe terms of reprehension to a husband who found occasion to publish his own and his wife's letters under any possible circumstances. I am quite willing to concede that without a real, meritorious cause an act of that character would be indelicate. It would be repulsive to the feeling of a husband, and to the sense of every man of honor, to publish a letter written to him either in the confidence of marital intercourse, or even in that confidence which sometimes attaches to a communica-

tion as between business gentlemen. But I think we can conceive of emergencies which would make the propriety of the publication very obvious; circumstances under which neither of the parties to the correspondence would feel any repugnance, but, yielding to the necessities of the case, each would approve the act. What were the circumstances under which this publication was made, and the inducements which led to it? Upon the cross-examination of Mr. Tilton he was led to speak of the circumstances which led to the publication and of the manner of it, and he says:

During the early consultations I had with my friend, Judge Morris, I put into his hands the papers. He read them and said, "These letters ought to be published, or at least liberal and copious extracts from them." I said, "No, they are private letters, and I think there is an impropriety in publishing them." He said, on the contrary, the case was of such seriousness and gravity, and had been so greatly misrepresented that he thought justice required that they should be published. He then suggested that good taste, perhaps, would lead to their publication, not here in Brooklyn in either of the local papers, but at some distant point; and at that time a visit was made to my house by an agent of *The Chicago Tribune;* Judge Morris made his acquaintance, and communicated to this agent written extracts from those letters; and in that way they were published.

Now, they were published at a time when Mr Tilton was pursued by misrepresentation and false public accusation. He was represented as a brute in his domestic relations; he was charged with the grossest outrages upon his wife and family; the most flagrant and debasing crimes were imputed to him, and the charges were circulated in all the papers of the land. The only weapon of defense he had was the testimony of his wife, in her letters, written under circumstances which gave to their contents entire veracity and verity. His lawyer advised him that under these circumstances it was justifiable to use and publish the letters, and he did so; and he is called a dastard, and a villain, outraging the confidence and the honorable obligations of married life and of society. Well, I dissent from that conclusion, gentlemen. Under those circumstances and in the position in which this man and wife then stood, that act upon the part of Theodore Tilton, if she was true to him as she then professed, would be approved by her. It was a publication made in their common interest; it was a publication made under circumstances by no means dishonorable to her, and communicating to the public a correspondence which in none of its characteristics reflected upon her propriety or virtue; and when this man was thus overpowered by adverse influences, when he was helpless and hopeless under the circumstances, was there any impropriety in it, and will any lady or gentleman, under such circumstances, condemn him as an indecorous and indelicate violator of domestic secrets? But, gentlemen, the astonishing statement is made by my learned friend, Mr. Porter, accompanied with the most severe denunciation against Mr. Tilton, for publishing the letter of Jan. 9, 1867. You will remember, gentlemen, that it is the letter which spoke of some infirmities and sufferings of Mrs. Tilton. Mr. Porter says of it:

Why was that published? Can you imagine anything more indecent, more mean, more contemptible than to publish in the newspapers of all this land a wife's letters in which she complains of her felons, her eruptions, her inflamed eyes, and her looseness of the bowels. This man's greed for admiration, his unbounded and stilted egotism, is such that to get a compliment he would publish anything.

Well, gentlemen, it turns out that this was all that was published of that letter.

THE SHIP'S CABIN, My Desk, Jan. 9, 1867.

MY BELOVED: It it quite time that you should have a little insight into the manner in which I am using your hard-wrought earnings.

And then there are points indicating an omission.

My heart is sick at the figures, while I make confession with shame and sorrow that I can do no better in my situation.

He was charged with parsimony, with not providing for his household.

Once more I would bless you for your delicious letters. They will be a legacy to my children when I no longer live to preserve them.

I will try to take care better of my wretched self, because the best man in all the world loves me.

That was the only way in which that letter was published, and my friend Mr. Porter must have known it. No allusion to any personal inconveniences to Mrs. Tilton; nothing disrespectful to her, and yet taking that letter and asserting its publication by Mr. Tilton, this violent assault is made upon him.

Well, the letter of January 28 of that same year is spoken of by Mr. Porter in like terms, and the letter of March 8, 1868, both of them introduced by Mr. Shearman on this trial and read by him. Now, it is a little remarkable that the plan of assault, the system of attack, the policy of vituperation adopted by my learned friend should have led him into such extravagance. He says that the egotism of Mr. Tilton is so enormous that he hesitates at nothing to gratify his vanity. I think I may say that the vindictiveness of my learned friend is so enormous that he hesitates at nothing to defame his adversary. Charges of this character, founded upon misstatement, against a man who claims the ordinary protection of a party in a court of justice, shielded by the impartiality of the law, cannot be recklessly indulged by counsel. Misrepresentations of this character, used as the foundation of calumnious vituperation, do not become the eminent gentlemen who represent this defense, and I will show you instance after instance in the course of the past 13 days where facts have been as clearly disregarded for the purpose of opening a justification for the vileness of the assault made upon the case of the plaintiff.

THE ALLEGED SHREWDNESS IN SELECTING DATES.

Mr. Porter alluded to the complaint in this case, and to the fact that the place or places of this adultery were very artfully and carefully selected. Well, of course, gentlemen, the plaintiff in this case knew nothing of it. We had no evidence of actual observation of the offense, and a pleader drawing a complaint in an action of this kind could not have verified the places where he might suppose it probable, under the evidence, that the offense could have been committed. Mr. Morris, in drawing this complaint, says:

The plaintiff, complaining of the defendant, alleges that on the 2d day of October, 1855, in the City of Brooklyn, the plaintiff intermarried, &c.; that the defendant contriving and willfully intending, &c., heretofore on or about the 10th day of October, 1868, and on divers other days and times after that day, and before the commencement of this action, at the house of the defendant, 124 Columbia-st., City of Brooklyn, and at the house of the plaintiff, 174 Livingston-st., City of Brooklyn, wrongfully and wickedly, &c., carnally knew, &c.

It is drawn in the ordinary form. Well, it is thought by Mr. Porter exceedingly surprising that we should charge in this complaint seduction and adultery at the house of Henry Ward Beecher, and thinks too that it was very adroit to have laid the venue upon the 10th and upon the 17th of October, because no alibi could be proved; and Mr. Porter, with a felicity and skill peculiary his own, has taken the occasion to draw an attractive picture of Mr. Henry Ward Beecher at his house surrounded by his wife and his children and his grandchildren. The description of the felicities and the sanctities of home life which at once touch the commonest nature and has appealed to you and to your natural emotions, to discredit the idea that Henry Ward Beecher, surrounded by these affectionate and holy influences could have been guilty in his own house, to his heart in the holy of holies, of such an offense. Why, gentlemen, we didn't charge it in the ordinary form of pleading, ignorant of the places where the alleged seduction was obtained; we give, in the general language of ordinary pleading, a description of place and circumstances, making it as definite as we can, but, nevertheless, making it as comprehensive as possible, so that there should be no destructive variance as between the allegation and the proof. I do not know, gentlemen, whether in the house of Mr. Beecher, or in the house of Mr. Tilton, or where this seduction, if there be a seduction, was accomplished. There is no right or contrivance upon the part of the plaintiff in these pleadings, or in this evidence, with a view to a location of the offense, that would be probable as to place or as to time of a character which would interfere with exculpatory proof on the part of the defendant. These places are alleged from an alleged communication from Mr. Beecher and Mrs. Tilton to Mr. Tilton when he was led to make inquiries in regard to the time and place of the occurrence, and upon that the simple claim is whether Mr. Tilton or Mr. Beecher, strengthened as either may be by the other evidence and the circumstances of this case, is to be credited.

ALLEGED MISINTERPRETATIONS OF TESTIMONY IN THE ARGUMENTS.

Mr. Porter has fallen into another mistake. He states that Mr. Tilton did not deny the first interview, the first visit to the room of Bessie Turner, as stated in her evidence. Generally, in regard to the allegations of my learned friend, that when Mr. Tilton and Mr. Moulton and Mrs. Moulton were recalled that they did not deny the statements which were made upon the part of witnesses for the defense, I may make the remark, if it please your Honor, that the question was presented, when our witnesees were recalled to the stand, to your Honor's discretion, whether it was proper for us, where the direct evidence, the former evidence given by our witnesses, was in conflict with the allegations made by witnesses subsequently produced upon the part of the defense,—whether it was necessary for us to reassert and contradict when our witnesses were recalled, I understood your Honor to say to me that it was not necessary or proper, and that Mr. Evarts had very promptly concurred in that conclusion. Now, there is not an instance in this case, gentlemen, where any adverse testimony with reference to a single witness, or either as to declaration or anything else, or facts—not a single instance where there is a want of contradiction (and I make the declaration after a tolerably careful examination of the proofs in this case), and relying upon the instructions which were given to us by the Judge, we did not pass through with all the evidence of Henry Ward Beecher, for instance, or of Bessie Turner, or of Mrs. Ovington, or any one else, where, upon direct examination of our witnesses, they had sworn to facts, to declarations and circumstances which stood in direct antagonism to the assertions of the witness upon the part of the defense; it was unnecessary. But in regard to this, and perhaps one or two other matters, I may occupy your attention. [Mr. Beach failed to find a page he was looking for, and continued as follows:] I must pass it, gentlemen. I will refer to the page upon another point. Mr. Porter stated that Mr. Richards, when called to contradict Bessie Turner in regard to the allegation that she communicated to Mr. Richards at his office at *The Evening Post*, stated that Mr. Richards only denied the communication asserted to have been made by Bessie Turner to him at that place, and did not deny that he received a communication from her at other places or at another place. By referring to page 80, which I have marked, and which I am certain cannot be a mistake, it will be found that

Mr. Richards, on the contrary, denies that the subject of the conversations was at any time communicated to him there, or at any place, by Miss Bessie Turner. Great complaint is made, gentlemen, that on the return of Mrs. Tilton from Marietta, Ohio, under circumstances and with a reception which certainly indicated no want of attention and no rudeness on the part of her husband, for he met her, with proper attention and proper affection, with a carriage at the depot, and conducted her to his house. But it is said that Miss Ellen Dennis usurped the wife's place at the table, and in the circumstances which surrounded that incident there was great cruelty and unkindness on the part of Mr. Tilton. Then, gentlemen, Miss Ellen Dennis was a cousin of Mrs. Tilton, a somewhat aged maiden lady, who had been the friend and attendant of Mrs. Tilton from her youth up, who, in the absence of Mrs. Tilton from her home, was the housekeeper, the active and convenient manager of the domestic concerns of the household, and while Mrs. Tilton was away, Mr. Tilton receiving his guests with that courtesy and hospitality which at one time distinguished his house, Miss Dennis superintended his domestic affairs and presided at his table, performing the offices of his wife during her absence, and on the morning when they returned, and at dinner that day, she occupied the same position, discharging the same duties. Was there anything indelicate or offensive in it? Was there anything which should have offended the wifely feelings of Mrs. Tilton, if they were offended, and was it a matter over which Mr. Tilton exercised any control? Why, you remember how scornfully and almost rudely he repulsed his wife at another time—related by Bessie Turner—when she made inquiries of him, or asked advice about the servants and the management of the interior concerns of their home. Well, it may not have been gracious, in your idea of the character and treatment of a husband; it may be that there are mental qualities about Theodore Tilton, that there is a devotion and a spirit to higher mental considerations and occupations which unfit him for those kindly and trivial and tender offices of domestic life. It is no reproach to him. The noblest moralists, the purest Christians, men of the highest intellectual attainments, have manifested a severer rudeness, I had almost said a bearishness, in regard to trivial matters of this character. What were the particular circumstances which produced a manifestation of feeling on the part of Mrs. Tilton at that time we cannot see from the evidence. Certainly there was no offense offered to her, no rudeness addressed to her, no circumstances which should have offended her wifely dignity, or excited the jealousy of a matron in the control of her own household. The account of this transaction by Bessie Turner is altogether too imperfect to enable us to judge correctly of that transaction, and Miss Dennis is in her grave, and Miss Bessie Turner speaks with great safety, because she can be contradicted by no one but by Mrs. Tilton. Now, it is not very important, gentlemen, in regard to all these questions of kindred character—the rudeness, the coldness, the sulkiness, the moodiness, the conduct of Theodore Tilton in his household is not a matter of imperative concern before this jury. He may have been all that Bessie Turner represents him to be. In the restlessness of his nature, he may have wandered, as she ridiculously says, from bed to bed to find a soft place on which to rest. He may be ludicrous in his habits, but, nevertheless, gentlemen, before a court and jury he may assert the sanctity of that home thus disturbed by his foibles, if it be so. He may have been harsh and cold at times in the domestic circle. He may have been stern and moody toward that delicate and sickly wife, if Bessie Turner is to be believed, but it gave to Henry Ward Beecher no license to trespass upon that household. It may have alienated the affections of the wife; it may have cooled the fervor of her affection; it may have shaken her reverence for her home and her marriage tie, but it gave to Henry Ward Beecher no warrant to take advantage of those circumstances. It is no excuse for Henry Ward Beecher that Theodore Tilton was a harsh and unloving husband, if it be true. It does not deny the truth of this accusation that that was a disturbed and discordant household; it may be true; that we will see about. It may have been an encouragement to Henry Ward Beecher to venture upon an assault upon its sacred purity, but it is no justification for the act. And so through all these irrelevant and collateral issues which have been forced upon this jury. Grant them all; grant that Theodore Tilton was the adorer of Victoria Woodhull, as he was her eulogist in her biography; grant that he was odious and debased in his habits; grant that he trespassed upon the proprieties of life; grant that he was less than a man and viler than a brute, when at Winsted, as they say, he seduced the girl intrusted to his care—grant all this, is it an answer to the proof in this case? Does it overturn the condition of this defendant? Does it wipe out those stormy and emphatic letters over which my learned friend passes delicately and lightly? Does it destroy the character and the credibility of the witnesses who reveal to you the history of his three years of penitence and remorse; and are we to be told, when evidence of this character is presented in a court of law, that the plaintiff is an immoral and degraded libertine, and that therefore the sin of the defendant should go unpunished, and the vice of his immorality unrebuked by the judgment of the law and the jury.

The Court here took a recess until 2:05 p. m.

THE CHARGE OF GARBLING THE LETTERS.

The Court met at 2:05 p. m., pursuant to adjournment.

Mr. Beach—In respect to various letters and documents which Mr. Tilton, in the course of this long and vexed

controversy, heretofore has been compelled to use, he has been charged with garbling. In respect to the letter of February, 1868, which Mr. Tilton had occasion to use in his sworn statement, submitted to the Committee of Investigation, and from which he quoted, Mr. Porter, referring to the quotation and to the use made of it by Mr. Tilton, says:

And yet the dastard to whom that letter is addressed published it in a form which was garbled, false, and forged; in a form in which she is represented as confessing the infamy which he now charges, and he says, by way of apology for it, "Well, but since I commenced this suit I have furnished a true copy."

The form in which the quotation from the letter of Mr. Tilton was reproduced by Tilton is this:

That previous to the aforesaid criminal intimacy one of the reasons which Mrs. Tilton alleged for her encouragement of such exceptional attentions from the Rev. Henry Ward Beecher was the fact that she had been much distressed with rumors against his moral purity, and wished to convince him that she could receive his kindness and yet resist his solicitations, and that she could inspire in him, by her purity and fidelity, an increased respect for the dignity of womanhood. Previous to the Autumn of 1868 she maintained with Christian firmness toward her pastor this position of resistance, always refusing his amorous pleas, which were strong and oft-repeated; and in a letter to her husband, dated Feb. 3, 1868, she wrote as follows: "To love is praiseworthy, but to abuse the gift is sin. Here I am strong. No demonstrations or fascinations could cause me to yield my womanhood."

And Mr. Porter alleges that that is garbled and forged and false in its sentiment, intent, and effect.

Here I am strong. No demonstrations or fascinations could cause me to yield my womanhood.

And Mr. Tilton, inquired of in relation to the motive which induced him to make that quotation and publication, and to the supposed effect of it, says:

I quoted it as a beautiful illustration of her own sense of the dignity of her sex, and of herself as respecting it. That was the use which I made of that extract in my sworn statement to certify to her strength of character at that time.

Comment cannot add, gentlemen, I must be permitted to say—with what my friend knows is the kindliest feeling toward him—nothing can be added by way of comment to the unworthiness of such an attack. In that statement Mr. Tilton, in pursuance of the policy which had governed him from the commencement of his discovery of his wife's turpitude, was modifying the offense, was maintaining her integrity of character, was professing at least, and believing, as I think, in the purity of her nature, and in the spotlessness of her sin, under the circumstances under which it was committed, and to which I shall advert hereafter, and in this statement before the Committee was representing with what fidelity to her womanhood and to her marriage vow, with what adherence to the policy with which she accepted the intimacy of Mr. Beecher, believing in his previous moral transgression, as I will show you by and by, and yet by faith in her own womanhood, and by belief in her own firm integrity, and by the nature of the influence which she knew she exerted over Mr. Beecher, as I will also show you. Mr. Tilton was expressing the confident belief, and quoted this letter in support of this belief, that this woman, at the time to which reference was made, was maintaining all these characteristics and this policy of action. He deserves no reproach, gentlemen. There is no misconception or misrepresentation of the letter of Mrs. Tilton in this quotation. It was ungenerous on the part of my learned friend. Nay it was clearly unjust toward his adversary, without presenting to you the character of the quotation, to assume that it was garbled and forged and misrepresented, for the mere purpose of indulging in a violent expletive against Mr. Tilton.

MR. TILTON'S PUBLIC DEFENDERS.

But the most astonishing thing to my mind, the most remarkable position that Mr. Porter in his argument assumed, is in that florid display of the friends and the influences which have gathered about Mr. Beecher in the course of this trial, and the absence of all encouragement and support in aid of Mr. Tilton. Well, gentlemen, what my friend said so eloquently, with immense descriptive power, upon that subject, was uttered for something. It was very well to describe Mr. Beecher as the possessor of all the manly and Christian virtues which have been attached to his character. It was a matter of policy to boast that those assumed qualities had collected about him all the piety and intelligence and respectability of the community; and it was well hoped that an assumption of that character might influence the conception which this jury might form in regard to Mr. Beecher and the respective merits of this litigation. I am not especially favorable to that mode of argument. Considerations of that character, in my judgment, are not legitimately or professionally addressed to the intelligence of a jury: but when they are resorted to it is well enough to learn whether they are well founded. And in the outset my learned friend finds a little difficulty upon this subject, because the leading papers that were daily presented to his observation at once satisfied him that in this outer intelligence, among this larger jury to which my friend Porter appealed, there were some who were bold, and my friend thinks unprincipled enough, to advocate the claim of Mr. Tilton, and to question the spotless, pure integrity of Mr. Beecher. Well, those he calls the effusions of Tiltonianism. *The Sun, Springfield Republican, Chicago Tribune, St. Louis Democrat*, and all the host of the leading newspapers in every section of the country, who are, with a keen and acute intelligence and logic examining this case, and this evidence, as it has been presented to this jury, and expressing conclusions which did not meet the approbation of my learned friend—why, they are Tiltonianisms

intimating that they are written by Mr. Tilton, that Mr. Tilton controls the press of this country, and that the almost uniform and universal judgment of that press is a judgment formed by Mr. Tilton for effect upon this jury. Well, it is an astonishing proposition, gentlemen. But does my friend consider the moral of this statement? Does my friend consider that the highest intellect of the country, the most fearlessness of investigation, is collected upon the leading daily press of this land, that in no department of science, of art, of learning, of business, is there such an association of cultivated and practical intellect connected with the most astonishing, marvelous enterprise as are associated in the conduct of the daily press of this land? Is he ignorant of the fact that the press is at once the educator and the representative of public sentiment, and when he talks about these Tiltonianisms in the leading newspapers of this country he is uttering the public condemnation upon the cause of his client? It is not an argument to control the intelligence and the conscience of this jury. I would have been ashamed to have alluded to it, but for the incorrect example of my learned friend.

MR. BEECHER'S BROTHER CLERGYMEN AGAINST HIM.

But then all society gathers about Mr. Beecher. The revered and the learned of every denomination, the Christian of every sect, according to my friend Porter, are gathered in one uniform and zealous defense of Henry Ward Beecher. Is this true? Where are they? Where is Dr. Storrs, one of the jury of the vicinage? Where is Dr. Cuyler? Where is Dr. Budington? Where is Dr. Talmage? Where is Dr. Ducyea? Where is Dr. Van Dyke, and all the other list of eminent Christian pastors? I have not seen them with ready and brotherly hands supporting Henry Ward Beecher. I have seen Plymouth Church in all its glory. [Laughter.] I have seen the zealots and the parasites of Henry Ward Beecher gathering about him upon this trial, and shedding all their influence, in and out of court, in his favor. But where are, beyond the walls of Plymouth Church—where are these good and great men who testify their belief in the integrity of Henry Ward Beecher, and their devotion to his defense? They are not here. And their absence is no evidence of guilt; but when my friend undertakes to boast of the prominence of his client, of the respect maintained by the community for his character, and to exalt himself upon the idea that there is a devoted and a unanimous rally of Christian sentiment about this fallen preacher, I am disposed to dispute the position. Quite willing would I be to submit this cause to the judgment, either of the public press, the public opinion, or the Christian sentiment of this nation. But, gentlemen, these are foreign and improper topics for discussion in this court-room. We stand in a presence, appealing to a spirit which rejects all these noxious and improper influences. Each of you may well say, in the language, but not in the spirit, of the Jew, "An oath, an oath, I have an oath in heaven. Shall I lay perjury on my soul?" And the moment the judgment of this jury departs from the evidence and the law, the moment it listens to these seductions and temptations of sophistry and oratory, the moment it is influenced by these impure approaches, of whatever kind or character they may be, they are treacherous to duty and false to their oath. I ask no influence of this character. I do not ask this jury, intelligent and responsible men, performing the most solemn and serious duty of their lives—I do not ask them to surrender their judgment to the bidding of any man, or of any class, whether they be secular or Christian, whether they be newspapers or pulpit orators. And, gentlemen, when I am led to the discussion of these foreign topics, it is not with any view or purpose of approaching your convictions by any such appeal, but to repress what I think the dangerous appeals made on the part of my learned friend.

Well, gentlemen, I have the means, if I thought it either necessary or entirely appropriate, to satisfy my learned friend, Mr. Porter, that he greatly errs in the professional judgment founded upon this case. And what has the opinion of lawyers to do with this case, or with this jury, except the opinion which proceeds from this bar, and so far as it is entitled to the approbation of this jury? I think I could satisfy my learned friend very readily that his conception as to the judgment of reflecting and prominent lawyers upon this case is quite different from his representation. It may be, perhaps, a significant fact, but I do not choose to use it in that character, that the two leading papers of the old home of Mr. Beecher, Indianapolis, will furnish some very instructive, if not entertaining reading to my learned friend, Mr. Porter, upon this subject. A new announcement of emotion, a new revelation of our emotional nature, is made in the speech of Mr. Porter.

MRS. TILTON'S RECENT ATTITUDE TOWARD HER HUSBAND.

I had occasion to say, gentlemen, in the commencement of this litigation, that it would be the happiest event that could occur in the history of this mournful drama if Theodore Tilton and his advisers could be satisfied, by that kind of proof which should satisfy the judgment of intelligent men, that his wife loved him with her early devotion and with her early purity. No consummation of this case could be more grateful to my client, and to those who aid him in the assertion of his rights upon this trial. But Mr. Porter gives us the assurance that she does love him, and produces the singular antithesis expressed in this language: "It is one of the things which seems to me marvelous in the sight of man, and only explainable when we shall be able

to look at it with the light that comes from Omniscience, that woman" [referring to Mrs. Tilton], "loathing this man as she does" [referring to Mr. Tilton], "to this hour loves him as I have never seen a woman love a man yet. It is the strangest anomaly that I have ever witnessed in the whole course of my life—the most idolatrous" [I suppose he means the love]—"the most idolatrous love and most abject." Well, that is seemingly an irreconcilable inconsistency, that Mrs. Tilton should at once love and loath her husband. That that love and loathing should be expressed by the conduct which she has pursued and by the position which she has assumed in this controversy, and that any human being should assert to intelligent and feeling men that that woman still loves the husband of her early youth and the father of her children, at the same time confessing that she loaths him with a bitter and utter loathing, is one of the most remarkable exhibitions I have ever witnessed. It seems to me if this lady had been left to the impulses and instincts of her better nature, the forgiveness which covered her sin in 1870, and the love and chastity which took her again to the bosom of her husband, if the policy of protection of the wife had produced its just and legitimate and affectionate influence upon her nature, if she had been true to the policy of forgiveness and silence which her husband followed, none of these sad consequences would have been exhibited to this jury to-day. It was only when, misled and deceived, after all this life of charity and love toward this woman upon the part of Theodore Tilton—it was only when she was seduced from the home which she had dishonored but which her husband had rebuilt, it was only when she was led from the sanctity and protection of a husband's love and a husband's home, to appear as an open accuser of that husband, and as the defender and vindicator of her seducer—it was only then that all hope of concealment, all effort at silence, all desire to keep the scandalous mass of wrong and guilt and sin and lying from the community was given up. The instant Elizabeth Tilton passed over the threshold of her house, fugitive from it, and allied herself to the fortunes of Henry Ward Beecher, it was only then that the policy of silence, which Mr. Beecher says should have succeeded, failed. Every eye saw, every tongue in this jury of the vicinage, confessed that there must necessarily be an investigation—an impartial, searching, judicious investigation. The moment Mrs. Tilton forever left her husband, and assumed an attitude of antagonism toward him, that moment conflict, contest, disclosure, were inevitable, and they followed. And who is responsible for it? That question I will endeavor to answer hereafter. But whoever is responsible has a mighty weight of responsibility to carry. It is not the loss of time, though that may be serious enough. It is not the interruption to your ordinary avocations, or to the common pursuits of this court of justice. It is not that that accumulates the amount of sacrifice caused by this trial. It is the demoralization of the public sense; it is the extended and profound interest which is felt in this case and in all its unpromising and unattractive features. It is that the Christian ministry is defiled. It is that the wicked scoff at Christianity and at the pulpit. It is that, however you may determine this case, as Mr. Porter says, there is a jury of intelligence equal to yours, and of a power beyond yours, sitting on this case, trying you and trying this court. There is no end to this unfortunate trial. There is no end to or any modification of its consequences. Even if Mr. Beecher be innocent, if he should be declared innocent, he never can take his stand in the pulpit the same grand, heroic character as of old. He is shorn of his power for good to a very great extent. He is sullied and damaged. Though you pronounce him guilty, though you vindicate Mr. Tilton. it does not repair the injury he has suffered. That broken home cannot be reconstructed and reunited. The stain and shame which have settled upon that household can never be lifted. Those children, pure and innocent and attractive, must suffer still. And I repeat, the man, who in his folly, or in his recklessness, has forced this issue and these consequences, to the community and to the individual, has assumed a mighty responsibility.

And you, with an equal responsibility forced upon you, you stand in an attitude of equal prominence and of equal power and responsibility. And you cannot, gentlemen—whatever my friend Porter may say on that subject, or anybody else—you cannot shift that responsibility. Nor, is it in your power, however faithful to the law and to your consciences, and to the intelligence of this case, you may be, you never can interrupt the light which the evidence in this case has thrown upon the public mind; nor can you ever stay the judgment to which that light will lead. You may lead men to criticise your motives and the results of your deliberations. You may gather around the administration of justice doubts and aspersions of its uprightness and integrity; you may attract the criticism of the press and public opinion; but you cannot change it. And the recousre for us, engaged in a manly and an intelligent examination of this case, is to do our respective duties fairly and intelligently and honestly, and leave consequences to themselves. The man who does his duty is above consequences. Resting upon its conscientious discharge, he is fearless in the light of all criticism or accusation.

Well, I regret that my learned friend had not given us some better evidence of the love of Mrs. Tilton. I am sorry that we cannot discern, through her associations with this case on its trial—that we cannot see from the attitude which she assumes in regard to it, the tendency of her affections; that we cannot perceive in anything which she does, in anything which she says, in any re

lation which she assumes to this case, that there is anything else but the most idolatrous devotion to Henry Ward Beecher and his cause. Ah! gentlemen, it throws light: it throws light upon the main issues you are to decide. If there was something else and somebody else beside Bessie Turner to contradict all the evidences and testimonials of uprightness and honesty and self-sacrifice which Henry Ward Beecher gives to Tilton and to Moulton, if, upon this evidence, there was presented any adequate cause proceeding from Theodore Tilton, in cruelty, in outrage, in wrong upon that wife, we might feel an inclination to forgive the position she now takes. But where, in all the developments of this trial; when, through the series of years through which these actors have been pursuing their lines of policy before the community, when and where has Theodore Tilton ever faltered in his fidelity to his wife and his family, in his determined devotion, at whatever sacrifice, to save that wife and family from the taint of this accusation? There is no evidence in this case of an act upon the part of Mr. Tilton justifying the flight of his wife from the home of her husband.

MR. TILTON'S GRAY HAIRS.

Well, gentlemen, both my learned friends, with a sort of exultation that they have discovered something of contradiction between somebody and Theodore Tilton, some contradiction which would rest upon better and more satisfactory authority than Bessie Turner, both of our learned friends have expatiated largely upon the incident of the gray hairs. Mr. Tilton when he was recalled as to the conversations had with Bessie Turner, made the incidental remark (it was not called for by any question)—but made a remark, at any rate, testified to the fact that at the time when Miss Turner spoke of these conversations wherein she represented him to say, "Oh! Bessie, my gray hairs are coming with sorrow to the grave"—a most ridiculous and absurd imputation of remark—Mr. Tilton said: "Why, I had no gray hairs at that time!"

Mr. Fullerton—He denied saying so at first and then added that.

Mr. Beach—He denied saying so, of course, first, and then added the remark that he had no gray hairs. And Mr. Porter comments upon it as a most striking evidence of depravity. Well, suppose Mr. Tilton made a mistake about that. He was referring to past times in writing to his wife. Suppose he had said, "Old age has crept upon us since then;" suppose he had said, "The infirmities of years, darling, have overtaken us;" and yet he is here, stalwart and strong, and our friends would have said it was a clear instance of deliberate perjury. [Laughter.] Why, Mr. Tilton was speaking, as we sometimes say, I believe justifiably, in a somewhat poetical sense. You see, according to our learned friends, he is an irrepressible rhetorician. When he gets talking or writing, why, there is no end to it—[turning to Mr. Evarts]—like some other people that I know of. [Laughter.] If Mr. Tilton had happened—these gray hairs being few, confessedly—they are not very numerous, now—if he had happened to mistake the time when they appeared it would not have been any very severe condemnation of his integrity that he had made a mistake on that subject. And it is a little remarkable that two such eminent gentlemen as Mr. Porter and Mr. Evarts should make so much of a circumstance of that kind, and arraign a man upon a subject of that character as, "With his hand upon the Bible, in the presence of Almighty God, testifying to such a godless lie as that." [Laughter.] They must be in great extremity for material. Now, the truth is, Mr. Tilton really had no gray hairs at that time. And suppose you imagine for one moment that his wife being—[turning to Mr. Tilton], isn't she older than you?—his wife being two years older than he, that gray hairs had overtaken her a little the soonest, and that this delicate and sickly woman should have found gray hairs creeping upon her head a little earlier than Mr. Tilton, and that in this letter-writing to his wife, referring to old times and events, and to the passage of the years filled with their incidents of love and affection, with children gathering about them, suppose that Mr. Tilton had said, referring to his wife's gray hairs, "Why, gray hairs have come upon us since then," would it be any very great offense either to truth or propriety? And that is just the fact. This letter by no means asserts that Mr. Tilton was gray then. Whatever events came over that household, whatever change in condition or circumstance affected that wife or that husband, when they were conferring in the intimacy of their relations, they might well speak of any change or circumstance in the one as belonging to the two, and of that circumstance or change as overtaking them, or "us."

WHERE THE EXPRESSION "TRUE INWARDNESS" ORIGINATED.

Well, my friend, Mr. Porter, has a terrible dislike for the term "true inwardness," and he rejects the idea that Henry Ward Beecher could possibly have been the author of any such phrase, and assumes that it was taught to whoever used it by Mr. Tilton.

"True inwardness!" he exclaims. "Where did she learn this phrase? My friend, Judge Fullerton, has brought in 'Norwood,' and Hannah More, and I know not what besides, in order to teach you what that woman had in view when she talked of 'true inwardness.' Why, she had been under the teaching of a man who left upon her all such expressions rooted so that they could not but spring up and bear fruit. And when he used it in a high and noble and generous sense, he yet imputes her adoption of the phrase to the vile purposes of her inward adultery."

Well now, it is a little remarkable, gentlemen, with such a malediction upon that term "true inwardness," that Mrs. Tilton did not use it, and that Mr. Beecher him-

self used it. "The blessing of God rest on you, etc. If it would be of comfort to you," says Henry Ward Beecher, writing to Mrs. Tilton—"if it would be of comfort to you now and then to send me a letter of *true inwardness* (italicized), the outcome of your inner life, it would be safe, for I am now at home here with my sister, and it is permitted *to you* (italicised), and will be an exceeding refreshment to me." Well, Sir, what becomes of all your severity toward Mr. Tilton as the author of this phrase, when it turns out that it was the skillful linguist, the unequaled elocutionist, the master of the English language, Henry Ward Beecher, who used it? I transfer all those strictures to Mr. Beecher. [Laughter.] You must pardon me, gentlemen. It is no very agreeable, nor is it a very intellectual, labor to expose these errors, but there is such a mass—I speak it not offensively—of misrepresentation and misstatement, I do not say coined, but used, for purposes of bitter malediction upon Mr. Tilton and others, that I cannot permit the imputations to go unrebuked.

MR. TILTON ACTUATED BY REVENGE.

Now, Mr. Beecher was represented by Mr. Tilton, when he was asked as to his conception of his character, as "big boy," and Mr. Porter says that in that connection Mr. Tilton imputed to him craft and want of ingenuousness. Let us see. Mr. Evarts was examining:

Q. Was he [Mr. Beecher] a man of mature years and settled position in his profession and before the public? A. Well, Sir, when I knew him I always regarded him as a big boy rather than a man at all. He was a man of large fame, and had a great church, and was in the exercise of very manly and illustrious powers.

Well, does my friend desire a better tribute to Henry Ward Beecher than is paid by Mr. Tilton?

Q. Well, in what sense do you wish to be understood that he seemed to you like a big boy? A. Because his manner was large, and hearty, and gay, and companionable, and winning.

Q. Guileless? A. No, Sir.

Q. How? A. No, Sir.

Q. Don't that come within the description of "like a boy?" A. Well, Sir, the craftiest people I know of are boys; newsboys, for instance.

Q. Well, do you not use this phrase "like a boy" in the sense of frankness and generosity of character and demeanor? You have used the phrase; now I suppose that that is the reasonable sense of it? A. When I say that Mr. Beecher in his earlier years was like a big boy, I mean to say that there was a certain bouncing character to his life and manner. He was very companionable, hale-fellow-well-met, fond of a joke and a frolic, fond of the things which boys liked. That made him very companionable to us, for I was very little more than a boy myself.

Q. And all the other young people? A. Yes, Sir; I thought he was the most charming man I ever saw.

Q. You thought so, then? A. Yes, Sir.

Q. And in looking back you think so of that period? A. Do I think now that that was my thought at that time?

Q. Yes, Sir; in looking back upon him as you remember him, you think of him at that period as the most charming man you ever knew? A. Yes, Sir; I have since met men who in all those qualities I think excel him very greatly, but at that time, in those early years, Mr. Beecher was my man of all men. I had not seen the world so extensively, and had not measured him with other men.

Now, in this particular instance wherein Mr. Porter falls into so grievous an error, and in various others, the attempt has been made, upon the part of both of my learned friends, to represent Mr. Tilton as entertaining the most bitter and malignant feelings toward Mr. Beecher; and yet whenever he is found speaking of him in the revelations of this evidence he has given him, justly, a high and distinguished character. I do not mean to say, gentlemen of the jury, that Theodore Tilton loves Henry Ward Beecher, or that he did love him an instant after that July in 1870, when his wife made to him her confession. I think it supernatural that a human being can be conscious of the fact that another man has seduced the body of his wife or of his child and feel no emotions of anger and no longing thirst for revenge. You Christians may condemn it, if you please; the lessons of the Scripture and the example of the Master may teach us better; but unless it be in the depravity and demoralization of the lowest sinks of vice and life, the heart beats not that can receive this blow without bounding with angry impetuosity. I know Theodore Tilton harbored these feelings, and I grant you that at times when he saw, or thought he saw, that they could be gratified without injury to his wife and his home, they broke out with resistless violence. If they had not, I would be ashamed to stand here as his representative and advocate, and that, to me, makes his example of self-denial, his earnest and faithful forgiveness of his wife, his Christian and manly charity toward Mr. Beecher—to me this consideration makes this exhibition of his character most noble and exalted. The man who has the power of overcoming passions like these and resentment like this, must have some principle of righteousness and justice within him to strengthen his will and subdue his passions. Talk about the unfriendliness and the hate of Theodore Tilton toward Henry Ward Beecher! Why, if it be true that Mr. Beecher, the chosen and the invited guest of his friend's house, who was directed there by the husband in times of his absence, the glory of his presence being the light of that household—if it be true that Henry Ward Beecher debauched its mistress and stained its hearthstone with the violence of his lust, why, is there a husband or a father on earth who will wonder that Theodore Tilton should feel indignation? "Oh!" says my friend, "this suit is for revenge." No! Not all that you can do; not all that the broad jurisdiction of this court can do, will satisfy the longings of that revenge. It is an imperishable feeling, and will be an unsatisfied

feeling so long as the tempter and the seducer of the wife breathes the same air with the living husband. I do not seek to convince you, gentlemen, that Theodore Tiliton has not the feelings of a man, and the resentment and the passion of a man; but I think I will show you that with all this infirmity, this resistless temptation, he yet, strengthened by his love for his wife and his children, and upheld by the grace of his God and the belief in his name, has withheld and stayed his hand so long as mortal heart could bear and hold back the arm destined to work out justice and truth. [Applause.]

Judge Neilson [To the audience.]—Gentlemen, this won't do. The way to show your respect for the speaker is to be silent; then you don't interrupt him.

THE EARLY STRUGGLE IN PLYMOUTH CHURCH.

Mr. Beach—My friend, Mr. Porter, then referred to Mr. Tilton as assuming great glorification to himself from having overmatched Mr. Beecher in the church controversy as to the disposition to be made of the missionary funds of the church. Well, gentlemen, I want to show you how Mr. Tilton was driven by the course of examination—inveterate on the part of Mr. Evarts—to make any comparison at all as between himself and Mr. Beecher upon that occasion. Why, the purpose of all this argument, and of this reference to all these minute circumstances, was to convince you that Mr. Tilton was a man of intense and remorseless egotism and vanity, selfish in all his nature, puffed up, vain, full of wretched conceit; that there was no honesty, no sincerity, no manliness in his make-up; that he was all mean and detestable from head to foot—that is the character striven to be given to Mr. Tilton; but it shall not be, upon the strength of false facts—I will not say of false logic. On his examination by Mr. Evarts, he was asked:

Q. Do you remember comparing yourself with him [Mr. Beecher] upon the occasion of your discussions about the church missionary appropriation, if that describes the occasion, and that you had overmatched him in that controversy? A. That speech is in a pamphlet, Sir; it will speak for itself; I know he was wrong; it is very easy to beat a man who is in the wrong.

Q. Well, now, rather it is your conclusions and consciousness about it, than the fact, that I am asking—whether you then came to the conclusion that you had quite overmatched him in that fight? A. Well, Sir, if I had come to that conclusion, I should not have any right to state it here.

Q. You are excused from any immodesty in the statement, for it is required from you as a part of your testimony. A. If I should say that I had overmatched him in that struggle, it would be immodest; if I should say that I had not, I should lie.

Well, that is the way Mr. Tilton was forced into expressing an opinion as to the right or wrong of the position he occupied upon that question as against Mr. Beecher. "I overmatched him," said Mr. Tilton, "because he was wrong, and truth always prevails." There was no self-glorification; there was no comparison of the respective efforts made by these two men upon that occasion; but when forced to say whether he was in the right upon that question and whether he succeeded, in his own judgment, in demonstrating the right, why of course he avows his conviction of the truthfulness and soundness of his own position.

THE TRUE STORY.

Very much has been said in this case, gentlemen, about this "True Story." Its essential characteristics, and the use made of it upon this trial and before, will be a topic for consideration hereafter; but my friend, Mr. Porter, asserts that when Mr. Tilton was first examined in regard to that "True Story" he pronounced it true, and that when, to use his language, it was resurrected through Redpath, then Mr. Tilton pronounced it untrue. Well, I cannot, gentlemen, account for statements of such a character from counsel so able, and usually so accurate, as my learned friend. Such a statement cannot be permitted to go uncontradicted if it is erroneous. If that were true, that when that "True Story" was first spoken of in his evidence by Theodore Tilton he pronounced it to be true, and then when it was produced, representing the offense upon the part of his wife to have been simply the reception of improper proposals, he pronounced it untrue, I could not argue against such a demonstration of his want of memory or want of honesty. We must see whether that imputation is true or not. [Mr. Beach not finding readily the part of the testimony he wanted, proceeded]: Well, gentlemen, I have fallen upon the testimony of Mr. Tilton where he speaks of the submission of the "True Story" to Dr. Storrs, and that is on his first examination before Mr. Redpath was sworn, and before the "True Story" was introduced. On page 636 Mr. Tilton speaks of the submission of what is called the "True Story" to Dr. Storrs. He says:

I read the paper, and Dr. Storrs turned to me and said: "Mr. Tilton, before I can consult with you on this subject or give you any advice worth having, you must answer me one question." I said: "What is it?" He then said: "I want you to tell me whether this narrative which you have read is the plain and honest truth, what is called in a court the whole truth and nothing but the truth." I said: "I will answer that question if you will promise not to ask me any further questions on the subject." "Well," said he, "I will not catechize you against your will or wish." I then said: "It is *not* the whole truth; it is only a part of the truth; it is an under statement, but it is all I am willing to give to the public." "Then," he said, "I advise you not to publish it."

Well, it is in the face of that evidence, and of still stronger evidence if I could find it at this moment, where Mr. Tilton explains the circumstances and the necessity out of which this statement arose, and which led to its

being written, that my friend makes this statement. On page 429 Mr. Tilton is asked what was the occasion or the difficulty at that time which called forth the letter to "A Complaining Friend," and he explains that, and speaks of the "Tripartite Covenant," and then the question is:

And arose out of the same emergency? A. Yes, Sir. I will also say that during that month of December I prepared another statement, the long document, which has become technically styled, I don't know why, the "True Story," for it was not a true story, it was a false one, as Mr. Beecher said he could not bear the publication of that, that it would kill him, and as the card to "The Complaining Friend," as he expressed it, only caused the very comment which I sought to quell, I prepared another statement, a brief letter to a friend out West, I think—yes, Sir; it has been read in evidence. It bore date, I believe, on the very next day, perhaps the very last day of the year, or at all events it was written with a view to herald in the New-Year season. There were a dozen different devices—some by Mr. Moulton, some by Mr. Beecher, and some by me—in that month.

Now, how does my friend venture to say, in the face of that direct proof upon the record, for the purpose of impeaching Mr. Tilton and imputing false evidence upon the stand to him, that when that "True Story" was first referred to in the evidence of Mr. Tilton he pronounced it true, but when it was unearthed and revealed by Redpath he swore to its being a lie? Why, I thought John Milton and John K. Porter said that "Truth needs no policies or stratagems." [Laughter.]

What is the need of this misrepresentation? and what is the policy of an argument founded in falsehood, to support a theory which they call the truth? Another instance: Mr. Porter says, in relation to the letter to the friend at the West, that it was not intended for the public, but that it was prepared and laid away for use. He charges that Mr. Tilton, with the subtle forecast which is attributed to him, prepared this letter to the friend at the West and laid it away for future use in the line of his conspiracy against the integrity and the pocket of Henry Ward Beecher. Well, let us see about that. I have already read you sufficient upon that subject. I don't know but I ought to read that letter. It strikes me as a very ingenious and happy and well-directed device in pursuit of the line of policy which was adopted by all the parties interested in this matter. But you remember it, perhaps. On page 429 the question is put to Mr. Tilton:

Q. What was the occasion for the difficulty at that time which called forth the letter to "A Complaining Friend?" A. Why, Sir, during that month of December, 1872, the public pressure put upon me to do something in regard to Mrs. Woodhull's story was utterly beyond the power of any language to describe. Every newspaper throughout the land was demanding that some explanation should be made—demanding that Mr. Beecher should make it, demanding that Mr. Bowen should make it, demanding that we all should make it, and there was a pressure in the City of Brooklyn, and there was a pressure in the Church and everywhere—the very air seemed to rest upon us.

Q. What did Mr. Beecher say in regard to that state of things, as to the necessity of doing something? A. I have already mentioned that, about a fortnight before the interview I have just given, Mr. Beecher had devised, as a plan of meeting it, that we should cut the tripartite covenant in two and take out Mr. Bowen's part, and charge him with all the slander, and make him bear the burden of retracting it.

Q. And this letter to "A Complaining Friend" succeeded that? A. Yes, Sir; about ten or 15 days.

Well, it would seem to be a satisfactory answer to all that is said by Mr. Porter upon that subject, as to its being laid away for use, that it was published, and so it was intended, I supposed, for publication.

ALLEGED GARBLING OF THE LETTER OF CONTRITION.

The next accusation against Mr. Tilton is that he quotes in the Bacon letter, and garbles what is called the "Letter of Contrition," or "Letter of Apology," and fails to give that part of it which is most favorable to Mr. Beecher. Now, this is a serious accusation, gentlemen. Unless the gentlemen on the other side deem these accusations as of importance, as bearing upon the question of credibility in this case, why they would not have been presented at such length and with so much earnestness and zeal by my learned friends, and I cannot permit them to stand without seeing how far they are justified, and whether they really assail the essential integrity and truth of Mr. Tilton, or of any person produced as a witness on his behalf. Now, in this Bacon letter, so much of the "Letter of Apology" is published as I read:

I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself. I even wish that I were dead.

HENRY WARD BEECHER.

Now, please remember the situation, gentlemen. Dr. Bacon, in a letter of great severity, had impugned the manliness and the honor of Mr. Tilton; had represented him as an offender against Mr. Beecher, as a knave and a dog who was subsisting upon the magnanimity of Henry Ward Beecher, and the object of this letter to Dr. Bacon (I am sure you cannot have forgotten it, gentlemen, and I wish it were not too much of an infliction upon your time and strength to read it); but it was intended as an answer to that imputation, and nothing more. No charge is made against Mr. Beecher in that letter. Not the slightest imputation by word or suggestion in that letter of any imputation against Mr. Beecher, and I beg you to remember it, gentlemen, and if there be any hesitation on your part in receiving that assertion as true the letter shall be read. I assert again, there is not

a word, there is not a suggestion from the beginning to the end of that most admirable and self-poised document imputing the slightest offense to Henry Ward Beecher, or to Elizabeth R. Tilton. On the contrary, it shields both, it defends both; but when this man was characterized by a leading divine and Christian of this country as a knave and a dog, the dependent of Henry Ward Beecher's sufferance, and living only by the tolerance of Henry Ward Beecher, was Theodore Tilton to be still? Was he to submit to this imputation?—an imputation behind which he could not live in silence; and with all his grand intellectual power, with all the strength of that genius which had once carried him to the pinnacle of renown, he could not have held his head in this community above the pavement, resting under that imputation. And what did he do? Why, by a simple, manly, temperate recital of facts, without passion, without accusation, without epithet, he told the simple relation of admitted and known facts in regard to his dealings with the church and the West charges, carrying no imputation against anybody, but relieving him from all imputation, and inserts this quotation from Henry Ward Beecher's letter, showing that Mr. Tilton was not quite so base and hopeless a dependent upon Henry Ward Beecher as Mr. Bacon chose to suppose and to charge. And what part of it did he omit? Mr. Porter said he omitted that part which would bear most in favor of Mr. Beecher. The remaining part of it is:

But others must live and suffer. I will die before anybody but myself shall be inculpated. All my thoughts are running toward my friends, toward the poor child lying there, praying, with her folded hands. She is guiltless, sinned against, bearing the transgressions of another.

And did my friend want Mr. Tilton to publish that?

Her forgiveness I have. I humbly pray to God that He will put it into the heart of her husband to forgive me. I have trusted this to Moulton in confidence.

Now, as fair men, as honorable gentlemen, I appeal to you whether there was any disingenuousness, any unfairness in the quotation from that letter by Mr. Tilton, whether the quotation was not conceived in the most generous spirit toward Mr. Beecher, and in the pursuit with reference to his wife and family, and that policy upon which he had ever acted to suppress their publication, and every suggestion of impropriety or wrong upon her part. Why, what would have been the effect of it? If Mr. Tilton had added what my friend says he was base for omitting, that the offense for which Mr. Beecher apologized to him, that the quotation showing that Mr. Beecher was the wrong-doer and not Mr. Tilton the knave and the dog, if, in addition to that, he had pointed that portion of this letter to a direct connection with Mrs. Tilton, showing that the offense which he admitted was an offense against her purity and honor, why, what would my learned friends have said of the delicacy and manliness and affection of this husband toward his wife?

THE ANNOUNCEMENT THAT THE CHARGE WAS ADULTERY.

Both these learned counsel have quite innocently misrepresented another important fact. Both have said that Mr. Tilton, by Mr. Redpath, in the Summer of 1874, sent word to Mr. Beecher that he was going to change his accusation—an utter mistake. Hereafter I shall ask your attention to the narrative of Mr. Redpath, but here I say that there is not in that narrative a single word justifying the use of that phrase by these two distinguished counsel. Mr. Tilton did send word to Mr. Beecher by Mr. Redpath that he was going to charge adultery. And, why did he do it? Why, up to that hour these men had been working with a common interest, and with a unity of effort to shield Mrs. Tilton. It was not only the policy of silence, but it was the policy of misrepresentation. It was the policy of devices, it was the policy of concealment to which Mr. Beecher was committed, which he favored and aided and in the pursuit of that policy Mr. Tilton had invariably represented the offense of Mr. Beecher toward his wife to be that of improper solicitation, and it is remarkable, gentlemen—look through the evidence and you will not find that he has uttered a lie upon that subject. He has said his wife was as pure as an angel, as white as snow; but upon this record you will not find a single instance where Theodore Tilton has said distinctly and definitely of his wife's offense and of Mr. Beecher's crime that it was not adultery. That is unimportant. It is true that, throughout the whole of these efforts at suppression, Mr. Tilton has persistently declared that his wife was pure, and that Mr. Beecher's offense was improper approaches. Nothing more. That was the statement in all these documents. What was there in the Bacon letter to excite the ire of Henry Ward Beecher? It is said that it was a hostile attack. Where is the evidence of the hostility? Why, Mr. Beecher, in his statement before the Committee, eulogized as such a wonderful and magnanimous protection on the part of my learned friend—Mr. Beecher, in that statement, admits an offense and wrong. Why, the Bacon letter charges nothing more, imputes nothing more, insinuates nothing more. What is there, then, in that to justify the ire of Mr. Beecher? There is not a word referring to him except the simple production of that quotation from his own letter of contrition, and that part of it which upon this trial he admits to be genuine. Well, I shall ask you to consider, by and by, what justification this furnished to Mr. Beecher to precipitate this controversy upon the public, and to invite and press an examination which must necessarily result in a full disclosure and examination of all these painful circumstances.

MRS. MOULTON'S OPINION OF MR. TILTON.

Well, my learned friend next says, why, Mrs. Moulton pronounced Mr. Tilton a traitor and a villain, and that is presented by counsel as the judgment of one of our witnesses upon the party who produced her. Well, did it strike my friends as a little singular when they were exposing what I may (adopting the language of my friend) say was the loathing of Mrs. Moulton towards Mr. Tilton, that they are at the same time charging her with becoming a conspiratress and a perjuress to support the interests of Mr. Tilton? That this lady, too, as my friend says, although she pronounced Mr. Tilton a traitor and a villain, yet, says my friend, she arranged that she should be a witness in an action of *crim. con.*, and pledged herself to be a witness. Well, there is a strange incongruity in those representations of the counsel. It is utterly impossible that Mrs. Moulton could have maintained these conflicting and irreconcilable attitudes, positions, and purposes with regard to Mr. Tilton and his crime. But, what were the circumstances under which Mrs. Moulton made use of these harsh expressions? I would like, if I can, to relieve my client from that unfavorable and unpleasant attitude; at least to modify somewhat the severity of the judgment which my learned friend infers from these expressions.

Q. Do you remember an interview that you had with Mr. Tilton at your house during some of these years; in January, 1873, do you remember having an interview with Mr. Tilton at your house, in which you told him that he was a villain, and would betray your husband as he had Mr. Beecher? A. I think I remember an interview with Mr. Tilton something like that.

Q. Do you remember when that was? A. Yes, Sir; it was last July.

Q. Last July? A. Yes, Sir.

Q. Do you remember, on his making some remark in answer to this statement of yours, that you threatened to send for a policeman and have him put out of the house? A. No, Sir; I never remember the policeman, nor any reference to any policeman.

Q. What did you further tell him? A. I said if he was unkind to Frank, my husband—if he turned on him in any way, insomuch as by a look, that he must never come into our house again.

Q. Did you, on the occasion of any interview that you had with Mr. Beecher, say to him this, or words equivalent to it, that "at heart Theodore Tilton is treacherous, and hates you?" A. I think I might have said to Mr. Beecher that Mr. Tilton hated him; I think he had good reason to.

Mr. Evarts—Read a little further.

Mr. Beach—[Reading]:

Q. Do you think that you did say to Mr. Beecher, "At heart Theodore Tilton is treacherous and hates you?" A. I remember repeatedly saying to Mr. Beecher that I thought it was impossible for Mr. Tilton to keep this quiet. I might, in that way, have said that I thought he was treacherous.

It was impossible to keep him quiet.

Mr. Evarts—It goes on a little more explicit. However, I don't care.

Mr. Beach—[Reading.]

Q. Treacherous in regard to keeping quiet? A. Yes, Sir.

Mr. Shearman—She says she don't recollect the exact words.

Mr. Beach—Where is that?

Mr. Shearman—A little further below.

Mr. Beach—How does the sentence commence?

Mr. Shearman—[Reading]:

Q. Well, now, Madam, will you tell me whether you ever told Mr. Beecher, in terms, that Theodore Tilton at least was treacherous and hated him? A. I don't recollect those exact words, yet I think I might have said so. * * * * * * Q. A number of times? A. Yes, Sir, I think so.

Mr. Beach—And the way she said it was, she told Mr Beecher she thought it was impossible for Mr. Tilton to keep this quiet. Further on, on page 748, Mr. Evarts not being entirely satisfied with the pursuit of that question, again introduced it, I think:

Mr. Evarts—You had a conversation with him, a part of which was that if he turned upon your husband even by a look—what led you to think of his turning upon your husband? A. I remember, it was in August this conversation took place; it was with reference to Mr. Moulton having failed to make his statement before the Committee as he had promised. At my earnest solicitation a short statement was prepared for Mr. Moulton and given to the Committee in place of the long statement, as I said, to give Mr. Beecher another chance to state his case fairly. Mr. Tilton did not know of that; he had been out of town. When he came home in the evening he came into our house with Judge Morris and said: "Frank, you have broken your faith with the public; your reputation will suffer; you have promised faithfully to give to-day to the Committee your statement; you have failed to do it." I listened to him for some time; I was sitting in the back room, and I did not like the manner or the way in which he reproved Frank for having failed to make his statement, and I went in and spoke to him. My exact language I do not remember; I know that I was very angry, and reproved him very severely for speaking to Mr. Moulton in the way in which he did.

Well, that is the whole history of that transaction. If there is anything of solace or comfort to my learned friends or to Mr. Beecher out of that, and if they can draw any inference from that that Mrs. Moulton considers Mr. Tilton either treacherous or dishonorable, why, I don't begrudge them the crumb. This lady speaks of a suit having been spoken of. She says, in answer to this question:

Q. How, then, had you learned all the things that you told Mr. Beecher then? A. Because I had heard Mr. Tilton say that he would take his case into the courts of justice, where he would be fairly dealt with.

There is nothing in the testimony of this lady which justifies the imputation of Mr. Porter that she arranged to be a witness upon the trial of a case of *crim. con.* to be brought by Mr. Tilton, or pledged herself to be a witness. When asked when first the idea of her being a witness in this or any other case was presented to her mind, she

mentioned that was in July of 1874, when Mr. Tilton, dissatisfied with the course of proceeding before the Examining Committee, threatened to bring an action; and the remark was then made that in case that event followed she would necessarily be a witness in the case.

The Court here adjourned to 11 o'clock Thursday morning.

101ST DAY'S PROCEEDINGS.

SECOND DAY'S ARGUMENT BY MR. BEACH.

JUDGE PORTER ADDRESSES THE COURT CONCERNING IMPUTATIONS MADE BY MR. BEACH—MR. TILTON'S COUNSEL EXPLAINS THAT HE DID NOT CHARGE CORRUPTION—ALLEGED EFFORTS OF THE DEFENDANT'S SUPPORTERS TO HIDE WITNESSES—OPENING STATEMENTS OF JUDGE PORTER AND MR. EVARTS REPLIED TO—MR. BEECHER'S CHARACTER AS VIEWED BY THE PLAINTIFF'S COUNSEL DESCRIBED — AUTHORSHIP OF FAMOUS SCANDAL PHRASES.

THURSDAY, June 10, 1875.

The crowding, pushing, and scrambling to get into the court-room to-day were even greater than on the day before, but the audience was no larger, simply because not another person could find sitting or standing room inside. It was with great difficulty that the aisles could be kept sufficiently open to allow the counsel and reporters to pass. There was the same enthusiastic element in the audience that had manifested its presence on the previous day, and Mr. Beach was applauded, not only upon his entrance into the court-room, but several times while he was speaking. Mr. Beach appeared to be stronger than on the first day of his argument. His voice was unbroken, and his manner easier.

At the opening of the morning session Judge Porter addressed the court in reference to the alleged imputation of Mr. Beach, in his opening speech, upon the jury and the counsel for the defendant. Mr. Beach replied disclaiming any intention of imputing corruption to the jury or any member of it. Later in the day the orator asserted that it was in reference to procuring of witnesses and the other machinery of the trial that his remarks about the eyes and arms and gold possessed by the defendant's counsel were applied.

At this point occurred one of the most stirring passages in the day's address. Referring to the assertion that the plaintiff had not brought the servants in Mr. Tilton's family as witnesses, the orator exclaimed: "Servants! We go to New-Jersey, but we find Mrs. Tilton ahead of us! We go to the various places where the servants scattered from this house can be found, and we find the lady zealots of Plymouth Church ahead of us! When the gentlemen tell us that we do not produce them, I tell them that they have hid them!" These assertions, delivered with all the power of elocution and earnest force of manner which Mr. Beach possessed, were received with a slight outbreak of applause.

There was another stir among the auditors when the orator announced that he did not believe that Mr Beecher had given his narrative under the solemnity of that obligation which the jury might have supposed that he invoked, and that he meant hereafter to maintain this proposition.

The course of the summing up followed the same line of argument with which the orator opened on the first day. Statements and arguments of Judge Porter were examined, and opposed by counter statements and arguments. The phrases "paroxysmal kiss," "the brink of a moral Niagara," &c., which Judge Porter said were unlike Mr. Beecher's mode of expression, were reviewed, and the orator read numerous extracts from the defendant's sermons and writings containing phrases which he considered to be similar, and from which he argued that Mr. Beecher might also have been the author of those in question. The reading of these extracts, and the orator's remarks upon them, were highly enjoyed by the audience, and Mr. Beecher appeared to be as much amused as any one.

The opening arguments of Mr. Evarts were replied to also. Mr. Beach gave instances of many cases of ministers, and other men of supposed high character, who had been guilty of debauchery and crime. From expressions used in the defendant's works, the true nature and disposition of Mr. Beecher were attempted to be shown in the light in which the orator regarded him.

THE PROCEEDINGS—VERBATIM.

MR. PORTER DENIES WORDS ATTRIBUTED TO HIM.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Porter—Before proceeding, your Honor, I desire to say in behalf of my associate, Mr. Evarts, that he is unavoidably deprived of the pleasure of hearing the argument of Mr. Beach to-day by a necessary engagement at Washington, and that he expects to be here to-morrow. One of my associates has suggested, and I recognize the propriety of the suggestion, that, in view of a remark

made by my learned friend yesterday in respect to the jury. I should say that we can appeal to every member of this panel in regard to the imputation made upon them and upon us. It was undoubtedly made by my friend in good faith, but I fear it was made upon the same authority with the charge of adultery against Henry Ward Beecher and Elizabeth R. Tilton. I appreciate fully, your Honor, the propriety of counsel representing clients, presenting their own views, as well of the evidence as of the arguments. It is not to be supposed that in a trial of this duration any human memory could carry or any report accurately represent all that transpires. I give credit to my friend upon the other side for entire good faith in representations of language used by Mr. Evarts and myself, which we both disclaim; but it would be rude, and not tending to the order of public discussion, if we were to interrupt the argument as it proceeds. There is a single point upon which my friend—I say my friend, for the cords that have been woven by thirty years of attachment are not easily broken—my friend has, in the course of his argument of yesterday, imputed to me a specific phrase which I perfectly understood, but which is misunderstood by others. As a matter of rhetorical hyperbole, and intending to characterize what I did say by something which I did not say, my learned friend said yesterday that I addressed to Mr. Tilton language like this: "Down, down to hell, and say I sent thee there."

Judge Neilson—That is a quotation from an old author.

Mr. Porter—It was a quotation, of course, used by my friend, but which as published would appear, contrary I know to his own intent, to have been the language which I literally used to Mr. Tilton. I certainly should not, if I were to make a quotation from Shakespeare at all, either assume myself the language of the murderer Gloster between the two stabs he inflicted upon a fallen king, nor should I think of clothing Mr. Tilton with the honors of royalty by addressing to him language which was addressed to one of the earlier kings of England. [Sensation].

MR. BEACH RESUMES HIS ARGUMENT.

Mr. Beach—Your Honor, I am sure, did not understand me, in any remarks which I submitted yesterday, to impute any impropriety, much less any corruption, to this jury, or to any member of it. I certainly disclaim any such intention, and I am quite sure my language bears no such interpretation. I did choose to comment, Sir, upon the confidence and boldness with which my learned friend assumed to know the sentiments of this jury, and assumed to predict what their verdict would be; and I think the recollections of the Court and the jury will sustain me in the imputation of language conveying that import and meaning, expressing it in most distinct and unequivocal terms, which I imputed to my learned friend.

Well, Sir, in imputing to the severe, violent, and furious language which was addressed by my learned friend to Mr. Tilton, I did, Sir, indulge in an addition which I supposed expressed the intent and the purpose of what my learned friend really did say. The scene will not be readily forgotten, Sir. Its impression and effect upon us will not be readily forgotten. In close proximity to my client, and with a gesture which under other circumstances would indicate the intensest hostility, and a most furious purpose of assault, my friend did cry to him, "Down, down, down," and I supposed, Sir, that he meant to consign him to hell, and I think so still. [Laughter and applause.]

Mr. Porter—It is a commentary of the client and the counsel upon what they thought.

Judge Neilson—It is to be hoped that gentlemen will show their respect to the speaker by keeping perfectly quiet. Every demonstration interrupts him, as well as disturbs the Court.

THE POTENCY OF WORDS.

Mr. Beach—Some high authority has said that words are things; and undoubtedly they exercise a great and most important influence upon the world. They stir the passions which upheave the elements of society; they suggest ideas which revolutionize the world; they are potent and powerful instruments in affecting the mind, controlling the judgment, governing the actions of the race. But words are also indicative of individuals. Particular phrases, forms of rhetoric, of expression, are, almost as clearly as handwriting, indicative of the person who uses them. If you should see a speech of my friend Mr. Evarts, without any title page, with his singular and unequaled command of language, and the peculiarities of its use, you would know at once that that was a speech of Mr. Evarts.

EXPRESSIONS IMPUTED TO MR. BEECHER AND DENIED.

Relying upon that principle, we have alluded in evidence, and in discussion, to certain phrases, words, appearing in writing and verbal expressions, given in evidence by various witnesses, as evidence of their authorship, and imputed through these expressions to Mr. Beecher, the production of the various scenes and conversations and writings in which they occur. With the sagacity which distinguishes my learned friend Mr. Porter, he has endeavored to disembarrass Mr. Beecher from connection with these particular words and phrases. He disclaims them. Elevating him as a pure and undefiled master of the English language, as the clear, precise, and simple rhetorician, speaking from the burning impulses of his own heart and mind, in expressive and simple language, he has advanced the idea that it is perfectly impossible that such a man, with such refinement and cul-

ture, and such a nature, could by possibility employ the exceptional and singular words which are imputed to him in the course of the plaintiff's evidence. And therefore Mr. Porter says:

You remember that single word "paroxysmal" which to this day furnishes occasion for those who are unfavorably disposed to Mr. Beecher to impute to him a base and an infamous crime, and yet it is a part of our public history that that "paroxysmal kiss" was never heard of from the lips of Mr. Beecher save by two men, Theodore Tilton and Francis D. Moulton. In the first place, the expression itself is absolute nonsense, and one of which Mr. Beecher is utterly incapable.

MR. BEECHERS USE OF THE WORD "PAROXYSMAL."

I do not agree with my learned friend in his estimate of the force and expressiveness of that word. Indeed, it has been adopted into legal phraseology, and has thus been adopted at the suggestion of one of the most learned of our professions. We have the term in our law books, our elementary works, and our works on judicature—"paroxysmal insanity," indicating that high and elevated state of feeling, that sudden, impulsive, and uncontrollable action which springs from those excited impulses; and in that sense the term "paroxysmal kiss" was used, expressive in its character, perfectly consonant with the state of feeling, the impulses which at the moment existed. And I have been curious to examine the works of Mr. Beecher to see whether or not he indulges in phrases of that character; because, gentlemen, in all the departments of this case, in regard to all the issues, whether of fact or of credibility, which are made in this case, it is necessary for us to understand the particular characteristics, the idiosyncrasies of the person whose conduct and motives we are examining, and I find in the sermons of Mr. Beecher, in the first series, in a commentary which he was making upon some excitement in regard to the Water-st. movement in the City of New-York, this expression:

The Water-st. movement in New-York to-day is another such movement, a kind of paroxysmal, fanatical, some call it, social, impulsive repentance.

Well, the precise word is used, and it is used with additional phrases that indicate its meaning, and the intensity of its signification.

That impulsive, ardent, irrepressible movement which springs from some overwrought feeling or sentiment, either of love or of indignation, or of any other of the passions which stir the human heart.

And in the same sermon he says:

Communities are sometimes possessed for short periods with a paroxysm of contrition.

And again:

The paroxysms of cruelty from men that wreak their vengeance without discrimination, the world is not unacquainted with.

One of these paroxysms, one of those revivals of personal feeling and of virtue.

I do not ask you to wake up to the paroxysm of zeal.

My children were dear to me as myself, and were a part of myself, and into what paroxysms of indignation would I have been thrown if any man had played experiments on those babes.

I tell you a mother in the paroxysm of love looks splendidly.

And if a husband and father was looking upon a mother in such a splendid paroxysm of love, very likely, I think, he would dispose upon her a paroxysmal kiss. [Laughter.]

I think that a man struggling against Christianity when under conviction, is like a fractious child struggling against a dear mother when she reproves and punishes it, until it rushes into her arms and kisses her with a paroxysm.

That is very much like a paroxysmal kiss. It is not very foreign to the usual expressions and the habit of rhetoric which belong to Mr. Beecher. And, therefore, we have in these few examples drawn promiscuously from a simple observation of his writings—we have Mr. Beecher full of paroxysms, paroxysms of repentance, paroxysms of contrition, paroxysms of personal feeling, paroxysms of virtue, paroxysms of zeal, paroxysms of indignation, paroxysms of cruelty, paroxysms of love, paroxysms of kisses, paroxysms of tears. Now, this exhibition of the rhetoric of Mr. Beecher, it seems to me, hardly justifies my learned friend, either in pronouncing the use of the term "paroxysmal kiss" as foolishness and absurd; certainly does not justify him in the exoneration of Mr. Beecher from the use of it.

"THE BRINK OF A MORAL NIAGARA."

But there is another phrase which excites deeper indignation upon the part of my learned friend. Mr. Moulton in his testimony, from the nervous force of the expression and as descriptive of the sense of utter misery and desolation expressed by Mr. Beecher, and felt by him, at the time of the interview in which the expression was used, says that he distinctly remembers Mr. Beecher exclaiming, in substance, "I stand upon the brink of a moral Niagara," and to discredit Mr. Moulton, to convince this jury and the public that his history of that interview was a simple and bald invention, my friend, upon the part of Mr. Beecher, disclaims the possible use of an expression of that character. He says, quoting the phrase:

"I stand on the brink of a moral Niagara." Now, that is Theodore Tilton; it is not Mr. Beecher.

[Turning to Mr. Morris.] Was it not Moulton who used that?

Mr. Morris—Yes.

Mr. Beach—He attributes it to Mr. Tilton. Well, it was a phrase testified to by Mr. Moulton, and not by Mr. Tilton.

Now, that is Theodore Tilton; it is not Henry Ward Beecher. Do you think Henry Ward Beecher would talk about a moral Niagara any more than he would about a

moral haystack or a moral swamp? It is not the man. With him words have meaning; they are alive; there is thought in them; there is significance in them; there is coherence in them; but with Mr. Tilton the brink of a moral Niagara brings him incongruous ideas, which to him have a rhetorical charm, and they are put into the lips of Henry Ward Beecher as his language, instead of the language of Theodore Tilton.

Well, Mr. Tilton never used the language in the first place, and my friend fell into that error in his zeal to impute it to Mr. Tilton. I have not the same idea of that expression as is entertained by my friend. A great preacher, a man distinguished for his learning, and holding, as they claim, the highest position among the pietists and the elocutionists of the age, is detected in the commission of an infamous moral offense. The victim of his impiety and sin is said to have charged him with it. He is brought face to face with the accusation, and he sees all the consequences to himself, to society, to religion. He is overcome with anguish and remorse; and with a flow of passionate language, which stirs the heart of every reader and listener, he utters his repentance and grief, and in connection with that utterance, to the ready and sympathetic friend who has stepped forward to aid him in his peril and exigency, he exclaimed, "I stand on the brink of a moral Niagara." And what expression in the English language, what comparison or similitude could more forcibly represent the position, assuming the accusation to be true, in which Henry Ward Beecher stood at that moment, and the clearness and the justness of the perception which he entertained of that position. It conveys to your mind, it bears to my mind, a most intense descriptive force, and it presents the real and the actual attitude in which the author of it stood then, and in which he stands to-day, before the judgment seat of this jury and the world. He does stand upon the brink of a moral Niagara. It is possible that your hands may rescue him; but assuming the truth which he then attached, and which we attach, to his position; assuming the guiltiness of Henry Ward Beecher, in the English language there is no more expressive description than that. Now, it is important for us, in determining whether there is that incongruity between the usual language and common rhetoric of Mr. Henry Ward Beecher, and this phrase—it is important for us to know how this gentleman ordinarily uses and applies language, expressly with reference to moral conditions and moral expressions. If Mr. Beecher had said, "I stand on the brink of a moral precipice;" if he had said, "I stand and am hovering over the brink of a moral abyss, into which to fall is degradation and infamy and destruction forever," would you have thought it inappropriate to his imputed condition? My friends upon the other side have referred to the sacred poets, and you remember Mr. Watts in one of his most expressive and touching hymns uses the phrase, "Plunged in a gulf of dark despair;" and no one has ever yet imputed to that phrase any want of proper rhetoric or of expressive force. Well, in looking at the "Life Thoughts" of Mr Beecher, I find that he uses the term "philosophic anguish," and he speaks of a man to whom "pumpkins were apotheosized!" Well, a pretty extravagant phrase. The man who will use that phrase as applicable to pumpkins—"apotheosized"—ought not to be condemned for using the term "moral Niagara." "A moral eye-sight," moral astronomy," "moral anatomist," and even "moral cripples"—all found in the works of Mr. Henry Ward Beecher. But in his "Life Thoughts" he uses this expression:

No doctrine is good enough for anything that does not leave behind it an ethical furrow for the planting of seeds which shall spring up and bear abundant harvests.

Now, we all understand what an "ethical furrow" is; and the seizure of that illustration by Mr. Beecher does not seem to me either unapproved or unrhetorical. It is expressive—an "ethical furrow" in which the seeds of truth and of piety are to be planted. And an "ethical furrow," it seems to me, would justify even the use of the term of my learned friend, a "moral haystack." [Laughter.] Well, with that humor which is a distinguishing and a happy faculty of Mr. Henry Ward Beecher, and which is one of his chief attractions among his other great recommendations, he uses, in his work entitled, "Eyes and Ears," this phrase: "The ghastly corpse of an apple-pie." And yet my friend thinks a gentleman who can use this illustrative language, an extravagant phrase of this character, never could have been guilty of using the words, "I stand on the brink of a moral Niagara!" Well, it happened, unfortunately to Mr. Beecher, upon one occasion, that the plumbing arrangements of his house were out of order, and one of his chambers became a little diluted. In describing it, he says:

One of the pipes was stopped up, and the chamber, &c., overflowed. The plumber was sent for. We had a pocket ocean up-stairs.

Well, now, that is not to be discredited, nor is it to be condemned. This is the style of Henry Ward Beecher. Read his sermons and works where you may you will find these original, these coined, these expressive phrases standing out all over through his works. I have many more quotations; I will not trouble you with them. But I have deemed this question of sufficient importance, because although it may not seem so to you, yet it has been used by my learned friends constantly throughout their address to this jury and the public, to impress upon all minds the idea that in the relation, by Mr. Tilton and Mr. Moulton, of interviews with Mr. Beecher, and in the documents and instruments which were imputed to him, there was an extravagance and impropriety of expression as compared with the cultivation and the ordinary habits of expression of Mr. Beecher, to produce the conviction that Mr. Beecher was misrepresented by this evidence. In the "Royal Truths," a work published by Mr. Beecher, I find this expression:

I may be broken up, disintegrated, comminuted, rendered pulverulent, and thus be in a state to promote better growth.

Well, when my friends impute to Mr. Theodore Tilton a straining after rhetorical effect, the coining of vain and superficial phrases, I commend them to the study of the works of their client. Without imputing to Mr. Beecher any impropriety, any awkwardness, any rudeness of expression, yet, there is not an author in this land who assumes more liberties with the English language, and coins more extravagant and, (notwithstanding the illustration of Mr. Evarts), I may say, transcendental expressions, than Mr. Henry Ward Beecher.

In my own experience of cases that I have most despaired of among those who come to me for spiritual help, have been persons who were nervinely sick. They must come to him under the cover of some apology or beneath some umbrellaed excuse lest the clouds should break, &c.

Well, the idea of an excuse being protected by an umbrella—an "umbrellaed excuse!" Well, this awkward phrase, "a wrinkled forcheaded man," "business vaticinations," "realizing centers," and "what is the average impression of the community in regard to religion—that it is beautiful or that it is gawky?" I don't exactly understand this term, "fictile skill," "typhoid conscience," "fluxing industries," and "a hailstone teaching," and, not quite as simple as "moral Niagara," "you might as well attempt to cure volcanoes with pills." And then, in his work entitled "Eyes and Ears," he speaks of "a horse rapture." Well, that is a kind of a rapture he may have felt; I never have understood. [Laughter and applause.] "Well, for her friends she is a continuous garden, for her not friends a precipice." "Ill-smelling flowers of hatred," "the hilltop of cheerfulness"—well, I think a beautiful expression and descriptive of that frame of mind which Mr. Beecher usually possesses and indulges. "The roots and branches and leaves of morality"—another beautiful idea and illustration. "A bird loves a kind of shy familiarity—nesting in the dry hay"—"amorous locusts." Speaking of an apple tree, he says, "In the month of May, apple trees go courting. It is a homely, sober, matter of fact tree. May seems to stir up a love-heat in its veins. You must not condemn a "moral Niagara," I submit, gentlemen, after expressions of that character. Now, these express not only the habit of thought, but the modes of expression of that gentleman, and I do not put them or use them for the purpose of imputing any rhetorical impropriety or any impurity of thought to Mr. Beecher. He uses figurative language, and expresses and illustrates with great beauty and force ideas and sentiments; and it is the great attraction of his preaching. It is that which, every day of the week, stirs the hearts and emotions of his audiences, and in the holy temple of God leads them to break out in rapturous and noisy applause, and he cannot disclaim them. They are indicative of the individuality of the man. And when you find in the records of his conversations and declarations, as given by witnesses and in the documents presented in this case, these unusual and extravagant expressions, they lead to the identity of the author.

"A SECTION OF THE DAY OF JUDGMENT."

Now, take the phrase, "section of the Day of Judgment," in the conversation had with Mrs. Moulton. Why, my friend Mr. Porter says, "Mr. Beecher could not have used that expression. He does not divide the Day of Judgment into sections." Well, he and I will find, I am afraid, when we come to that time that there are at least two sections to that Day of Judgment. [Laughter.] This lady, Mrs. Moulton, was continually impressing upon him the idea of confession. "Submit to the discipline of the Scripture; confess your sin; stand no more in this attitude of concealment and secrecy and duplicity. Be the man you profess to be—the exalted teacher of morality, the embassador of Christ. Live up to your weekly teaching in the pulpit. Let there be no more of this depraved inconsistency between your conduct and your teachings."

And is it surprising, with his ardent temperament, with his impulsive expression, with his habit of rhetoric—would it have been surprising under these circumstances that Mr. Beecher should say to Mrs. Moulton, "Why, I come to you for encouragement and for rest, for cheer in my sorrows, for that solace which can only come from a woman's sympathy and a woman's hand, and you are forever holding up to me the terrors of this offense and impressing upon me the duty of confession and exposure. Why, you seem to me like a section of the Day of Judgment." Henry Ward Beecher throughout! And I adopt, gentlemen, a little commentary I found in one of the prominent papers of the neighboring city. Speaking of Mr. Beecher and Mr. Moulton, this paragraph says:

He comes to her for comfort and consolation as man goes to woman in his trouble. She is, under the unhappy circumstances of his case—unhappy whatever they really have been—the only woman to whom he can go to be soothed and cheered. And what, according to her account, does she do? Day after day she says to him, "Confess; make clean your breast of all this, and be forgiven." But, as she says, rather than do this he told her he would die. And yet she continued to urge upon him that which she says he declared was worse to him than death. What wonder, then, that he should break out upon this perverse female Baalam, who would not say what she was expected to say, and who held up ever before him the vision of a great accounting to come, and told her that she was like a slice of the Day of Judgment? How graphic! How humorous! How perfectly Beecher-like! How it tells of the disappointed longing of a soul that sought consolation and found threatening; that thirsted for the sweet and tasted the bitter! What a warning to women that they should not put off the white robes of mercy and don the ermine of justice! And what a light it throws upon the scene as the witnesses describe it! That worn and harassed man, lying upon the sofa, looking for the soft ministrations from woman, which, whether they touch the root of the heart's disease or not,

are balm to man's wounded spirit, and hearing only that constant warning counsel, "Confess" — longing for a glimpse of hope, and seeing only a slice of the Day of Judgment.

Now, it seems to me that commentary expressed precisely the situation, the position, the state of mind, the character of thought, feeling and expression belonging to the two parties of that interview.

MR. TILTON'S SPECULATIONS ON THE LIFE OF CHRIST.

You will remember that Mr. Tilton wrote to his wife a letter, in which he speculated upon certain circumstances and possible conditions in the life of Christ. My friend, with severe denunciation, pronounced it to be a gross and repulsive sacrilege. Mr. Tilton indulged a vein of thought and speculation upon the question, what would have been the effect upon the estimation of the world, upon the reception of the character and teachings and influence of Christ, if he had been married, if he had loved with a worldly affection and been the husband of an idolized wife and the parent of a happy household. And this is pronounced as blasphemous. It is presented to you as a revelation of the indurated and unreligious sentiment of Mr. Tilton. No character on earth, no historic personage has ever drawn from the lips of the learned and the pious more speculation and more commentary than that of Christ. The revelations of his customary and ordinary life are not very full or complete. There is room enough for speculative thought. There is room enough for philosophical conjecture. There is room enough for the indulgence of commentary, and for the derivation of various and conflicting opinions in regard to his character and his relation to the Trinity. And it never has been thought irreligious or sacrilegious to indulge in those reflections. It indicates not a spirit of scoffing and unbelief when respectfully indulged, when suggesting a possible condition to the life of Christ, which might have had an intimate and controlling effect upon our conceptions of his character, and our receptions of his intermediary agency between the Father and ourselves. I have gathered a few teachings of Mr. Beecher upon this subject, as approving this sort of speculative philosophy. Mr. Beecher regards Christ as a historical character—of course he could not do otherwise—as a character of history, independent of his close and religious relations to every human heart, which deserves to be studied and commented upon. It is a character in its relations, in its revelations, which affords the widest scope for the exercise of the profoundest learning and the highest genius, and the deepest emotion, and Mr. Beecher so regards it. He says:

There is no other historic name that has shown, and is showing, such a power. Christ's name is, at one and the same time, not only the name of a historic personage who had his wonderful peculiarities, but a name, etc.

In his sermon on "Soul Building" he speaks of "Christ as he has been historically developed and philosophically conceived." He says of Him, "He represented historic Judaism." "You may deal," he says, "with Christ first, as if you were merely a historic critic. You may sit in judgment upon Him, upon His life, His disposition, His deeds, His faith, &c. You are not forbidden to go into historic investigations of it." And what more does this letter of Theodore Tilton import? "You may deal with Christ," says Mr. Beecher, "as a historical critic. You may sit in judgment upon Him, upon His life, His disposition, His deeds, His faith. You are not forbidden to go into historic investigations of it." Well, an ordinary mind—I don't think either of you gentlemen—I am certain as to myself—an ordinary mind would not have entered into that line of comment, investigation, thought. Immersed in the cares of the world, in business, and in professional life, you would not think to philosophize upon the possible condition of Christ's having been a married man and a man of family. We accept Him as He is revealed in the Scriptures. We are content with our knowledge of Him as derived from the Scriptures. You, who have accepted Him as your faith and your salvation, enter into no doubts or speculations in regard to His relation to the Godhead or to man. You build upon Him, lean upon Him, trust in Him, hold to Him as the revealed Savior, as the Son of the Almighty Father, as the sufferer upon Calvary, and as your Redeemer. But we have men of philosopical minds, of speculative learning, men who investigate these subjects—not alone Theodore Tilton, but Henry Ward Beecher and all the great luminaries not only of the pulpit but of science. And what harm is there in it? If we may be governed by the teachings and the authority of Henry Ward Beecher it is commendable. It indicates a depth of interest and a range of thought which does not belong to the common and ordinary understanding. And that letter of Mr. Tilton, expressed with the finest delicacy of language, with no reflection upon the character of his Lord, suggesting merely the effect which would have been produced upon the world, and upon the influence of Christ upon the hearts of men, he writes it with no indelicacy of speech, with no rudeness of phrase, with no reflection upon the holiness, the sanctity of the character of Christ.

Well, how does Mr. Beecher deal with Christ? You and I, gentlemen, were taught early to lisp at our mother's knee the Lord's Prayer, which, then and now, appears to us as the most solemn, comprehensive, and expressive invocation ever invented, to our God. Christ taught it; Christ gave it to the world as the form of prayer belonging to fallen souls to be addressed to their Maker, their Protector, and their Judge, and it has been reverenced and uttered by sincere and pious lips and by devoted hearts from the time it was thus dedicated to the use of man to this hour. And no man ever [illegible]

lence of his chamber without feeling a fresh and a stern impression of the majesty of God and of our relations to his law and his government. What does Mr. Beecher say about it? Speaking of this Lord's Prayer, he says:

It is no reproach, and it takes nothing from the value of the Lord's Prayer, nor from this whole discourse (the Sermon on the Mount) to say that they were not original with Christ, that they were not then first invented, when He gave them to His disciples. We know it was so in respect to the discourse at large.

Well, Mr. Beecher treats Christ as a plagiarist—Christ whom he teaches us is divine, Christ whom he teaches us is the Lord, co-equal with the Father, one of that resplendent and mysterious Trinity presented to us by the revelation of the Lord, possessing the omnipotence, gifted with the omniscience of the Godhead—and yet he tells us that that divine personage, ruling all things, knowing all things, was not capable of delivering a sermon or dictating a prayer to fallen man! Well, that is dealing freely and liberally with the character and the attributes of Christ, and the counsel of a man who does this is in a very poor condition to reproach a speculative, philosophic thinker who ventures to suggest what would have been the conditions and the relations of Christ toward fallen humanity if it had happened that he had been the subject of worldly love, the husband of a wife and the parent of children.

"Well," he says, "if you measure Christ, Christ's influence upon the mass of his countrymen, it was null and void."

Indeed!

"Neither did he found a family."

Why, Mr. Beecher thinks of that! He can indulge thoughts of that kind!

Men are born to love and marriage, &c., but Christ was not born to any such destiny. Upon no one did He ever bestow His heart's treasured affection; He never knew the sweet relationships of husband and father in the household.

Well, if Mr. Beecher can deal thus with the character and the conditions surrounding the life of the Redeemer, what is there in this letter of Mr. Tilton that should excite such extreme disapprobation from my learned friend? Mr. Beecher says further:

When it is said that Christ was tempted in all points like as we are, we are not to understand that He stood in every relation in which we stand. He was not a husband or a father; He did not trade or traffic; so that there are special varieties of external history which befall men that did not come to Christ.

Well, a very proper reflection; but yet a somewhat familiar treatment of the character and the history of the Savior.

I believe that a man may go wrong a great way in his intellectual views of the Savior. I believe that he may err much in reasoning upon Christ.

The propriety of reasoning upon Christ is admitted, then!

I believe that he may fall into innumerable mistakes in fashioning a system of religious truth, and yet be saved.

Sound doctrine all of it, I think you will conclude; but this speculation of Theodore Tilton, written, gentlemen, to his wife, not uttered upon housetops, not published as a theory which might excite ridicule of the Master, nothing which would draw out unfavorable or conflicting comment, but written, in the fullness of the confidence of marital correspondence, to his wife—this letter is seized upon by our learned friend as evidence of the religious obliquity, of the scoffing religious indifference, of Mr. Tilton. It deserves no such comment, and Mr. Beecher in his sermon says so.

EPITHETS APPLIED BY MR. MOULTON TO MR. BEECHER.

Now I pass from all these subjects, gentlemen. Mr. Porter alluded to an expression used by Mr. Moulton in the course of his testimony, which he thinks of so base and calumnious a character as to be utterly destructive of the credibility of Mr. Moulton. He says:

Now, the testimony of Moulton is that Beecher is a liar and a libertine. This is the spirit in which this man comes to this Court to swear away the reputation of a pure woman and a pure man. There is his photograph, made by himself and for you. The man who uses such foul, base language, and yet pretends that all this while he was the friend of the man in respect to whom he used it—can you trust him?

Now, I have no hesitation, gentlemen, in saying that I disapproved the expression; but if that is to discredit Mr. Moulton when he appears under the solemnity of an oath as a witness, what are you to think of the impartiality and sincerity of my learned friend when he applies not only to Mr. Moulton and Mr. Tilton, but to a woman, the epithets which he has used in this case. Why, by parity of reasoning, if Moulton is to be discredited, my friend Porter is not to be believed; these men are not so bad as he represents them to be; he is not a veracious witness, and you will not accept the character which he has given them.

But what were the circumstances, gentlemen? Not here do I propose to review or comment upon the conduct of Mr. Moulton in his association with Mr. Beecher; that is matter for future consideration. But we can glance at the general aspects of that relation. I think none of you will hesitate to say, from your recollection of the evidence, that up to the time when this subject came within the jurisdiction, the effective jurisdiction, of Plymouth Church, during the Investigating Committee, and, as I shall show you, after that period, there was no service to Mr. Beecher that Mr. Moulton could render, within the limits of his theory and effort, that he did not perform. He has been called a traitor; with chosen and deliberate language he has been pictured as an infamous "Judas," but my learned friends have failed to show that up to that period he faltered for an

instant, under any circumstances, upon any occasion, in his devoted fidelity to Mr. Beecher. But when was it that these relations were changed, and how came they to be changed? Not by the simple appointment of the Investigating Committee (which Mr. Moulton disapproved), for he still labored on, as I will show you, in an effort, in conjunction with and under the approval of Mr. Beecher and his advisers, to suppress this investigation. It was when Henry Ward Beecher, in his statement before the Committee, charged this true and unflinching friend with attempting to blackmail him, it was when, from that examination, that statement, the hurricane of denunciation went out through the land against Mr. Moulton, under which his reputation and his prospects, I confess, have suffered—it was then that these relations changed. Now, if it be true that up to that hour Mr. Moulton had been the faithful and devoted friend of Mr. Beecher, sacrificing time, and effort, and character, and morality, if you please, to save him from the consequences of his offense; and Mr. Beecher, under the conditions and with the fact, as he swears to it upon this stand, made against him the false and calumnious charge that he was a blackmailer, some extravagance of expression will be pardoned on the part of Mr. Moulton. Mr. Beecher is a great man; he is revered and trusted by many souls; he has occupied a great position in the eye of the world; and no young man, like Mr. Moulton—nay, no old gray-headed man—has the right, whatever he may think of his purity and morality, to say, in his presence and to his face, that he is a liar and a libertine. It is a sacrifice of that respect which belongs to age, culture, dignity, position—aye, it is a disrespect which no feeling and upright man will offer even to fallen greatness. I do not justify it; I do not approve it; but this man, Mr. Moulton, is of an ardent and impulsive nature, and he has exhibited it through all this complication of circumstances. He used a rash and intemperate expression, I grant; but does that prove him dishonest or unfaithful? does that justify my friend in saying that he entertained these sentiments in regard to Mr. Beecher during the period in which friendly relations and the most intimate intercourse existed between them? By no means—by no means. Mr. Moulton never uttered a disrespectful or irreverent expression about Henry Ward Beecher until after the event to which I have directed your attention; and if he has sinned, he has sinned under great provocation. If he was a true friend, the ingratitude of Mr. Beecher is inexpressible. If Mr. Moulton was an honest and trusty friend, I must be permitted to say that it was base and horrid for Mr. Beecher to impute to him a character and a practice which rendered him, if it was true, infamous in the eyes of the world. But then my friend says:

The man who said that [referring to an expression testified to by Mr. Storrs] was the same man who went out on the 1st of January to make two calls, one on a woman and the other on a clergyman, and carried a pistol for his protection—I am wrong as to the date; it was the day before, Saturday—a man who is such a coward that he needs a pistol in his pocket to walk down to the house of Theodore Tilton in order to get from his wife a letter that would enable him to call upon Mr. Beecher—such a coward that when he goes to Mr. Beecher he wants to impress him with a sense of peril by showing him that he has a pistol, although there was no occasion to use it—that is not the kind of man that had better talk much about whom he is going to shoot down.

Well, now, gentlemen, in the light of the evidence of Mr. Beecher, was there ever a more sophistical perversion of the condition of things than that statement? You know from the evidence that Mr. Moulton, by reason of the conditions of his business and the necessity of being about your large warehouses and docks, among rude and violent persons, and at all hours of the day and night, was in the habit of carrying a pistol—a habit that I do not approve, a habit that I think under ordinary circumstances I never should indulge in, a habit which I think produces a great part of the outrages and crimes which afflict the community. But it was a necessity of his business and condition; and you have heard Mr. Beecher's description of that pistol scene; and you know from Mr. Beecher's evidence that that pistol was not carried for any such purpose as that imputed by Mr. Porter, and that it was not used for purposes of intimidation. But the necessities of this case, the determination to talk and abuse these men out of court, has led my learned friends to indulge (he must pardon me for saying) in this perversion of fact, and in this unjust reprehension of Mr. Moulton.

WHY MR. CARPENTER WAS NOT PUT ON THE STAND.

Well, then, my friend says: "Carpenter was not called;" and he says there was a promise of that in the opening of Mr. Morris. He says that, according to that opening, Mr. Carpenter was to be called to prove the confession of Mr. Beecher; and, with very great emphasis and force, he inquires why that evidence is suppressed; and, if it were true, it is an inquiry which under all circumstances can be addressed to a party who fails to produce evidence in his power, and the omission of it is significant of the truth that its production would have operated unfavorably to the party suppressing it. But what is the true indication given by Mr. Morris upon this subject in his opening? On page 45 Mr. Morris used this language:

On the evening of June 1 Mr. Carpenter, to whom I have alluded, attended Plymouth Church. After the service was over Mr. Beecher called Mr. Carpenter aside and said to him, in great anxiety, "Have you seen Theodore?" He replied, "No;" and then Mr. Beecher said, "He is going to publish my letter." Mr. Carpenter replied, "Well, what of it?" The answer came, "It will be my ruin and his too, because he cannot rise on my ruin."

That is what Mr. Morris represented would be the testimony of Mr. Carpenter in relation to his interview with Mr. Beecher. Subsequently he said:

But, gentlemen, we don't rest our case upon the testimony furnished by Mr. Tilton himself alone. We go further than that. We will put upon the stand Mr. Carpenter, whose veracity, I apprehend, will not be questioned in this court, and to him, we may say, Mr. Beecher made his confession.

Well, how made it? Why, in the language of the detailed interview which Mr. Morris had previously given. It was never pretended by Mr. Morris or anybody else that Mr. Beecher had confessed the offense with which he was charged by us to Mr. Carpenter, except in the particular mode of the conversation, the precise details of which were given by Mr. Morris. But when Mr. Beecher comes to the stand upon cross-examination, we find that there is no necessity for the production of that evidence. Mr. Carpenter was withheld for the purpose of rebutting any testimony that Mr. Beecher might give in denial of the alleged interview and for the purpose of answering other expected circumstances of proof upon the part of the defense; but it never became necessary to introduce him, for the condition of the proof did not require his introduction.

A TRIBUTE TO MR. PORTER.

Now, then, gentlemen, so far as the examination of the particular propositions, and the specific representations, made by my friend Mr. Porter is concerned, I am done with it. In nothing that I have said in regard to that gentleman (I am provoked to say by the remarks he made to the Court this morning), will any one, I trust, suppose that my respect and affection for him, which originated long ago, and has grown through thirty years of most intimate and personal relationship and friendship, has at all abated. I do not say it in the vein of compliment, but I have always regarded him as one of the proudest exemplars of our profession, and in all the intercourse between us—what is somewhat remarkable, I think, for we have been engaged in opposition upon exciting questions which have moved the sternest and most irritable feelings of the community—never in the ardor of professional debate and contest has there passed between us a ruffle or a word of unkindness. I have none for him now, and I must be permitted to say, though I am not in the habit of indulging very much in compliments, that there is no gentleman in professional or in social life to whom my judgment, my intellect, and my heart tend and bound with a more affectionate respect and love. I have been compelled, in the discharge of my duty in this case, to speak of him in terms of, I trust moderate reprehension. I believe he has made an unworthy assault upon the character of my client and the character of witnesses whom I am bound to maintain and protect. I have done it in kindness, but I have done it as I am accustomed to do, in plainness. If my learned friend can reconcile to his own sense of professional duty, to that sense of the decorum which is due to parties, witnesses and adversaries in a court of justice, the violent assault he has made upon the plaintiff and witnesses here, why, I certainly shall be rejoiced at his self-complacency. I do not imagine—I do not imagine, that he will justify to himself the virulence of the epithets he has bestowed upon man and woman in the course of this debate. Epithets do not kill, gentlemen. Denunciation does not destroy. Vilification and vituperation are not argument; and when I have exposed to you the errors into which my learned friend has fallen, and the rank injustice he has committed, I trust it will lead you and his Honor to reflect with something of care upon the argument he has submitted. [Applause.]

MR. EVARTS'S ARGUMENT CONSIDERED.

I, of course, cannot pass the elaborate, learned, moralizing, extended address of my friend Mr. Evarts. In the cast of characters in this social tragedy, to him has been assigned what I believe they call the "heavy" part of the performance. [Laughter.] My friend Porter was to do the denunciation; he was to dispose of the plaintiff and the witnesses on behalf of the plaintiff, by vilification and abuse; and my friend Evarts, by a system of moral reflection, by the promulgation of doctrines of morality in which I cannot concur, and against which I shall contend, by a long and labored application of that wonderful power of language and rhetoric possessed by that gentleman, has attempted to control the minds and judgments of this jury by leading you from a fair and just consideration of the evidence in this case, of the facts upon which your judgment should be founded. He has endeavored to change the attitude of the parties in this case, to turn Mr. Tilton into a defendant, to change the range of accusation and defense—sometimes a skillful mode of actual as well as argumentative warfare—to put Mr. Tilton upon his defense, and Mr. Moulton and Mrs. Moulton upon their defense, and then he calls upon us to exculpate ourselves from the indictment which he presents, instead of defending Mr. Beecher from the accusations under which he rests.

THE CASE NO ANOMALY.

Now, I must answer the best way I can the various propositions of those learned gentlemen. And the first is, if it please your Honor, that this action is an anomaly in the judicature of this State; that it never had any respectability, and in a court of law one of the leading lawyers of our State has the boldness to say to a court and jury that a right of action, given by the law, commended by the law, and practiced in the law, is an anomaly and disreputable. There is no right of action which the wisdom and the justice of the law gives to an injured citizen which is an anomaly in a court of justice

or disreputable to the man who presents it. It is a reflection and a slander upon the wisdom and the policy and the justice of law and society. No man is to be turned from a court of justice coming in search of justice under the authority of the law, bearing with him its elements of justice and its power of redress. Why, think of it, gentlemen. You are asked to discredit this action; to confound Mr. Tilton; to impute to him baseness and dishonor because he resorts to the law for the redress of an alleged grievance, and this is presented and urged by those who affect to be the leaders of the profession. What shall one do who is assailed in his dearest interests? What shall be done to one who has invaded the sacredness of the family relation, of that relation so highly and beautifully extolled by the learned gentleman who pronounces the plaintiff infamous to produce such a case in a court of justice? If it be true that, under the exasperating and aggravated circumstances of this case, Mr. Beecher did invade the home of Theodore Tilton and assail the chastity and virtue of his wife—if all the deplorable consequences which have followed are attributable to Henry Ward Beecher, in the name of that law and justice which you revere, and which you are bound to administer, what shall be done to him? Does he deserve no punishment? Is there no redress for personal dishonor, and for personal and long-lifed sorrow? In the scheme of our jurisprudence is there no punishment for the seducer? "None," says the gentleman. "You are disreputable if you come into a court of justice asserting either your own wrongs and rights, or indulging any vindictive spirit of revenge toward the seducer." Why, gentlemen, the wisdom of our law-givers, the policy of our social relations, gives no criminal punishment for seduction. The libertine may roam through your homes and families. The virtue of a wife and daughter may fall before his arts—specious, plausible, effective. The policy of family and its protection may be subverted. The rest, the peace, the tranquillity, the virtue of family and home may be dissevered and broken up and depraved, and yet our law affords no punishment to the wrong-doer. There is no way of vindication or of punishment. This institution of family and home is upheld by none of the criminal justice of the law. What is to be done? Why, it has followed as a necessary consequence of its omission, as I think, of the law—it has followed as a necessary consequence that the common sense of mankind, and the common sense of the jury box, has protected and shielded husband or parent who has taken vengeance in his own hands, and has disregarded that injunction of the great Law-giver: "Vengeance is mine; I will repay, saith the Lord." When has there been a conviction of husband or parent who has taken in his own hand the awful sense and act of judgment and sent the seducer to his last and long account? And you are asked, when a husband outraged, when a family broken and dissevered, when children blighted and dishonored, when the family institution is tainted and degraded, and the husband, head and representative of all, comes into a court of law, by the only path open by the law, and asks his fellow-men to strengthen his morality, his religion, his sense of justice, and to stay his arm from vindictive punishment, you are told he is a degraded seeker after pelf, a mercenary and selfish litigant for gold; that he is an anomaly in a court of justice; that he is disreputable before the world. You may adopt this reasoning; you may approve that sense of justice which applauds the man who slays the invader of his honor and his home. It is not the spirit of the law. In a government of laws it is your duty to teach obedience to the law; it is the duty of this jury, upon this occasion, to inculcate a sentiment which shall uphold our system of laws, however defective or faulty it may be. You may, in the impulses of your own nature, in those deep and irrepressible emotions which stir the human frame when its holiest and dearest affections and hopes are assailed—you may say that this Christian forbearance, that this steeling of the heart to endurance, that this acceptance of contrition and remorse in the indulgence of the highest love and the holiest pity, you may say it is contemptible; and such, in the ways of the world, in the habits of society, where the wayward passions of men play loose and revel in crime and blood, this will be said, and has been said, and my client sits here to-day under popular condemnation because he was bold and brave—aye, and I say Christian enough to forgive. I will try and find by and by the motives which lead to that act. I will try and see by and by whether there is anything in the character of this offender which justifies this indulgence towards an erring and faulty wife and a hoary-headed seducer. [Applause.] And I hope to satisfy you from the evidence that Theodore Tilton, instead of being hounded from a court of justice, libeled and calumniated before his fellow-men, is entitled to that approbation which Christianity, religion and morality ascribes to him who governs his passions, and submits to the law of God and the law of earth. And that man, when he comes in the ordinary way of justice, under circumstances of provocation and necessity which justify the appeal, no matter what may be the consequences, no matter who may be trampled upon, in the course of strict and stern justice, that man is entitled to your applause rather than your disapproval.

HOW CHARACTER SHOULD BE CONSIDERED IN THE CASE.

But my learned friend says this is a miraculous seduction, and herein lies the germ, the kernel of the defense in this case. Now, I have no objection, gentlemen, I find no fault with the extravagant glorification of

Mr. Henry Ward Beecher by his counsel. Aside from this question, aside from what I think I can show has been his conduct in the matter under investigation, they have no higher admiration for this defendant than myself; they have no better appreciation of his great and commending qualities than myself, and they have no more readiness in according to their client than I have the meed of approbation and reverence. But when from all that they derive a principle; when upon that they erect a proposition, either of fact or morally, that it was impossible for Henry Ward Beecher not to sin, I differ with their conclusion. The argument prevailing through all the addresses of my learned friend is: "Why, Mr. Beecher is a good man; he has been a serviceable man to the world; he has been a great preacher, a great author, and distinguished in the lyceum and upon the platfor rendered great service to the world; he is a great man, and, therefore," says my friend, Mr. Evarts, "it is impossible that he should have committed this offense. It is against the law of his nature; it is against all the impulses of his being; it is against all the training and the discipline of his life; he cannot have been guilty; it is a miracle; it is a miracle if he was guilty; and you, gentlemen, on the part of the plaintiff, why you must produce sufficient evidence to convince the jury that a miracle has happened in our midst." Well, what is this teaching, gentlemen? Is all our experience of life to be disregarded? Are we to have a new version of the Scriptures? Are we to have new teachings in regard to the nature and the fall of man? Are we to be told that there is no sin among the apparently pure and great? That there is no hypocrisy in the world? That there is nobody who steals the livery of heaven to serve the devil in? Is that our observation of the world? I know Mr. Beecher does not believe in original sin, I think; I am sure he does not believe in total depravity; but what becomes, under this doctrine of Mr. Evarts, of the teachings of Scripture that we are utterly depraved, that none of us are good, no not one? that the heart is deceitful above all things, and desperately wicked? What becomes of this theory of the depravity of human nature? Was there a fall, and in the sin of Adam did all men sin? Is it the teaching of inspiration that human nature is depraved, deceitful and desperate? And what becomes of the Atonement, if not so? What necessity was there for the suffering of a God? What becomes of the agony of Gethsemane, and of Calvary? Where was the necessity that a God should descend and die to redeem the sins of humanity? All this is to be rewritten if it is a miracle that good men apparently should sin with all this leaven of unrighteousness, with all these wicked and sinful tendencies of the nature, when it requires the constant guardianship of the Holy Spirit to hold the redeemed heart true to its faith and professions in its life. If these things are true, what becomes of the doctrines of my learned friend, who stands before you and in the presence of direct proof, in the presence of confessions and conferences which could only be produced by the consciousness of most deep depravity, who yet says that this man is pure and saintly and God-like, and that never in his whole life has his garment been stained by the smell or spot of sin? Well, gentlemen, this has been the theme upon which the most pathetic eloquence and the highest utterances of the greatest oratory have been displayed for thirteen days before this jury and the world. It is the only impressive, stirring, moving argument which has been addressed in so many forms, with such powerful ingenuity by my learned adversaries.

I deny the proposition. Great and good as Mr. Beecher may have been, he is yet, in the eye of God and in the eye of men, a fallible sinner. There is no one perfect, no, not one. I know the value of character. In this land of ours, where character is so valuable and so efficient, where, aided alone by a good character and an honest life, the humblest of us may aspire to the highest honors of society and State—I know the value of character, and esteem it properly, and give it its due weight. I don't know, gentlemen, but I may say, so far as my own judgments and convictions are concerned, that if this case depended upon oral evidence alone, leaving out at least one witness, Mrs. Moulton, that I would hesitate long before, against the oath and character and the position of Henry Ward Beecher, I would believe this offense, although imputed to him by men who I believe to be as honest and as honorable as any two who have ever adorned either the ranks of learning or that business position so highly extolled by my learned friends. [Applause.] I give great value to character, I reverence character, and specially if it is that holy character animated by sincere piety, by worship of that God whom, if I do not adore in a Christian spirit, I yet reverence and fear; that character which, under such impulses and with such devotion, is given to the interests of religion and of men, and I will not assail it lightly. I will not be the organ of light assault upon such a character; but when it forces me into a court of justice, challenges investigation, claims entire purity and excellence; when it seeks to overturn the reputations of men, if not as holy, yet as exemplary as himself, reputations as dear to them as his is to himself, then I examine that character fearlessly, and I shall talk of it as, in my judgment, the evidence shall justify. [Applause.]

Judge Neilson—Officer Rogers, you instruct your officer up stairs to exact from the people in the gallery a promise to keep silence, otherwise the gallery will be closed. I am quite ashamed of the gentlemen on this floor, and of being compelled to say to them that this applause is disrespectful to the Court and disrespectful to you. Think of it a moment—if it had been any single man or some one in this court that disturbed a speaker and an auditory by demonstrations of applause! I could

not believe it but for this exhibition. [To the jurors.] Gentlemen, return at 2 o'clock.

The Court then took a recess until 2 o'clock.

OUTSIDE OPINIONS ON THE CASE.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Beach—Mr. Porter quoted the opinion of a gentleman of very considerable prominence, both in the profession to which we belong and in the world of letters—Mr. Bartlett—and declared that when the first revelations of this matter became public Mr. Bartlett expressed a spontaneous and decided opinion that it was a case of blackmail. Whether this opinion was expressed to my friend Mr. Porter, or came to him second hand, I do not know. And my friend indulged the expression of great regret that a gentleman of the ability and renown of Mr. Bartlett was prevented by other engagements from undertaking the cause of this defense. I certainly am not inclined to detract anything from the high encomium passed upon Mr. Bartlett; it is undoubtedly deserved. But Mr. Bartlett, in addition to his professional labors, is in a very important degree connected with a leading newspaper institution of the City of New-York, and the reference of my friend Mr. Porter to the opinion of Mr. Bartlett, connected with the fact of that association, justifies me, I think, in repeating what I suppose may be possibly an expression of sentiment upon the part of Mr. Bartlett, or the paper with which he is so intimately connected, upon the particular subject which is now under discussion. I may remark, however, that of whatever value the opinion of Mr. Bartlett may have been in the early stages of this controversy, and however clearly he may have formed and expressed the opinion that this was an arrant case of blackmail, it would be difficult for him or any other gentleman to maintain that conclusion in the face of the very clear and decided evidence given upon that subject by Mr. Beecher. But speaking upon this subject of presumption of innocence, arising from a previous good, superficial character, without any power—for we cannot see the heart; we cannot search the secret recesses of human nature; we cannot explore all the mysteries of personal life; we but see the superficial character in the public acts of men; and, it is true, from those developments we may, with reasonable safety, form a conclusion in regard to their essential merits. But yet judgments are deceptive. They give us no clear and satisfactory clew to the true inwardness of a man. We do not get at the bottom facts. We have to judge, as well as we can, from the ordinary manifestations of a man's life, unable to trace his acts to their motives, which may be exculpatory, or condemning, with none of that unerring infallibility with which we are each to be judged hereafter; and we cannot well say of any man, even with whom we are personally acquainted, however estimable may be all his characteristics and associations and apparent acts—we cannot after all say to him, or of him, that he is a faultless human being; and the error of this argument founded upon a mischievous moral proposition of Mr. Evarts is that it is contradicted, not only by the teachings of inspiration, but by the revelations of our daily lives; and it is well expressed and exposed in a paragraph or two which I adopt, and which I suppose Mr. Bartlett, if he had had the happiness, and my friend the gratification of an association with this defense, would have very readily expressed upon the trial:

One of the principal arguments in behalf of Mr. Beecher's innocence is his alleged incapableness of the crime charged upon him.

Incapableness! If I had not seen that as coming from Mr. Bartlett or *The Sun*, I should have thought it was a Beecherism. [Laughter.]

His counsel in the court-room and his friends out of it are never weary of dwelling upon the impossibility of his having done what Mr. Tilton says he has done. The incident of his long and successful public career, his literary and oratorical achievements, and his services to the Church, the nation, and to humanity in general, are recounted and appealed to as proofs that he could never have yielded to temptation and fallen into sin. In a word, the effort is made to take him out of the common category of the human race and place him by the side of One who assumed the weaknesses of our nature only to resist and triumph over them.

If there is anything plainly revealed in both the Old and the New Testaments it is that all men are more or less prone to all crimes. The very first man and first woman introduced to our acquaintance are described as guilty of ingratitude, disobedience, and lying. Their first-born son murdered his brother, and their posterity, in a few centuries, became so corrupt that they were all but exterminated by their Creator off the face of the earth. The survivors and their descendants kept on in the same career, and their history, down to the very latest period, is one long tale of depravity. Drunkenness, treachery, cruelty, murder, theft, adultery, incest, and every kind of wickedness that can be imagined are charged upon them with pitiless precision of detail. Abraham repeatedly showed himself capable of cowardice and lying. Jacob cheated his father and robbed his brother of his birthright. Joseph's brethren only refrained from murdering him that they might sell him into slavery. The Hebrews that came out of Egypt were so rebellious and ungrateful that they were denied entrance into the Land of Canaan, and their children were constantly engaged in quarrels and civil wars among themselves. David committed adultery first and murder afterward. Solomon was a voluptuary and an idolator. The records of the kings of both Israel and Judah show them to have been almost without exception cruel, revengeful, and brutal in their passions, and their subjects apt imitators of them, &c.

Nor are the early Christians represented in any better light. The rival factions among them came, at times, almost to blows. The converts from among both Jews and heathen are charged by the apostles with all manner of vices, and the annals of the Church ever since have been stained with lust, bloodshed, and violence on the part of some of her most conspicuous servants. It is no wonder that all classes of theologians agree in substance with the Westminster Confession of Faith, that we all inherit a

corrupt nature [quoting the confession], "whereby we are utterly indisposed, disabled, and made opposite to all good, and wholly inclined to all evil." This is the doctrine of all orthodox denominations, and even infidels and skeptics sorrowfully admit it to be a fact which they cannot gainsay. Yet in the face of all this testimony, and their own professed creed, Plymouth Church and its allies ask us to declare on the evidence of a merely superficial character and reputation, that Henry Ward Beecher is intrinsically incapable of adultery and perjury!

What makes this demand the more absurd is that Mr. Beecher's career hitherto is very far from raising, as is claimed, the presumption that he is so different from men in general as to be unlike them in ability to commit a sin. He has never been conspicuous for self-denial and asceticism. On the contrary, he has consistently practiced as he has preached—the enjoyment of the pleasures of the senses. He is a good eater and drinker, fond of pictures, music and poetry, a keen admirer of horseflesh and of Alexander Dumas, and last, but not least, an epicure in kisses. [Laughter.] Not one word in his sermons or his writings reveals anything in his character opposed to the full and free gratification of the appetites of the flesh; and every lineament of his features declares him to possess those appetites in a marked degree. To try and exalt such a man into a saint who has trampled under foot the inherited evils of human nature, and particularly to claim for him an exemption from human infirmity which is the peculiar grace of the Savior of Mankind, is an insult alike to religion and to common sense. The case never can be settled by such an argument.

So much for Mr. Bartlett, who is a very high authority in the estimation of my learned friend.

Mr. Porter—Do you say Mr. Bartlett wrote that?

Mr. Beach—I say Mr. Bartlett is associated with *The Sun*, in which this article appears, and makes constant communications, and some of the most able communications appearing in the columns of that paper.

EXAMPLES OF CLERICAL DEPRAVITY.

But let us come to a few more definite and explicit instances of this fallibility of human nature, as it exists in the pulpit and among religionists.

The Rev. Joy H. Fairchild, a leading Congregational pastor in Boston, after honorable service in the pulpit for many years, became involved in some difficulties with his congregation in consequence of his intercourse with its female communicants. He left Boston and was settled at Exeter, probably in consequence of these rumors, and which followed him to that place. He was accused of seduction, and on trial before a council a letter was read to the council in which Mr. Fairchild admitted that he had bound the girl by a solemn oath to deny that she ever knew him. The Council were inclined and did give Mr. Fairchild the benefit of the doubt, and he was not convicted. He afterward attempted to preach in Boston, but met with no success, was there openly charged by a paper with the crime, the offense of adultery, and he brought an action of libel against the publisher, and was defeated, on a full trial of all the circumstances, upon a justification of the alleged libel, and upon the proofs, with some additions, substantially which were presented to the council of his brethren, and who, as the report says, gave him the benefit of their doubts.

The Rev. Dr. Fay, who was a pastor of the first church in Charlestown, near Boston, and whom, the gentleman who gives me these minutes states, stood as eminent and as popular in Boston as Dr. Storrs in Brooklyn—that Mr. Beecher never stood higher in the estimation, even of his devoted adherents in this city, than did this gentleman in his pastorate. After a settlement of 25 years, attended with great popularity and with great efficacy in the effect of his preaching, rumors of adultery and fornication began to circulate, and he denied the charge, and took an oath that he was innocent. He was arraigned and put on trial, and he was so beloved and so popular, the case at the time attracted such intense interest, that all the prominent citizens of all the professions became involved in the examination—the Attorney-General of the State—all the dignitaries of the State. The trial was protracted long, but no proof of the direct act was adduced, no proof of any confession. The evidence depended entirely upon rumors and slight circumstances, and it was thought insufficient to justify a verdict of guilty; and a committee was appointed to bring in the result of the determination of the church judicatory, and this committee, through their clerk, who was a friend of Mr. Fay, as he was awaiting the result of the deliberations of his judges, sent that clerk to Mr. Fay with the direct information that the judgment was to be favorable to him; and the committee determined to recommend a verdict of acquittal, and they did so; but in their report, and in the judgment which they recommended for adoption, it was stated that the Court had examined all the rumors and charges. Well, there were conscientious men upon the tribunal, and one of them says, "I cannot sign that report. All the rumors and charges made against the accused have not been examined;" and he named one. "Let us make a clear case," said another. "Let us adjourn and have this specification examined and looked to, and then we can conscientiously sign this proposed result." Well, Mr. Fay was then notified of the new turn which the thing had taken, and he sent for the clerk and told him to inform the brethren not to adjourn, that he had a communication to make; and in 15 minutes he sent for the clerk again and handed to him a written and a full confession of the charge that was made against him. The new matter, it turned out, which Dr. Hooker, who dissented from signing the report first brought in by the Committee, would have disclosed not only his turpitude but would have exposed him to a criminal indictment; and he had heard the declaration of the Attorney-General of the State that if the evidence justified it, before the church judicatory, he would see that he was indicted by the State. And upon that confession, under these circumstances, this eminent divine, justly cele-

brated and beloved—I repeat again, as popular and cherished as Henry Ward Beecher, and with a reputation, prior to this circumstance, stainless, and who had taken oath to his innocence upon his own confession, afterward rendered under these circumstances, was deposed from the ministry.

The Rev. Mr. Starsburg, who was settled—he may be within the recollection of my learned brother—who was settled over the First Presbyterian Church at Albany, with a large congregation of the influential and the eminent men connected with the State Government of that city: he was said to be a genius, an able and an eloquent preacher, apparently exemplary in all the relations of life, and it is said by my informant that he led the congregation's and the public sentiment, to adopt the language of my informant, "as Beecher and Talmage lead the sentiment and the emotions of a Brooklyn audience." Well, he was accused of debauchery, of herding with negroes, in the indulgence of the lowest debauchery. He was put on trial and he was deposed, and never was his eloquent voice again heard in the pulpit.

The Rev. Mr. Southard, the son of the Senator Southard from New-Jersey; he was the founder of the Calvary Protestant Episcopal Church in the City of New-York. He was accused of immoralities, but as the information goes, the matter was hushed up, and he went to Newark and founded the House of Prayer, but he could not remain, and went South and divided his time between the pulpit and the low dens of Southern cities, and he died drunk in a vile brothel in New-Orleans.

The Rev. Dr. Reed was settled at Malden, Massachusetts, over a Congregational Church. Well, you recollect—it is not needful and would scarcely be decorous for me to state the crimes which were alleged against him in connection with the youths, both male and female, the children of his society. He was proved guilty of this disgusting and repulsive vice and crime, and was deposed.

Mr. Charles Rich settled over a church in Washington City where the Rev. Dr. Sunderland now is. He took a charge, just out of Boston, and he was accused of gross indecencies and immoralities; I need not relate them; and he, too, escaped the indignation of a mob and became a fugitive. He was deposed from the ministry, and died upon a farm.

The Rev. Mr. Thompson was settled over a Presbyterian church at Buffalo, and the Arch Street Presbyterian Church at Philadelphia. He was charged over and over again with adultery, was tried several times, but escaped. The account says that he suffered, as he must necessarily have suffered, from the simple accusation.

Mr. Pomeroy, one of the most eminent Congregational pastors of the East, was for twenty-five years the pastor of a prominent church in Bangor, Maine. He was made the Secretary of the American Board—a position, as you know, of high honor and trust. He was traced to houses of ill fame in Boston, New-York and the West. He denied his guilt to the last, and made the excuse that he went to these resorts to persuade young women to leave their bad lives. He was charged, condemned, and deposed; and his fate was what you can very well imagine.

Avery, you remember, of the Methodist Episcopal Church. He murdered his victim, it was charged; and he met the same fate as Fairchild.

Mr. Johnson of *The Evangelist*, a great reformer and ultra temperance man, and who led that well-known moral reform movement at one time; and you remember that *The Evangelist* at the time spoken of was the great organ in the country of reform. The account says: "One day an elder in Dr. Skinner's church was talking to his pastor about religion. 'It is all a sham,' he said 'Before you talk to a heathen like me you had better convert some of your own ministers.' 'Why, what do you mean?' says the other. 'I mean that some of your most eminent pastors and editors can be seen any night in the third row of the theatre, sitting with prostitutes in their laps. Go with me to-night and I will show you one.'" The pastor said he would go, and they did go, and he was shown Mr. Johnson, the pious editor of *The Evangelist*, a great advocate of temperance and reform generally, a distinguished Christian—he showed him in that relation. He was tried, he confessed, and he was deposed.

Well, you remember the case of Kalloch of Boston (it must be within your recollection), who at one time excited so much attention for his distinguished oratorical powers; and you remember what his history was. Well, gentlemen, I have a great many instances of that kind, furnished to me by gentlemen interested in the subject of this examination, giving instances of the infirmity and the fall of pastors and religionists of high standing in the Church, and of high reputation in the community. I do not care to present them all.

You remember the case of Dr. Magoun, to whom my learned friend has often listened, as I have, with great admiration. He is now the present President of the Jones College, a Congregational institution. He was licentious. He was deposed. But he confessed and repented, and he was restored; and now he is a leading minister of that congregation.

Well, the case of Horace C. Taylor, one of the chiefs of Oberlin—he was guilty of seduction; he was convicted; he was imprisoned; but he was released, and he was restored, but he fell again.

I am just now furnished with a memorandum to the effect that the Rev. Richard Fink of Grand Rapids, Mich., was recently found guilty of adultery with a young sister of the church, and his resignation was accepted. He was a very popular young man, and was termed "the Beecher of the West." He, however, like a man, and "Alexander Hamilton-like," as the memorandum says, confessed.

Well, the case of the Rev. Augustus Doolittle (or St.

Clair, as he changed his name to), who did not long maintain his connection with the Baptist Church at Hoosack Falls—I had not looked through the memorandum when I read it, or I would not have alluded to that. There is a little information upon this subject to be derived from a publication which has undoubtedly fallen under the observation of my learned friends upon the other side, by the Rev. Mr. Fairchild, the pastor of the First Congregational Church, in Mansfield, Ohio. I am not proposing to read, gentlemen, for the purpose of argument, any part of this production of Mr. Fairchild. But I refer to it merely for the purpose of the history which it contains upon this particular subject.

The writer of these pages was for seventeen years associated with a minister in college work, and for several years of that time associated with him in the pastorate of a college church. He was an earnest preacher, and especially gifted in prayer. Three years ago he was accused, upon the testimony of a single witness, with criminal intimacy with the wife of one of the deacons of his church. Although at times for years there had been hints of scandal, yet not one in a hundred gave the least credence to the story the witness told. The witness was maltreated and mobbed. The accused denied the charge and asserted his innocence with the most solemn asseverations that ever fell from human lips. The denials and asseverations were repeated day after day, in the most solemn manner, for three weeks, until, at length, the "horrors of hell got hold upon him;" for he believed in a future judgment and future retribution, and he then confessed that the charge was true, declaring that nothing but the undoubting belief of an endless hell had saved him from suicide, or induced him to confess. For years and years this criminal intimacy had existed, his accomplice sitting before him every Sabbath and her husband, all unsuspecting, receiving from his hand, each two months, the bread and the cup. Such is the mystery of iniquity. A man may preach with fervor, and pray like an angel, and yet live like a reprobate.

I shall not read further of its personal application to Mr. Beecher.

Well, gentlemen, is not the whole history, then, of mankind adverse to this proposition of Mr. Evarts, and is not that necessarily an overthrow of all the teachings of inspiration as well as of experience? Lucifer, the great archangel, fell. Two of the chief disciples of the Lord, living under His immediate influence, exalted and reclaimed and controlled by His example and the outpourings of His spirit in presence—two of them fell: one denied the Master and the other betrayed Him. And so, through the long list of examples proving the doctrine of man's depravity and his proneness to sin, through all the examples of social life, proving that the highest, the most exalted, and honored, are not only subject to temptation, but are too weak to resist its attack. All the lessons from which we can derive truth in regard to our own nature and the nature of our fellows are opposed to this unsound and corrupting theory. Why, you remember the case of the learned doctor, Prof. Webster, of Boston. He was connected with a leading institution of that city, a proud rival of the universities of the Olden World, and he was one of its most learned and eminent professors, exalted in the estimation of the cultured society of Boston. Tempted by mercenary motives he murdered Dr. Parkman. He denied his guilt. He was put upon trial, and through the influence of his great character, with all the aid derived from the host of attached friends who gathered about him with devoted fidelity, the evidence satisfied the jury of his guilt, and he was convicted and executed. And the argument then was, as it is now, that "This man so learned and great, so pure in all his past life, so imbedded in the affections of the community—why, this man could not have committed this great offense." No eye saw the crime. No ear heard the cry of the murdered victim. With deliberation and the skill of an anatomist the body of Parkman was dissected and burned, and it was upon circumstantial evidence alone that this high and distinguished character yielded to the stern judgment of the law. Well, you have noticed in the papers but recently the case of Palmer, equally eminent in religious circles, though a business man; devoted to all the ceremonies and forms and duties of religion, so respected and popular that he became the trustee and depositary of the funds of the widows and orphans of that community, and the tale comes to us but now that with $350,000 of this trust money he absconded, and but a day or two since was brought back by the hands of the police. Ah! gentlemen, need you go as far as that? How long is it since, in our midst, one of our most prominent lawyers, the friend and associate of the gentlemen upon the other side, as well as myself; who stood renowned even among a noble and honorable profession for integrity and honor and honesty—how long is it since he was found to be a defaulter and his head is hidden in shame and disgrace? And yet we are to be told that because Henry Ward Beecher is great and has rendered noble services to the cause of religion and humanity, because he has been cherished by the reverence and the affection of the world, we are yet to be told that he is incapable of sin, and when he is accused and confronted by criminatory proof, that he can yet stand upon this miserable doctrine of incapacity to offense. If you, fearless of this idea of the immaculateness of this gentleman, if, as Mr. Evarts says you must, and as I agree, judge and try him as you would judge and try any other man as infected with the infirmities of our nature, as bearing within him if not the inherited and original yet the actual elements and seeds of sin, if you apply the evidence in this case to the parties as you would apply it in any other case, why what is there left of this defense? If the power of Henry Ward Beecher's name and supposed character is not to overcome all the force of testimony, and all the rules of evidence, if you are to decide according to the preponderance of proof, why is there any hesitation in the mind of intelligent and

reasoning men as to the inevitable result of the judgment of the law upon the evidence in this case? And, if my learned friends loosen themselves for one moment from this theory of exalted character and incapacity for sin; if they confess that Henry Ward Beecher is mortal, subject to temptation, and subject to fall, will they, then, say to this jury that they know what the verdict will be, and will they say to this jury and to this community that there is not the slightest evidence of the guilt of Henry Ward Beecher?

MR. BEECHER'S TEMPERAMENT.

In the article which I read you the physique of Mr. Beecher is alluded to. But, with singular maladroitness, I think, Mr. Evarts in his argument to you, presented the same consideration, in these words. Speaking of the condemnation of Mr. Beecher by the outside community, he says:

Others put it upon what they understood to be the robustness of Mr. Beecher's frame. Well, now, that is a ground to put it upon that it is very difficult to deal with, for we cannot deny that he is a man, as he presents himself before you, as you have studied his face and seen his figure. And yet, over and over again, you have seen what professed to be rational examinations of this inquiry that are all made to depend, when put to the true analysis of what the argument means, on this question of physical strength and temperament.

Well, you will get the idea, I suppose.

Why, to be sure, that overthrows human virtue, human civilization, education, religion, morality, faith in men and love for men, faith in God and love to God; it overthrows them all.

Well, when those terms of a high oratory rolled from the lips of my learned friend, Mr. Evarts, they were overpowering. If all these sources of human hope and human reliance are to be overturned by this doctrine that men are differently constituted, that they have different force of appetites, and that they suffer different severities of temptation, if all these ideas of morality and religion and truth and honor are to be overthrown by that simple sentiment, why it is terrific; we must abandon it.

Man is an animal, and when you come to deal with the question of natural propensities you must treat him as an animal.

Well, that is what this doctrine of robustness does.

In other words, gentlemen, this scandalous, and wicked, and, when stated, ridiculous and monstrous proposition is made, that against an accusation of incontinence there is no defense in our state of society except the proof of impotency.

Well, gentlemen, nobody has stated that proposition that I know of except Mr. Evarts. Does Mr. Evarts mean to deny that there are varieties of human temperament; that men are differently constructed, that they have different propensities, that they have different passions, or the same passions, but changed in each in intensity and virulence? Does he mean to say that all men have the same force of will and the same power of resistance to temptation? Why, he must say that, or else he must admit that, in the varieties of human nature, some men are constituted with a proneness to particular indulgences, to particular vices, and I think I do not avow a doctrine which would be dangerous to the community when I say that they are infected with different constitutional tendencies, leaving them, in a variety of cases, to the perpetration of particular crimes. Why, in medicine and in experience there are persons who, without any motive, without any sort of temptation, ladies of high degree in everything else, exhibiting all the graces of a true womanhood, wealthy, reputable, distinguished matrons of society, yet who cannot resist the tendency, when they come under particular circumstances in the presence of a single temptation, cannot help stealing. They do steal. The instances are numerous, and they exist now in the City of New-York, and the works of our medical authors and the acknowledged opinion of medical science declare that such examples of human infirmity do exist. And then in the tendency to arson, to burn, in the tendency to kill, all these are maintained not only philosophically—scientifically, by the most learned men of the community, but they are sustained by the clearest examples. Now, the law rejects, of course, all this, when it is interposed as a shield for criminal offense, and I do not dispute by any means the policy of the law. That is not a subject for our discussion here. I only illustrate by that determination of science, and by that evidence of examples in addition to others which I have given you, that all this theory of Mr. Evarts in regard to the common plane of humanity, to the common rule of passional excitement, and the common level of controlling will and judgment, is illusory and vain. But what does Mr. Beecher think about it? He is a better judge than I am. Mr. Beecher says:

I care not to have men come to me and state their secret courses. I could read it in the skin and in the eye. There is no one single appetite or passion that has not its natural language, and every undue indulgence of that appetite or passion leaves that natural language more or less stamped upon the skin, upon the features, upon the expression of the face, on the carriage of the body. Pride has its natural language, mirthfulness has, goodness has. Nobody doubts this. So have the passions their natural language. Men think that if they commit their wickedness in secret places or in the night that it is not known. It is known, although no man ever say to him, "Thou art guilty." And again, "There are very many men so organized that their appetites and their passions predominate with terrific force."

Ah! Mr. Evarts, if we say to you that there is a certain form of constitution, that there is the possession of certain passions and certain appetites as manifested by the exterior development of the man, which are strong and terrific in their impulse toward sin and indulgence, do we say that the charge of incontinence can only be met by the proof of impotency? Mr. Beecher says no.

After you have been leading a Christian life for 25 years or for 30 years, if you had the strong tendencies

organized in you at the beginning, they will be there still. No power will eradicate them where they once existed; they are ineradicable.

And it is true philosophy, founded upon the known constitution of man, upon the inherited tendencies of human nature, upon the experience of the world. That is from the "Plymouth Church Pulpit," Seventh Series of Sermons, page 145, and the first one was in the 11th volume, at page 330. Again Mr. Beecher says:

The intellectual and the moral faculties are certainly stronger to-day than ever they were before, but the animal passions of the race do not seem to have lost any force, nor do they seem to be under any greater control than they were a thousand or two thousand years ago.

Ah! yes, gentlemen, Mr. Beecher recognizes the truth of the existence of those animal passions developed in the external form, which exist in all their original and terrific power, neither abated in force nor better governed than when man was more an animal than now. (6th Series, 161.) Again:

Men utter a vast amount of slander against their physical nature, and attempt to repair deficient virtue by maiming their animal passions. These are to be trained, guided, restrained, but never crucified or exterminated.

I do not exactly agree in the application of that term "crucified." They should be crucified, perhaps, never exterminated.

"The lecherous imagination goes to and fro, a robber of purity throughout the universe." And then he speaks of "these great, swollen, bull-necked men." "Find me prelates and bishops that have made the world richer than they found it, and I will also find in them a mixture of dross." "The malign passions rise and dominate over the higher faculties. There is nothing else that begins to compare in cruelty with the human race. Sharks are merciful, and lions and serpents are angelic compared with men. Man is the chief monster that the earth ever bred." And he says of himself, with great candor and propriety: "I am a man of passions like your own. I know my own estate and my own weaknesses. I shall labor among you with these weaknesses in the time to come."

Now, gentlemen, I should not have alluded to this subject but for its discussion by Mr. Evarts. I am not going to argue or urge against this defendant one single proposition or idea that I do not believe to be just and sound. Whatever may be the constitution of this defendant, whatever others may say about his physical development and the indications which his external form gives of the possession of high and intense passions, or of particular appetites, I do not urge it as an argument in this court of justice. I believe it would be a disgrace to the administration of the law to charge a man for an instant with the idea of incontinence or adultery upon the theory of his physical constitution. No matter how fierce and torrid the passions of men may be; no matter what may be the tendencies of their appetites, yet, in a man of high character and high culture, fierce as these temptations may be, goading as these appetites may be, there is nevertheless a God-given power of resistance equal to the force of the temptation. And if Henry Ward Beecher is assailed by any of these forms of constitutional development, or by the overdue strength of any of these appetites, I give him the same credit as I claim for myself, or for you, or any other gentleman, of being able to govern himself according to the power and the grace which is given to men in the ordinary situations of life. I say, judge him as you would judge any other man and in no other wise. You will judge him, you will judge all the characters that have been introduced into this case, by a proper examination of their peculiarities, their characteristics, their tendencies; and when you are asked by either side to impute a certain motive and to trace a certain result from that motive, or to take a certain consequence and reason back to the probable motive, you will look at the particular people to whom the motive is imputed and from whom the act proceeds, and, with your clear and decisive knowledge of the qualities of the act and of the parties, you will form a wise and a just conclusion.

MR. BEECHER'S UTTERANCES ABOUT LOVE.

Well, I have been furnished with some quotations from the writings of Mr. Beecher directed to an expression of his commendable ideas upon the subject of love. I do not see any impropriety in presenting them to your consideration, though for myself I do not reason very strongly from any hypothesis in regard to the speculations or ideas or notions of Mr. Beecher upon that subject. He says: "To love I must have something that I can put my arms around." [Laughter.]

Judge Neilson—Wait a moment, Mr. Beach. Gentlemen, is this to be repeated? If it is we shall adjourn. Please to understand that.

Mr. Beach—Now, gentlemen, what I think is an improper construction is given to that remark of Mr. Beecher. It does not seem to me to bear any vulgar interpretation. I do not suppose that he meant to inculcate the idea that to love he must actually embrace the object. Why, he loves his God and his Savior, and he embraces Him only in a spirit embrace. It is an imaginative, figurative expression, expressing the idea of the closeness of love, the idea that love seeks to cherish and to fondle and embrace. I see nothing bad in that; I agree to it. But it shows that the man has a perfect idea of the emotion. Again, speaking of the occupation of a chair once by a man of eminent and apostolic piety, he says—and it is illustrative of the intense and peculiar mode of expression and feeling belonging to the man—"It would have made my loins tingle to have sat where he did." Well, that is an extreme expression. Very likely it is true that it would have done so. There

is an intensity in some natures, an extravagance of sensibility, an outbreak of feeling—physical, animal feeling—under circumstances which excite the peculiar characteristics of the man, which are unexplainable to those of a more ordinary and less intense and expressive temperament. And this, perhaps, expresses the jovial, jolly, companionable nature of the man, when he says: "There was a time-honored business, handed down to us without a break from the Garden of Eden, of courting and kissing, and that was one of its ordinances." Well, he did n't create any break in the habit. [Laughter.] Then Mr. Beecher says: "There is no religion without passion;" and I think that is true. "Look," he says, "at the objections which are made to our hymn-books. Nearly all of our best hymns were thrown out because they were so amorous." Well, that was a poor objection to them, for the love was directed to a high object; it was spiritual love and spiritual adoration. "One of the delicacies in this world is that when two souls come together and unite with each other, no one has a right to meddle with them. They are to be left alone." What? What? "When two souls come together and unite with each other, *no one* has a right to meddle with them. They are to be left alone." That sounds a little Woodhullish. [Laughter]. There is the essence of free love in it—free love as it is understood, not by popular acceptation, but free love as it is taught by the teachers of that school; free love as Theodore Tilton understands it, and free love as Theodore Tilton is not ashamed to-day to communicate it. Not that gross and sensual idea of free love which teaches the promiscuous intercourse of the sexes; not that free love, or that system of marriage and divorce which inculcates the right of abandonment of children, and the separation of those holy ties, and the rejection of those imperishable duties which grow out of the fact of parentage. That we will talk about hereafter. But, "two souls once united to each other, no one has a right to meddle with. They are to be left alone." Well, Mr. Beecher undoubtedly meant it in its true sense.

Now, gentlemen, you have the nature of this man, you have his habit of thought, you have his tone of expression, you have his style of rhetoric, you see the man in his writings, you estimate him not by the picture that the imaginations of my learned friends draw, but by his own expressions and revelations of character; and with this in your hands and in your minds, you can approach the examination of this evidence understanding that character, and able to judge of the probability of that evidence.

THE EVIDENCE AGAINST MR. TILTON'S CHARACTER.

Another point. I think it is a pitiful consideration to talk about to this jury in a case of this character, but the charge is so remarkable and so unjust, and the subject has been introduced by our friends upon the other side so repeatedly, that I think a suggestion should be made in regard to it. My friend Porter in the opening of his address was pleased to say that one hundred, or one hundred and thirty-five days, whatever it may have been, of your time had been drawn from your business and your ordinary avocations by Mr. Tilton. Well, gentlemen, you cannot but remember the course and the character of the management of this case in the production of evidence on the part of the plaintiff, presenting the documentary proof, giving some evidence in regard to the declarations of Mr. Beecher, and the declarations of Mrs. Tilton, communicated to Mr. Beecher on the subject of this case, and then giving you some proof of some schemes and devices which were resorted to by the parties interested for the purpose of preventing a full and a scandalous development of this difficulty. It was very legitimate proof. It bore directly upon the issue in this case, and for long and weary days and months the answer given to that proof was the incriminating of the character and the conduct of Tilton and Moulton. Witness after witness was produced to show the supposed indecency and dishonorable connections of Mr. Tilton with Mrs. Woodhull. Days and days were occupied in proving that Tilton and Moulton had made declarations inconsistent with their testimony upon the stand; proof which we admitted, facts which Tilton had declared and Moulton had declared in their evidence upon the stand. There was no concealment, no denial of those declarations; they were explained and avoided by the accompanying circumstances. But our friends could not be satisfied; they must be proven in all their detail by the production of the witnesses, honorable and eminent gentlemen, because it was supposed that their production upon the stand, conveying the influence of their character, might produce a more effectual influence upon the jury than the mere admissions of Tilton and Moulton that they had made to those various gentlemen these statements.

And so, the life of Mr. Tilton for years, in his lecture courses, in his associations, in his business efforts, was all traced with the utmost vigilance and particularity, for the purpose of spreading before this jury and community everything that was thought to be unfriendly to his standing as a man and a gentleman. And in these examinations my friends have occupied, as they have occupied in the final discussion of this case, a large proportion of the time of this Court. We submitted to what we considered irrelevant examinations without a murmur. We have never interposed any obstacle to the fullest and the deepest examination of this case. Although we have not unnecessarily or improperly occupied the time of this Court, nor to any extent in comparison with our friends upon the defense, yet we have been ever urgent for opening the

gates of evidence, for unclosing every avenue of thought, for introducing every topic which would lead to the enlightenment of this obscure and interesting question. And we are reproached with it. Well, you can judge, gentlemen, of the merit of that reproach.

MR. BEECHER'S MEMORY COMPARED WITH MR. MOULTON'S

Then, it is said, to the discredit of Mr. Moulton, that he had a very failing and imperfect memory. My learned friend, Mr. Tracy, set the example of having counted the number of instances in which Mr. Moulton, emulative of the jockey of *Non mi ricordo* memory on the trial of Queen Caroline, had answered to their questions "I don't know," or "I don't remember." Well, now, I have been handed this little paper. I said to you when I commenced this line of remark that I did not regard this as a very important consideration to be addressed to the jury in a case like this or in any other case; but some gentlemen in the office of my friend, Judge Morris, in imitation of Mr. Tracy, have examined in the same way the evidence of Mr. Beecher. It was not as long as that of Mr. Moulton, you know; and yet it proves that Mr. Beecher, in the course of his evidence, answered, "I can't recollect," "I don't recollect," or "I can't say," 583 times. [Laughter.] Well, I believe the grand result in the case of Mr. Moulton was some three hundred and over. But, then, in addition to that, there are 245 instances in which Mr. Beecher says, "I think," "I presume," "I suppose," "I don't think;" and then there are 57 instances in which he says distinctly "I don't know;" and the aggregate is 894 to Moulton's 305! Well, gentlemen, it was deemed a sort of an argument against Mr. Moulton, of importance enough to be presented in a written opening, the product of many minds, [laughter], and reproduced in a pamphlet edition of 100,000 copies to be circulated throughout the United States; and if it is of sufficient importance to demand a consideration of that character, I think I shall be justified in presenting to you what would otherwise be a clear triviality; though, when you come to consider the testimony of Mr. Beecher hereafter, when you recall with what precision Mr. Beecher recounted in detail and fullness the conversations and the occurrences at the critical periods of this transaction, and how utterly forgetful and incompetent he was when he came to the detail of the other events and transactions of this defense, this failure and conflict of recollection excites some surprise. There is a fixed and immutable theory of this defense, and able as they are, it does not spring from the advisors of Henry Ward Beecher. It was organized by him; every element of it is shadowed in the statement he made before the Investigating Committee, and in July, 1874, with his large wisdom, with his vast learning and deep penetration and knowledge of human character, Henry Ward Beecher devised the theory of his excuse and defense, and in this trial everything has been bent to conformity with that theory. Mr. Beecher has come into this court-room with a perfect understanding not only of the theory, but of the mode by which it was to be supported by his evidence upon this stand—evidence, I say, by his narration upon the stand, for I do not believe, gentlemen—and I mean to maintain that declaration hereafter—I do not believe that Henry Ward Beecher has given his narrative of this transaction under the solemnity of that obligation which you may have supposed he invoked. Well, we are responsible for the evidence which has been given in regard to what is called the Winsted scandal. I don't know what you think of human nature; I don't know what you think of Theodore Tilton as he has impressed you by his presense, his bearing, and his testimony upon this trial; I don't know what you think of him as you read him through his former life as developed by the parole evidence, and by the productions of his own heart or brain; but if there is a man on this jury, under the evidence in this case, who can believe that Theodore Tilton, whatever he may think of him, seduced and betrayed the young girl, then 17 or 18 years of age, who in reverent admiration desired to hear one of his lectures, and was intrusted to his care by his wife—if there is one man upon this jury or in the whole earth that believes that, I do not envy him his nature or his character, because that judgment must be formed upon the inherent baseness of the man who forms it. There is no evidence to justify it. There is no presumption to uphold it. Everything in the circumstances, in the proof, in the nature of the parties—everything surrounding the whole transaction rejects the impure and the indecent suspicion.

THE ABSENCE OF LOVE LETTERS.

"But," says my friend, Mr. Evarts, "you have not got any love letters here. How do you prove seduction by Henry Ward Beecher of Mrs. Tilton without producing love letters? They," says Mr. Evarts, "are the usual accompaniments of these offenses. Lovers always write love letters." Well, gentlemen, where have you ever found them submitted as evidence in a case of *crim. con.*? Where have you ever found them evidence in a case of that character where the parties were situated under such circumstances that they had free communication and the fullest opportunity for the gratification of their most intense love and desires without any written expression of love? Mr. Beecher was admitted into the freest intimacy of Mr. Tilton's household. Why, it is made a cause of accusation and crimination, almost, against Mr. Tilton, that he invited Mr. Beecher to visit his house; that he and his wife felt honored and elevated by the association and countenance of Mr. Beecher; and my friends speak of it as if that

were a sort of excuse for the wrong Mr. Beecher subsequently did. "Why," says Mr. Evarts, "Mr. Tilton knew what he was. He had heard these charges against his integrity years before," and you see from the letters of Mrs. Tilton that she knew; she knew that there had been rumors against the moral integrity of Henry Ward Beecher, for she writes it in her letters to her husband, and says to her husband, in substance, "Cannot we uplift this degradation of the nature of the man? Can we not be a solace, and a comfort, and a strength to him? Can we not unite in restoring that sacrificed manhood, and, if we can, is it not our duty to do it? And although in our estimation, by his known practices to us, this man has been divested of his moral grandeur, yet he is a great and a good man, and deserves support and countenance." and it was with this knowledge of the man, and with this theory, this perfect comprehension of the character of Henry Ward Beecher, that this intimacy was introduced and occurred, and which forms one of the facts and circumstances which seem to unlock and disclose the mysterious operations of this passion, and the singular and exalted conceptions which both Mr. Beecher and Mr. Tilton indulged in in regard to this course and its effect upon the mutual parties. But why should there be any love letters?

A CHARGE THAT THE TILTON SERVANTS HAVE BEEN HID.

"Oh, you do n't introduce the servants, either." Well, the experience we have had through poor Kate Carey was quite enough, because she has been assailed with a torrent of vituperation—I will scarcely say that—she is set aside at once as a liar and a perjurer without any consideration whatever, and yet you remember the circumstances under which her testimony became known, as described by herself, to this plaintiff, and the circumstances under which she has been produced, to be alluded to hereafter. But, servants! We go to New-Jersey, but we find Mrs. Tilton ahead of us. We go to the various places where the servants scattered from this house can be found, and we find the lady zealots of Plymouth Church ahead of us. No servant is to be got; no servant is to be found. They are in foreign States, beyond our reach, and secluded from our control, and we are reproached with their absence, and when the gentlemen tell us that we do not produce them, I tell them they have hid them, and you can well enough conceive that with this multitude of arms and this myriad of eyes which Mr. Evarts wished for and found, and with those hands and their pockets full of gold, it is the easiest thing in the world to suppress evidence; and we have had no such power and no such influences and no such aids in the marshaling and production of this plaintiff's case, and my friends know it.

THE ASSERTION THAT THE PLAINTIFF HAS NO PROOF.

Well, my friend, Mr. Evarts, says: "You have no proof of circumstances; you have none of those developments — those practical developments which usually accompany a course of intrigue and ultimate sin." Well, that of course dispenses with Kate Carey; that, of course, disposes of all the minute circumstances, perhaps inconsiderable in their separation and individuality, but, collected and concrete, furnish a power of evidence and a strength of conviction which always attends the combination of circumstances testifying all to the same result. This declaration of Mr. Evarts disposes of all of them. Well, "you have got no evidence." Well, the confession of Mrs. Tilton, or the accusation of Mrs. Tilton, whatever you may call it, accepted, acted upon, answered by crushing remorse and despair, by the most pathetic outbursts of regret and penitence upon the part of Mr. Beecher, why, they amount to nothing. There is no evidence. And when we get a letter of apology, breathing all over, in every line and every word, the odor of guilt, fastened upon Mr. Beecher by evidences of authorship and individuality unanswerable, and by oral proof not contradicted by him, "you have got no proof," says Mr. Evarts. When we produce evidence of improper proximity; of circumstances which indicate improper association; when we find Mr. Beecher, by uncontradicted evidence, in the house of Theodore Tilton in his absence, secluded in the parlor of that house in dangerous proximity, with confessed love, with free opportunity and the woman blushing, and scarlet and red as the woman described by Hawthorne, "you have got no evidence, nothing upon which a jury can act. Confessions are nothing. The law won't listen to confessions. The sanctity and the honor of the family and household cannot be sacrificed upon confessions, and there is no proof in this case. There is nothing upon which a jury can deliberate. We were all wrong, all wrong in entering upon our defense, and spending 13 days in maintaining it. We ought to have dismissed this case when the plaintiff's evidence was concluded." Well, of course it is necessary for me to examine all these branches of evidence, to test by authority the notions of my learned friend in regard to the power of the different species of proof which we have introduced, to examine, to detect, to criticise these documents in the light of experience, and taught by our knowledge of human nature, and judging them by the greatness and the skill of their author, and see whether there is nothing to be found in all these accumulated varieties of proof which shall not only justify you in an examination of this case, but demand from you a verdict in favor of their verity.

Mr. Porter—If your Honor please, my friend now pro-

poses to enter upon another branch of the argument, and perhaps it would be convenient to take an adjournment now.

Judge Neilson—Mr. Beach, would it be agreeable to you to adjourn now?

Mr. Beach—If your Honor please, Sir. It is quite immaterial to me; I am quite ready to go on.

The Court thereupon adjourned until Friday at 11 o'clock.

102D DAY'S PROCEEDINGS.

CONTINUATION OF MR. BEACH'S ARGUMENT.

THE DAY LARGELY DEVOTED TO REPLIES TO POINTS MADE BY JUDGE PORTER AND MR. EVARTS—AN EXCITED COLLOQUY WITH JUDGE PORTER CONCERNING THE TREATMENT OF THE CHARGE OF IMPROPER PROPOSALS—THE INTERVIEW OF DEC. 30 CONSIDERED—MR. BOWEN'S RELATIONS TO THE CASE REVIEWED—AN APPEAL TO THE JURY FOR CONSIDERATE ATTENTION AND IMPARTIAL JUDGMENT—ENERGY OF MR. BEACH—CONTINUED INTEREST IN THE SUMMING UP.

FRIDAY, June 11, 1875.

The address of the senior counsel for Mr. Tilton continues to attract a large share of public attention. Ever since he began to speak, the court-room has been crowded with people, and the corridors leading to it have been rendered almost impassable by the throngs that could not get admission to the court-room. The "Plymouth party" has been, in a measure, a distinct portion of the audience ever since the trial began, but only since Mr. Beach opened his argument has there been a so-called "Tilton party." Now, however, a habit has grown up among reporters and others of calling those who sit near the plaintiff and his counsel by that name, and the number of visitors who, merely by their proximity to Mr. Tilton and his lawyers, come under this designation has been very much increased within the last three days.

The tendency to applaud the orator was as marked to-day as at any previous time, notwithstanding the grave rebukes which Judge Neilson has several times administered to the offenders against good order. When Mr. Beach came in there was, as usual, a loud clapping of hands, and the same demonstration greeted the appearance of Mr. Pryor, who was present, during the morning session, for the first time since the taking of testimony was closed.

Mr. Beecher appeared in court only during the morning session, staying away in the afternoon, as he has done ever since the summing up for the plaintiff began. Mrs. Beecher, however, is always present, and apparently attentive to every word that the orator utters.

Mr. Tilton's demeanor is unchanged. He sits further back among the spectators than he formerly did, and seems to have surrendered his work of searching evidence and supplying references to Mr. Fullerton.

Mr. Beach was somewhat hoarse to-day, and he evidently felt the heat severely. Some portions of his address were delivered with a vigor and energy of voice and gesture that caused the perspiration to stream from his face, while they aroused the liveliest interest in the audience. Once in a severe and earnest tone he addressed the jury—seemingly intending the larger part of his remarks to apply to the foreman, Mr. Carpenter—in terms of reproach, because he had perceived what he considered an incredulous smile on the lips of one or more of them at some of his statements. He asserted his claim on the respect and attention of the jurymen. These remarks of Mr. Beach to the members of the jury, when considered together with those which he addressed to them on Wednesday, excited a good deal of comment, and there was much speculation as to the motive which the orator had in making them.

Near the close of the afternoon session occurred a curious scene, which excited the audience to the highest degree, both of enthusiasm and astonishment. The orator made some assertions about the manner in which the defendant's counsel had treated the charge of improper proposals against Mr. Beecher. Judge Porter, understanding the assertion to be that that charge had been admitted by them, arose and interrupted Mr. Beach, asserting that it was not true that the charge had been admitted. A burst of applause followed this interruption. Mr. Beach excitedly replied that the chords of 30 years of friendship between himself and Judge Porter would not admit a charge of falsehood in open court. This reply received another demonstration of applause, and the aroused audience and the jurymen looked on in surprise, while the two lawyers continued to address each other in an excited manner. Finally, Judge Neilson succeeded in quieting the storm by pointing out what he conceived to be the cause of the misunderstanding, that Judge Porter thought Mr. Beach meant that the charge of improper solicitations had been admitted,

whereas his real meaning was that it had not been denied by the defendant's counsel. Mr. Beach said that he did not mean that it had been admitted, and after some further remarks resumed his argument.

PROMINENT PARTS OF MR. BEACH'S ARGUMENT.

The argument to-day covered a great variety of topics, but it was of the nature of a defense against the arguments and accusations of the defendant's counsel. The affirmative presentation of the plaintiff's case appears to have not yet been reached. Mr. Moulton's conduct was first defended by the orator, and the subject of the proposal to burn the papers was discussed. The Bowen award, and the testimony of Mr. Bowen, were considered. Referring to Mr. Bowen's appearance as a witness, Mr. Beach said, "He is no friend of ours; he was not called as a friend of ours."

At this point Mr. Beach made one of the most fully appreciated oratorical hits of the day's address. Speaking of Mr. Bowen's testimony, he exclaimed, amid a burst of merriment, in which Mr. Evarts joined, "If he could have contradicted Theodore Tilton's relation, oh! how that Latin maxim would have rolled from his mouth" (indicating Mr. Evarts), "Falsus in uno falsus in omnibus."

Again referring to Mr. Evarts having said that Mr. Beecher's guilt would be a miracle, the orator related a laughable story about an Irishman in illustration of the meaning of a miracle, concluding with a personal application to the senior counsel for the defendant, which set the audience and the jurymen laughing heartily.

The interview of Dec. 30 and the alleged confession of Mrs. Tilton, which was destroyed, were also brought under consideration. Mrs. Tilton's letter, Mr. Beach said, was not a confession, for she had confessed six months before. Various other points of the summing up for the defense were replied to. One of the arguments, used by the orator, which attracted unusual attention and comment, was in reference to peculiar doctrines about sin advanced by *Master Tompkins* in Scott's novel of "Woodstock." These doctrines were asserted to contain the very sentiment attributed to Henry Ward Beecher, as having been used to corrupt the virtue of Mrs. Tilton.

Mr. Evarts's remark about the manner in which a verdict against Mr. Beecher would be received in England called from the orator a reply full of oratorical force, which was greeted with applause. Some remarks about Mr. Evarts having too much respect for English opinion, and about the time he had spent at Geneva and Paris, attracted attention and caused remark.

The Court adjourned until Monday morning at 11 o'clock.

THE PROCEEDINGS—VERBATIM.

THE REQUEST TO BURN THE PAPERS.

The Court opened at 11 o'clock, and Mr. Beach resumed his argument as follows:

Mr. Beach—Very much time and a very large degree of indignation was expended upon the theory that Mr. Moulton had been guilty of dishonorable and faithless conduct in his failure to burn the papers relating to this scandal, as it was assumed that that was one of the conditions of the award made by the arbitrators, to which Mr. Tilton and Mr. Moulton assented. But the foundations of the especial comments, severe and reprehensible, upon the part of Mr. Evarts, was the testimony of Mr. Storrs relating a conversation some ten days subsequent to the arbitration and award. It is my duty, gentlemen, to draw your attention to that topic. Mr. Storrs says that Mr. Moulton, in the conversation of which he spoke,

Said that Sam Wilkeson, as he called him, had either seen him or written to him, and requested him particularly to burn Mr. Beecher's "apology" and the papers, and Mr. Moulton said: "Oh, yes; I have burned the papers," and laughed; and he says, "Mr. Beecher thinks I have." Then he remarked: "If Sam Wilkeson thinks I have burned all these papers, he is mistaken. What would Theodore do in case of trouble?"

Mr. Evarts—"With his trouble," I think it is.

Mr. Beach—I believe I can read, Sir, with the print before me.

Mr. Evarts—I beg your pardon.

Mr. Beach—He says again, on cross-examination:

Well, this was the conversation, as I said. It commenced about the tripartite settlement, as far as I now remember. I had not any talk with him before, and I was telling him that Mr. Bowen felt that we brought in too large a sum, and that his sons felt aggrieved, and then Mr. Moulton during this conversation—Mr. Moulton said that Sam Wilkeson had either seen him or written him—I wouldn't be positive which—that Sam Wilkeson had seen him, or written him, that he wanted me to burn—to be sure to burn Mr. Beecher's apology and all the papers, and Mr. Moulton says: "Of course," says he, "I have burned all the papers," and laughed; and he says, "Mr. Beecher thinks I have;" and then he says, "If Sam Wilkeson thinks I have burned all the papers, he is mistaken. What would Theodore do with his trouble?"

I then handed to Mr. Storrs the letter of Mr. Wilkeson—he, as you perceive, representing that Moulton stated that this request to burn the papers had come from Mr. Sam Wilkeson; and there is no intimation in this conversation on the part of Mr. Moulton or Mr. Storrs that the duty of burning the papers, or that the request to burn

the papers was connected with, or arose in any degree out of the arbitration and award. Mr. Storrs does not here pretend that the conversation had any connection with the arbitration and award, but says that it arose out of the Tripartite Agreement, with which, as you remember, Mr. Samuel Wilkeson was intimately connected, he having no connection whatever with the arbitration and award, and Mr. Wilkeson, after the Tripartite Agreement had been executed, and that act of composure and friendliness had been completed as between the parties, then addresses this letter to Mr. Moulton, which I read you:

MY DEAR MOULTON: Now for the closing act of justice and duty.

Let Theodore pass into your hands the written apology which he holds for the improper advances, and do you pass it into the flames of the friendly fire in your room of Reconciliation.

Then let Theodore talk to Oliver Johnson.

I hear that he and Carpenter, the artist, have made this whole affair the subject of conversation in the clubs.

Sincerely yours, SAMUEL WILKESON.

Now, two things result from that letter—first, that it did not originate from the arbitration and the award, and second that there was no request or demand, or intimation that it was the duty of Mr. Moulton to burn all the papers. It was confined to the "Letter of Apology," the so-called "Letter of Contrition." Well, when I handed that letter to Mr. Storrs, and when he repeated the conversation, that Mr. Moulton attributed the request to burn the papers to the letter of Mr. Wilkeson arising out of the Tripartite Covenant, he was, of course, somewhat confounded. And it is perfectly evident, gentlemen, that Mr. Storrs, in the relation of this conversation, was wholly mistaken in the allusion which was made by Mr. Moulton to the papers.

You will remember the lessons which our learned friends have given to us in regard to the fallible nature of evidence as to conversations, confessions. My learned friend, Mr. Porter, read us a very able, instructive, and truthful essay upon that subject, in every word of which I concur. It is one of the most difficult efforts of the human memory to recall and repeat a conversation, and it is, I admit, a hazardous species of evidence, to be scrutinized and criticised and taken with proper degrees of allowance; and I am quite content that that rule of law should be applied to the evidence on the part of the plaintiff, but I insist that the same application should be made of it to the evidence upon the part of the defense.

Another thing is obvious from this letter, that there was no assertion upon the part of Mr. Wilkeson—there never has been a pretense so far as this evidence is concerned, of any demand or suggestion to Mr. Tilton or Mr. Moulton that the papers, or any paper connected with this transaction, was to be burned, founded upon any idea either of an express agreement to do it or of any obligation arising out of any proceedings before arbitrators or otherwise. Mr. Wilkeson had just completed that act of amnesty and conciliation, the "Tripartite Covenant," and then he appeals to Moulton, or to Tilton through Moulton, as an act of clemency and of duty under the circumstances, to burn the apology, and nothing else. What if there had been, gentlemen, such a promise upon the part of Mr. Moulton? Suppose in the exuberance of friendly feeling which controlled and followed the "Tripartite Covenant," Tilton and Moulton had said that they would burn all the papers connected with this scandal; that, after reflection, considering the possibilities of the future, there being no imperative obligation assumed, there being no duty by any authority imposed upon these parties to burn the papers, there never having come from Mr. Beecher a single request, or intimation, that he desired any papers to be burned, what if they had changed their purpose, and determined to preserve these documents to meet any possible exigency that might arise in the future? I do not see any particular dishonor in it. I do not see why Mr. Moulton should be excoriated as a faithless and treacherous man, either to his word or to his duty, and I see no obligation on the part of Mr. Moulton acting as the friend of both these parties, the custodian of the papers belonging to each, and the representative of the interests of each. I see no obligation upon the part of Mr. Moulton to follow the requests or pursue the line of duty or of obligation suggested by Mr. Samuel Wilkeson, and without any concurrence upon the part of Mr. Beecher, without any request upon the part of Mr. Tilton or of Mr. Beecher to burn papers which were intrusted to his custody and confidence. What has it to do with this case, gentlemen? We have spent days in the consideration of this question. How does it throw any light upon the real intrinsic issue of this case? The papers are here. They are unchanged; they are unmutilated; they speak for themselves in the same language of truth as if this agreement (if there were any agreement) did not exist. The fact that Mr. Moulton or Mr. Tilton may have pledged themselves to their destruction does not reflect any light upon the construction of these papers or change a syllable or the significance of a single word. And what has all this denunciation and all this waste of time and ingenuity over this question of propriety or honor to do with the examination or decision of this case? And in this way, throughout the whole of this trial, upon the part of the defense, we have been led into side and collateral issues, the only effect of which has been to embarrass our minds and our consideration of this case, and to cover up the true question which is to be presented for your deliberations and decision. Well, my friends say it reflects upon the integrity of Mr. Moulton; it destroys his credibility as a witness. A party to no proceeding, disconnected in interest with the arbitration, entering into no obligation to destroy these papers, although requested

to do so by Mr. Wilkeson, without any promise to that effect, and although believing that Mr. Beecher supposed the papers were to be, or were, burned, this gentleman yet preserves them, and what obligation or duty has he violated? What pledge has he assumed or broken? And why is he vilified, because, with a view to the whole relations of these parties and the possible conditions of this scandal, then bruited about the country as a matter of gossip, within this city and abroad—what if he did determine to preserve them? I repeat again it is no reflection upon his character for sincerity or honor. "Ah! but," says the gentleman. "Mr. Moulton indulged in the exclamation: 'What will Theodore do in case of trouble?' or 'What will Theodore do with his trouble?'"

MR. BEECHER'S AFFAIRS NOT BROUGHT BEFORE THE ARBITRATORS.

Each of these expressions is accurate. The preference of my learned friend seems to tend to the latter. What trouble was there then? The affairs with Mr. Bowen had just at that instant been concluded, the arbitration had been held, and the award had been made. All the difficulties with Mr. Bowen were composed; Tilton had received his $7,000, putting him in comparatively easy circumstances and relieving him from all his pecuniary distress and difficulties. He was then prosecuting the enterprise of *The Golden Age*. What was the trouble to which Mr. Moulton alluded, and in reference to which these papers might perhaps be useful? The gentleman has not told us that. Is there anything in this evidence indicating any circumstances of difficulty, any possible trouble which was apprehended by Mrs. Moulton except that growing out of this very scandal which we are now investigating? And Mr. Moulton, standing in the attitude in which he is represented by the evidence, and which is conceded in anticipation, notwithstanding the arbitration and award, notwithstanding the "Tripartite Covenant," knowing all the surrounding circumstances and the knowledge which others possessed of this scandal, Mr. Moulton under these circumstances says: "These papers ought not to be, and shall not be, destroyed unless both parties request their destruction. This is a pernicious and a babbling secret. It never has been still. It never will be at rest. It is a secret confided to too many mouths; it is a secret reaching too many interests; it is a secret of too grave and troublous character to be trusted to the hazard of examination hereafter, except upon the truthful records and the evidences in these documents which I possess and hold as the representatives of these parties, and I will hold them."

Now, it is to my mind of very considerable significance, gentlemen. It has been said all along by our learned friends that Mr. Tilton was worried and excited and spurred by his necessities and his difficulties with Bowen. He had fallen from a high position; his resources had been reduced; he was in perplexity and want. *The Golden Age* was embarrassed and a failure, and he was irritable and restless and forever stirring the hot embers of this scandal. Why, all these things had then been pacified and silenced. There was no more trouble, I repeat, with Bowen: there was no more irritation from business difficulties; there were none of those perplexities arising from a straitened income and resources. The man was relieved and at last stood erect, able to pursue his enterprise without any embarrassment or fear. What was the trouble which then disturbed the mind of Moulton, and in view of which he determined to preserve these evidences bearing significantly upon it, whatever it was? It was this difficulty with Beecher. It was this secret in regard to Beecher. And it was in view of that that he came to this determination and acted in the manner he did. And yet the gentlemen would have us believe by the testimony of these arbitrators that all this between Mr. Beecher and Mr. Tilton had been composed by submission to these gentlemen, and by their award. It seems to me one of the boldest and most astounding propositions connected with this case that the difficulties between Mr. Tilton and Mr. Beecher formed a portion of the subject matter of that arbitration. The submission to arbitration is produced. Mr. Bowen testifies; Mr. Tilton testifies; Mr. Moulton testifies; the written record, so far as there was any record—there being no written award—the written record is produced. It shows what was submitted. A suit had been commenced by Mr. Tilton against Bowen; the friends of the parties interpose, an arbitration is agreed upon, a written submission is made, a meeting is had before the arbitrators, the parties relate their differences and claims, an award is made of a money verdict, it is paid on the instant and the matter is closed. And, now, when a difficulty arises between Mr. Beecher and Mr. Tilton, it is pretended that that difficulty was submitted to this arbitration! Where was Mr. Beecher? Who represented him? Who presented his defense? Why was Tilton silent? Or was there no representation of his claims and his complaint as against Mr. Beecher before these arbitrators? Why, can a right of action and a cause of complaint, by the mere will of arbitrators chosen for another purpose, without any appearance of the parties, or any submission of the cause of difficulty, be disposed of as to the rights of parties? The testimony upon all sides by the arbitrators is that the only matter discussed by the only parties appearing before the arbitrators was in relation to the claim of Mr. Tilton against Mr. Bowen. No allusion to Mr. Beecher, he having no connection with that affair. And the arbitrators say that in their consultations something concerning this difficulty was suggested as between themselves; that it ought to be settled; and Mr. Storrs tells you that after the award was an-

nounced, and not till some time after that, it was then said that the papers relating to this scandal ought to be burned. Well, the gentlemen, arbitrators, were members of Plymouth Church. They were the ardent and devoted friends of Henry Ward Beecher, then and to-day, and it may very well be that they felt a great anxiety to end these difficulties, and they judged wisely in my opinion. They ought to have been composed then; they ought to have been composed before. There ought to have been quiet in the ranks of Plymouth Church, and the friends of Plymouth Church and the friends of that arbitration were the persons who felt most keenly and most sensibly the necessity of composing this difficulty. Day after day it was fermenting in the midst of their membership, creating distraction and contention, and disturbing the comfort and peace, not only of the pastor, but the congregation, and it may well have been a subject constantly pressing upon their thoughts and their anxieties, and very likely when considering this question as between Bowen and Tilton, these suggestions passed as between themselves, and that suggestion in regard to the burning of the papers, after the announcement of the award, may very likely have been made by them. But the point is, gentlemen, was there any submission of this difficulty, any of that formal and solemn appearance before a *quasi* judicial tribunal which should conclude parties and bind them to the conditions of the award? Well, why didn't my learned friends interpose it as a bar?

We have had no plea of that kind—no such defense in these pleadings; and my learned friends have not had the boldness of arguing that that arbitration and award was an estoppel upon this right of action. But if it were submitted; if there was any authority upon the part of that arbitration to pass upon the interests and control the rights of Henry Ward Beecher or Theodore Tilton, and to make an award that those papers should be burned, or that the difficulties as between those two parties should be held settled and satisfied by that arbitration, why don't my friends present that as a bar and an estoppel upon this prosecution, as it would have been had any such circumstances occurred? Well, I asked Mr. Storrs questions for the purpose of showing that in the determination which these arbitrators advanced no consideration whatever of the claims or the rights, as between Mr. Tilton and Mr. Beecher, were considered by them.

Mr. Storrs, was this $7,000 awarded by you to Mr. Tilton, in your judgment and to your conscience, a just and a true amount due to him? Yes.

Mr. Tilton, through all this difficulty, had been insisting that Mr. Beecher had been guilty of an offense toward him. Mr. Beecher himself had confessed it. I mean, not now, by the general evidence, to which I shall allude hereafter, to prove the truth of this accusation; but in his statement to his own packed Committee he admitted an offense. Theodore Tilton had been denounced throughout the whole length and breadth of this land as the calumniator of Henry Ward Beecher. Everywhere he had been denounced as the assailant of the proudest pastor of the greatest pulpit of the land. And, did Theodore Tilton submit to those arbitrators this question affecting his integrity and honor and fame without claiming a single word of justification in the award; without, at least, demanding that the offense to which Henry Ward Beecher confessed, however limited it may be, and whatever may have been its character, should have been declared by these arbitrators, that he might hold it up as his justification against these foul and destructive assaults upon his honor and fame? Why, gentlemen, it seems to me one of the most preposterous proposals that could be advanced, and it is only done for the purpose of reviling and calumniating a gentleman who, up to that day, stood unchallenged and unrebuked by Mr. Beecher, or by any friend of Mr. Beecher, as the most honorable and truest friend sent by the express providence of God, as Mr. Beecher says, for his protection and defense. Then there was no suspicion of Mr. Moulton. Then there were no degrading accusations against Mr. Moulton. Then there were no revilings and mutterings from Plymouth Church. Moulton was then the staff upon which Beecher leaned, and leaned with entire confidence and trust. There was not an act performed by Mr. Beecher at that period with reference to any of the complications which surrounded him (and there were many involving him in difficulty); he could not even receive a letter from Victoria Woodhull without sending to Moulton to know whether he should answer it, and how he should answer it. And in every step in all his perplexities Moulton was the man to whom he resorted, and in whom he trusted. Gentlemen, why all this uproar about the non-destruction of papers? When one is destroyed, why, there is a clamorous outcry; and when they are kept there are ferocious complaints. If those papers reveal any wrong, if they are consistent with the interest and the integrity of Mr. Beecher, if the theory and the construction of my learned friends are all correct and sound, what is the cause of this disturbance? Why do my learned friends complain that we have kept other papers, their own writing, and produced them when they wanted them for use? The papers, gentlemen, do not disturb them if their contents are so frivolous and so easily reconciled with the integrity and the innocence of Mr. Beecher. What is the trouble, gentlemen? Take your paper; be judged by this. Construe your own writings; and if they acquit you, why, bless God and thank us that they were preserved. [Applause.] The difficulty is, gentlemen, that these papers are full of a deep significance which disturb the conscience and excite the fears of their author and his advocates. They cannot be satisfied that they are kept, that they speak loud-mouthed with a clear and unerring voice of truth upon the subject of this scandal.

MR. BOWEN'S CONNECTION WITH THE CASE.

I do not think I am called upon in this case to enter upon any defense of Henry C. Bowen. I know if the testimony of Mr. Tilton is true, and I think I will satisfy you by-and-by that it is veracious—I know that Mr. Bowen acted an unfriendly part, to say the least, toward Mr. Tilton. I know that when he refused to both sides, both our learned friends and ourselves, all information in regard to the facts within his knowledge, all revelation as regards the testimony he would give upon this stand, that we called him as a witness, and that relation usually imposes upon a lawyer an honorable duty of protection, so far as protection is justice. He was called, gentlemen, as you well know, in answer to a demand. You felt the propriety and necessity of hearing from Henry C. Bowen what he had to say upon this subject. Theodore Tilton had sworn that on the 26th of December Henry C. Bowen had revealed to him disgraceful charges against Mr. Beecher. It is not necessary to repeat the details of those charges. They were of such a grave and serious character, according to Mr. Tilton, as to lead Henry C. Bowen to say that he was unfit to hold his exalted position as a pastor and instructor in the truth. They were sufficient to authorize Henry C. Bowen, in his judgment, to say that the promulgation of those charges would drive Mr. Beecher from his pulpit and from Brooklyn in twelve days.

Mr. Evarts—Twelve hours.

Mr. Beach—Twelve hours. Mr. Tilton then gives a partial revelation of his own difficulties with Mr. Beecher. Mr. Bowen says to him in the Spring of this year: "Mr. Beecher and myself settled our business difficulties, and I cannot well be the principal in any accusation against him. But you, Tilton, write a demand upon Mr. Beecher for his resignation of his pastoral charge and his departure from the City of Brooklyn and I will support you in the charge. It is not necessary to specify the causes in the demand. Say to Mr. Beecher, 'for reasons which you explicitly understand,' the demand is made. I will furnish the evidence; I will support you in the accusation; I will justify you in this imperious and insolent demand upon this preacher in the largest—to the largest congregation and in the greatest pulpit of the country." Mr. Tilton does it. And why he did it and why he withdrew from it hereafter I shall submit to you. But he does it, and he sends that demand by the hands of his coadjutor and principal in the name and upon the authority of whom he is acting. He bears it, and then is found—according to the testimony of Mr. Beecher and himself—then is found coöperating and confederating with Mr. Beecher. And Mr. Tilton, under those circumstances, is left betrayed and forsaken by the man who had stimulated the charge, undertaken to furnish evidence, and we have no explanations of the reasons or circumstances which lead to that sudden confederacy. Mr. Bowen is on the stand; my friends do not ask him whether Theodore Tilton's relation of the proceedings between him and Mr. Bowen of the 26th of December were truthfully told by Mr. Tilton. My friends did not ask Mr. Bowen whether or not on the 26th of December he did tell Theodore Tilton to present this demand and he would back him up in it. My friends did not ask him to tell you how and why, if he did this, if in the name of truth and morality and upon the evidence he held in his own hands, he had undertaken to pronounce Henry Ward Beecher an unfit occupant of the sacred pulpit—they don't ask him how he came to change his views and purpose, and to betray the ally who on the 26th of December he had taken to his confidence and trust. My friend (Mr. Evarts) smiles ironically. I would be happy to give him an opportunity now to explain why he did 'nt ask these questions of Mr. Bowen. We could not do it, and he knew it. We could not ask as to a conversation between Mr. Tilton and Mr. Bowen, but that gentleman had the whole range of the inquiry, and if he could have contradicted the relation of Theodore Tilton, oh! how the Latin maxim would have rolled from his mouth, *Falsus in uno falsus in omnibus.* [Laughter.] There would have been then a contradiction upon some material point, something which touched the heart and the merits of this controversy, and not a fighting about the outskirts and skirmishing among the patrols of this conflict. The gentleman then would have come to the citadel in this case. He dare not, he has not advanced to it. It is a somewhat significant confession, and I will show you by and by, when we come to that "Tripartite Covenant," how it is and why it is that upon the documentary evidence of this case Theodore Tilton stands so exalted and truthful and supported that my friend dare not assail him in any essential point of his evidence except by Henry Ward Beecher and Bessie Turner. But when we get an apparently truthful and independent man, a man who, from his position, is adverse to Mr. Tilton—because not even in the speeches of my learned friends is there so severe a philippic, so unsparing and crushing a denunciation, as stands in this evidence, uttered in writing by Theodore Tilton, upon Henry C. Bowen. He is no friend of ours. He was not called as a friend of ours. He was called upon the same principle and with the same motives as have induced the management of the case of this plaintiff, as I asserted before, to open every avenue of proof, to present every possible witness whom we could control, who, from his relation to this transaction or to Plymouth Church could give any light upon this extraordinary and world-wide controversy.

MR. TILTON'S VERSION OF THE INTERVIEW OF DEC. 30.

But Mr. Evarts proceeded to comment upon the relation by Mr. Tilton to Mr. Beecher in their first interview on the 30th of December, of the alleged confes-

sion of his wife; and my friend then indulged in a most extraordinary vein of exultation. Oh, he knew! he knew he had Theodore Tilton then. You will never forget the unction with which my learned friend made that declaration, as if he held the destinies of this case and of all this earth in his hand. "I knew I had him then," says the counsel. "I did not interrupt his narration; I did not try to change a word of what he said. It was so absurd, so improbable, so contrary to the law of nature," that it was one of those miracles the counsel spoke of. And, by the way, an Irish friend of mine insists that Mr. Evarts and *Punch* are plagiarists upon Irish humor and wit; that long before *Punch* thought of it or Mr. Evarts adopted it there was a better illustration in Irish history of the definition and character of a miracle. I never could tell a story, gentlemen; I shall probably break down before I get through with it; but I have faith in my informant—a gentleman who favors us with his presence very often here, and enlivens us with his witticisms in the course of this trial. His story is that an Irish priest was delivering a sermon upon the subject of miracles, and giving a definition of a miracle entirely satisfactory to himself, as I suppose; but one of his rustic hearers was a little confused and uncertain about it; the definition was too learned, it was not practical enough, he did not understand it; and therefore at the end of the services, at the door, he addresses the priest and says: "Your Rivirence, I didn't quite understand your definition of a miracle and your explanation of a miracle; won't you make it a little more plain and satisfactory to me?" "Oh, yes, Pat," says the priest; "turn around." And there was a spasmodic lengthy effort of the external muscles of the lower limbs of the priest, which disturbed somewhat the perpendicularity of Pat. But he got together and started out; and the priest said to him: "Well, Pat, did that hurt you?" "Oh, yes, your Rivirence; it hurt me badly." "Well," said he, "Pat, if it had n't, it would have been a miracle, and now you know what a miracle is." And if my learned friend (turning to Mr. Evarts) has any uncertainty upon that subject, if he will submit to a practical illustration, I will promise that he will have a more forcible idea of a miracle than he ever had before. Now, you see you must remember, because Mr. Evarts must be consistent in his argument—you must remember that Mr. Tilton is a stilted rhetorician, a vainglorious, lofty, famous utterer of big words. He must do everything with a strut and a ceremony; every word must be rolled out with the utmost dignity. That is the man who is talking, and we must know about him to see how reasonable and truthful the story is that he tells. That is what Mr. Evarts says about him.

Well, Mr. Evarts says this is a most astonishing relation. Mr. Tilton, fresh from the discovery of the seduction of his wife, just learning of the commission of this adultery, raging and terrible, for he quotes the Scriptures and says, "Jealousy is the rage of man," repeating the confession or the statement of a woman reeking with the stains of adultery, why he delivers that formal and set address to Mr. Beecher. Well, it would have been astonishing, even giving to Mr. Tilton the character he is represented to possess, of a hasty and formal and ceremonious talker—it would have been astonishing, but when was it? It was on the 30th of December. The confession of his wife had been made in July previous. It was that confession he was relating. For six months he had stayed his hand, and bound his impulses by the strong motive and constraint that pressed upon his heart and his conscience. He came to that interview with Mr. Beecher restrained, manacled, bound, and with the stormy rage of a wronged man burning within him; he was yet under the promise and the pledge to talk to this man in terms of friendship; he was sent by his wife for that purpose; she had learned of this demand; she had learned of the combination which had been formed between Mr. Tilton and Mr. Bowen for the persecution of Mr. Beecher, if you call it persecution. She was alarmed and anxious; she entreated her husband; pressed upon his conscience the promise he made at the time her confession in July had been given. And that woman who, Mr. Moulton said to Mr. Beecher, could turn this strong and robust and proud man with a wave of her finger, or a lisp of her voice, that man was submissive. He yielded to the entreaties of that wife whom he still loved and adored. He did go to Mr. Beecher, and do you suppose that upon that occasion, for the first time since the confession of his wife had been made, seen face to face by Theodore Tilton—at the first interview between the seducer and the wronged husband under the chains and manacles of affection and reserve, and holding the impulses of his nature in strong constraint and control—do you suppose that he spoke in the composed and the natural language of the conversationalist, or the rhetorician, and is he to be judged by such a standard? Do you not perceive that every word that Theodore Tilton uttered upon that occasion must have been a word struggling through impetuous feeling and passion, and that the man was holding himself with a tight rein from an outburst which would have been perfectly natural under the circumstances? Well, look at the narrative. Speaking of Mr. Beecher—I suppose I should commence the interview—Mr. Tilton begins the relation by saying:

The conversation that took place I cannot undertake to repeat accurately, that is to say I will not attempt to give the words, except at certain points, because what was said was mostly said by me, and I have no special gift at recalling words. I can better recall what he said than what I said. I began, as I remember, somewhat in this way—I think I am entirely accurate as to the first words spoken, and they were these. I said: "I presume, Sir, that you received from me a few days ago, through Mr. Bowen, a letter demanding your retirement from your pulpit and from the City of Brooklyn." He said, "I did."

I then said to him, "I have called you here to-night in order to say to you that you may consider that letter unwritten—unsent—blotted out—no longer in existence." He then said to me, bowing his head, "I thank you." I replied to that, "Your thanks should not go to me, but to Elizabeth. It is in her behalf that I hold this interview, and whatever I shall say here, or in consequence of this meeting, is not for your sake, nor for my sake, but for her sake." I then asked him whether Mr. Moulton had shown to him a statement which Elizabeth had written.

Now, Mr. Evarts says he never interposes any objection, or attempts to change any narration, but he here says:

Now, if your Honor please, I interpose an objection, that on the witness's own statement, this was an interview held in the confidence of the wife, and in her behalf, and he cannot avoid it.

Mr. Shearman—He cannot "reveal" the statement.

Mr. Beach—Yes. Well, that was overruled and Mr. Evarts took an exception, although he was delighted, —you perceive, according to his argument, with the whole conversation.

Mr. Evarts—I have not heard it.

Mr. Beach—Oh, yes, you heard some of it. [Reading:]

He said to me that Mr. Moulton had shown him no statement. I then said: "Do you not then understand the object of this interview?" "I do," said he, "in general terms." I then replied: "You should understand it more specifically. I will read to you a statement which Elizabeth has made. Mr. Moulton has the original; I have a copy; I will read to you the copy." I then put my hand into my pocket, took out some papers, and while searching for the copy which I had made of Mrs. Tilton's paper, he said to me: "Before reading that, Theodore, I wish you would tell me what Mr. Bowen has been saying against me." I replied to him that I had not summoned him to the interview for the purpose of discussing with him Mr. Bowen's affairs, but that he should go to Mr. Bowen himself. Nevertheless, as he asked me the question, I would say that Mr. Bowen, in an interview with me on the preceding day, had made the statement that "you have been guilty of adulteries with numerous members of your congregation ever since your Indianapolis pastorate, all down through these 25 years; that you are not a safe man to dwell in a Christian community; that he knows numerous cases where you have shipwrecked the happiness of Christian homes; that he is determined you shall no longer edit *The Christian Union;* that you shall no longer speak in Plymouth Church, and he says distinctly that you are a wolf in the fold, and that you should be extirpated! Mr. Beecher said it was a matter of amazement to him that Mr. Bowen should have so spoken. "For," he said, "when Mr. Bowen delivered to me your letter demanding my retirement from the pulpit, he appeared to be friendly, and he offered me his friendly services in the matter." I then said to him that I had joined with Mr. Bowen at the beginning of the week in making that demand upon him to retire; that I had written that letter at Mr. Bowen's suggestion; that Mr. Bowen had requested that such a letter should be written, and had said that the reason why he could not write it himself was that in the preceding February—that is, February, 1870—he (Bowen) had had a reconciliation with Mr. Beecher, and that Mr. Beecher had begged his pardon and had bent himself on the floor and wept, and Mr. Bowen had freely granted him forgiveness for the crimes which he had committed, and that Mr. Bowen said in view of having granted that forgiveness he could not initiate proceedings against Mr. Beecher, but that if I would initiate them by sending such a challenge, he [Bowen] would sustain that demand, and in the interest of morality and religion expel Mr. Beecher from his pulpit and from the city. That he furthermore had said that he [Bowen] had it in his power at any time to drive Mr. Beecher out of Brooklyn within twelve hours. Mr. Beecher again spoke of his astonishment that Mr. Bowen should have said such things to him or to me on Monday, and then have expressed himself in a friendly way, as Mr. Beecher described it, on the occasion of delivering him the letter. I then told Mr. Beecher that after I had had this interview with Mr. Bowen I had narrated the substance of it to my wife; that my wife was ill, and that this intelligence filled her with profound distress, and that she had instantly said to me that it was a violation of my pledge and promise to her, made in the preceding Summer, that I would never do the Rev. Henry Ward Beecher any harm, or ever assist in any exposure of his secret to the public. She said to me: "If Mr. Bowen makes a war upon Mr. Beecher, and if you [that is myself] join in it, and if Mr. Beecher retires from his pulpit, as he must under such an attack, everybody will, sooner or later, know the reason why, and that," said she to me, "will be to my shame and to the children's shame, and I cannot endure it."

Well, now, gentlemen, I again recall to your attention with this specific statement on the part of Theodore Tilton, under oath, as to what Mr. Bowen on Monday, the 26th, had told to Mr. Tilton in regard to the character and the adulteries of Mr. Beecher. If that statement was false; if no such communication and charge had been made by Henry C. Bowen to Mr. Tilton, and if he had not undertaken to Mr. Tilton, as Mr. Tilton swears he had, why did they not ask Henry C. Bowen as to the truth of this narrative? They had the means of then overturning it by the evidence of our own witness, called and certified, and certified too by the fact that we called him to the stand, above any impeachment on our part; a witness whom they say by this very relation of Mr. Tilton was an adversary witness to us; a witness whom we said had betrayed us, had been dishonorable in his engagements toward us; they had the means, by one question to that witness, of stamping upon Theodore Tilton the disgrace of falsehood and perjury. They dared not, and they did not, accept the challenge. It is to be taken as true, because they didn't contradict it when they had the means of contradicting it. And is the gentleman, under those circumstances, by his keen raillery and his Attic wit and his false construction of this language and its sentiment—is he, under these circumstances, to throw out the sworn evidence of an unimpeached witness? Oh, there is wonderful and witching power in the tone of my learned friend! He is skilled in all the devices of oratory; he knows how to touch all the springs of the human heart; but will the law permit sworn evidence from a witness to be blotted out, whom they have not dared to assail by the ordinary and the proper modes of law,

through an impeachment of his character? Is it to be erased from the record by the mere breath of counsel, and is that the mood in which, in a great case, before a learned Court, justice is to be administered between the citizens of your State? Now, Mr. Evarts—he had got a good way in the narrative then, and Mr. Evarts must have understood something about it—he was delighted with it all the time. His clutch upon Mr. Tilton was getting stronger and closer every instant, every word he uttered. But Mr. Evarts says:

Now, if your Honor please, this indicates the nature of the communication concerning which my objection applies. I am understood, of course, as objecting distinctly to every branch of this. "Of course," says the Judge.

Delighted he was with this narrative. "Oh, I have got this gentleman now. I can, with my use of rhetoric, with my analytical skill, with my touches of oratory and raillery here and there, I can destroy this man now; I can carry this jury; I have got the matter all in my hand now." Well, the witness proceeds:

Mr. Beecher then asked me what I meant by speaking in that way of Elizabeth and her shame; so I then read to him the copy of Mrs. Tilton's confession—a copy which I had made in the early part of the evening, the original of which was in Mr. Moulton's possession, etc.

Well, here a long argument ensued, very skillful and able on the part of my learned friend, and all directed to closing the mouths, and shutting out the evidence, and obstructing the facts. It was a policy and a stratagem which my friend Porter condemns. This was so long an argument that——

Mr. Shearman—Page 396.

Mr. Beach—Thank you. "I told Mr. Beecher that in the early part of July, previous to that interview." And please remark it, gentlemen, that he had read the statement to Mr. Beecher given to him by his wife, which was as a mere introduction to the subject of discussion as between the two; Mr. Tilton insisting that it would be derogatory to his honor and his dignity to seek Mr. Beecher and say to him that he withdrew the demand which he had made on the Monday previous for his resignation, and his plan for removing their difficulty by writing a short statement, about which we will talk hereafter, for the purpose of forming an introduction to the matter of their designed conversation.

I told Mr. Beecher that in the early part of July, previous to that interview, Mrs. Tilton had come home unexpectedly from the country, and had said to me that the object of her return was to communicate to me a secret, which had long been on her mind like a burden, which she wished to throw off; that she had on several previous occasions come almost to the point of making such a statement to me, and once in particular, while on a sick bed, but that she had never until then, having been restored to health, been brought quite to the point of courage to make the disclosure.

Oh, gentlemen, when you read those letters of self-depreciation and self-condemnation written by Mrs. Tilton, when she speaks of the sorrows she has caused her husband, of her temper and her infirmities betraying her into wrongful conduct in her household; when, in that notable letter to which I will ask your attention, she speaks of the sorrow that is soon to break upon the head of her husband, cannot you see how this deadly secret was rankling in the heart of this woman, how it was struggling for utterance, how she loathed the condition of duplicity and deceit in which she was placed, and how with her high Christian character (which we will talk of by-and-by), she felt that the utterance of this secret was due to her faith as a Christian woman, to her duty as a Christian wife? [Reading:]

That before she would announce to me what the secret was, she exacted from me a pledge that I would do no harm to the person concerning whom the secret was to be told, and furthermore that I would not communicate to that person the fact that she had made such a revelation to me, because, as she said, she wished to inform him of that revelation herself.

Well, that I think is the first incongruity that my learned friend discovered in this narrative. The idea that a wife having confessed her adultery to her husband, bound him to silence and restraint by a solemn pledge, and with all the earnestness of a suffering and beloved woman, at all times insisting upon the performance of the pledge—that such a woman should insist upon her herself making the communication to her betrayer that she had made this confession to her husband was, in the eyes of my learned friend, an unparalleled atrocity—a miracle, if it was true. Well, I have said to you two or three times, gentlemen, that in construing the acts of these parties (and the necessity will become more apparent to you hereafter), we must consider the peculiar characteristics, circumstances, and conditions of these various parties. One thing you know, that Elizabeth R. Tilton loved, adored, worshiped Henry Ward Beecher. That is confessed on all hands. Her character as a Christian devotee, her temperament, as a delicate, excitable, spiritual—aye, as Mr. Beecher says, "inspirational" woman has been given to you. I shall hereafter show you, I think, the circumstances, the mental condition under which this woman was led to submit to the wishes of Mr. Beecher. But she was a peculiar lady, of deep emotional character, of somewhat strange, eccentric thoughts and feelings. Mr. Beecher was a great preacher, her pastor, loved still; for at that time the conviction of her sin had not fallen on her conscience; the delusion by which she had been betrayed had not then been dissipated. She then recognized no wrong in the act, and culpable only in the system of deceit in the life of duplicity which she was living. Now, if this be the character of the woman and the relation of the parties, there is nothing strange or inconsistant in the idea that Mrs. Tilton should desire to make the first communication to Mr. Beecher that she had revealed to her husband the character and extent of their intercourse. As between ordinary minds and men, in the practice of

the vulgar and obscene adulteries of the time, why it is possible the criticisms of my learned friend would be true. There would be nothing of that delicacy of sentiment, there would be nothing of that elevation of feeling and emotion, there would be nothing of that spiritualized idea of the intercourse given to this by these parties (as I will show you), to modify their action, or to relive it from the sensuousness and the vulgarity of a lustful intercourse and elevate it to that hight which my learned friend expresses when he concedes it to have been introduced by prayer and ended with a benediction [reading]:

That I had given to her this pledge, my word of honor, that I would neither disclose her secret, whatever it might be, nor would I injure the person concerning whom the secret was to be told; that she then said to me that it was a secret between herself and the Rev. Henry Ward Beecher, her pastor; that, as I was well aware, there had been, during a long course of years, a friendship between herself and her pastor; that this friendship, contrary to my expectation or belief, had been in later years more than friendship, it had been love; that it had been more than love, it had been sexual intimacy.

And this is criticised by my learned friend. Well, would there have been anything astonishing if Mrs. Tilton, in making this confession, had used that precise language—"Why, you know my husband that we have been intimate with Mr. Beecher for years; our friendship has been close and confiding; it grew into love, and from love it progressed to sexual intimacy"—if the woman herself, in making a confession under such circumstances, had said that, would it be very strange? But you see that Mr. Tilton is not reproducing the exact language of his wife; he is not repeating her exact words of confession; he is reproducing it according to his own habit of thought, and his own style of expression; through his own rhetoric he is expressing to Henry Ward Beecher the truths which were confided to him by his wife, and the burning impression which they made upon his mind and heart at the time. How unjust it is then, in the criticism of this narrative, to represent it as the statement, in her own words, of the wife, or as imputing to her the style of expression, or even the tenor of communication, which was then made by Mr. Tilton to Mr. Beecher [reading]:

That this sexual intimacy had begun shortly after the death of her son Paul; that she had been in a tender frame of mind, consequent upon that bereavement; that she had received much consolation during that shadow on our house from her pastor; that she had made a visit to his house while she was still suffering from that sorrow, and that there, on the 10th of October, 1868, she had surrendered her body to him in sexual embrace.

Now, does anybody suppose that Mrs. Tilton used that precise phraseology in the communication to Mr. Tilton, and that he is pretending to reproduce it in precise form? [reading]:

That she had repeated such an act on the following Saturday evening at her own residence, 174 Livingston-st.; that she had, consequent upon those two occasions, repeated such acts at various times, at his residence and at hers, and at other places—such acts of sexual intercourse continuing from the Fall of 1868 to the Spring of 1870; that in July, 1870, she had made to me a confession in detail of those acts; that she had given to me also during that recital many of the reasonings by her pastor, communicated to her to change what were her original scruples against such sexual intimacy.

Now, I have pursued this long enough, gentlemen, to show you the general character of the narrative made at that time by Mr. Tilton, and I have done it for the purpose of illustrating the proposition I made, that this was not a revelation of a mortal wrong done by Mr. Beecher to Mr. Tilton, from the pressure of which upon his heart and soul Theodore Tilton was then burning and raging. It was *a narrative of a preceding transaction six months before;* it was a narrative made necessary by certain immediate circumstances in which Theodore Tilton had committed, according to his wife, an error of judgment with reference to their domestic condition and their relations to Mr. Beecher. He was called upon to have this interview with a man against whom I (in my judgment properly) admit he felt in his heart a sentiment of resentment and hostility, which was only governed and controlled by his own Christian resolution and the restraints of his wife and her love.

FOREMAN CARPENTER REBUKED FOR SMILING.

You may not believe it, Sir. [Addressing Mr. Carpenter, the foreman of the jury, who was smiling.] It may excite incredulity in your mind; it may excite a smile of ironical disbelief. But you are bound to judge from this evidence. You are not to adopt the prejudices of counsel; you are not to adopt misrepretations of counsel. You have sworn to decide this case upon the evidence and according to the law; and I am entitled to a respectful hearing from this jury and from each and every member of it. [Applause.[I am asking the intelligence of this jury in its highest and best exercise, and with its most impartial and justest judgment, to consider the arguments which, in answer to 13 days of appeal, I am attempting to make to the judgment and consciences of this jury. [Applause.]

MRS. TILTON'S LOVE OF MR. BEECHER.

Well, my friend spoke of the comment made, according to Mr. Tilton's representation of this interview, upon the earlier moral condition of Mr. Beecher; and mocked at it. He could not do otherwise. Having exalted the character of Mr. Beecher to the standard of infallible purity, having clothed it with a white robe, unsoiled by sin, through all his career, he could not of course admit that in any portion of it there was ever any doubt of his exalted morality and purity of conduct. But according to Henry Ward Beecher, Mrs. Tilton is a truthful woman. Again and again, asked upon the stand if certain things were true, as connected with the passage

of Mrs. Tilton. he answered, "I don't recollect, but if Elizabeth R. Tilton said so, it is true." Now, what did she say of Mr. Beecher? Writing on the 25th of January, 1867, she says:

Four letters from you reached me to-day, my own dear husband, including one of Mrs. Desmond and Oliver's letter to you. I did not go to Mrs. D.'s wedding as it was celebrated at Mrs. Merriam's, in Springfield. Mother went on and has not yet returned. I will forward your letter. * * I think in reference to Oliver's [that is Oliver Johnson's] opinion of Mr. B. [that is Mr. Beecher], as his remarks were made to Mr. Bowen, and *they* are embittered toward one another, that what Mr. B. said of you may appear very different through the coloring Mr. Bowen may give it. Oh, how my soul yearns over you two dear men! You, my beloved, are higher up than he; this I believe. Will you not join me in prayer that God would keep *him* as he is keeping *us?* Oh, let us pray for him. You are not willing to leave him to the evil influences which surround him. He is in delusion with regard to himself, and pitifully mistaken in his opinion of you. I can never rest satisfied until you both see eye to eye, and love one another as you once did. This will not come to pass as quickly by estrangement. But, with all the earnestness of my being, I commit you both to God's love. He has signally blessed you both, and He will keep His own beloved. Why I so mysteriously was brought in as actor in this friendship, I know not Yet no experience of all my life has made my soul ache so keenly as the apparent lack of Christian manliness in this beloved man. Mattie [that is, Mrs. Bradshaw] feels as *I* do. I saw her to-day.

The "lack of Christian manliness!" There is another letter from which I intended to read which I have not at hand at present, but I will find it and read it to you hereafter. I will now read an extract from a letter, bearing date a year earlier—in 1866:

But to return to Mr. B. He has been the guide of our youth, and until the three last dreadful years, when our confidence was shaken in him, we trusted him as no other human being.

This was in 1866; and for the three preceding years *something* had occurred in the history of Mr. Beecher which had shaken the confidence of this woman in his integrity; and yet she appeals to her husband to gather about him all the influences of their friendship and all its sweet restoring solace. You see how she yearned over these two men, whom she united in her affection, around whom her heart clustered its tenderest affections and sympathies, for both of whom she was struggling always to elevate them to a higher plane of moral perception and conduct. But yet, after all, this woman, with her keen spiritual perceptions, had found for three years prior to 1866 *something* in the life and character of Henry Ward Beecher which had shaken her trust and confidence in one whom she called the guide of her youth and the father of her religious faith.

THE GRANDEUR OF WRITING THE LETTER OF DEC. 26.

Well, Mr. Tilton ventured to say, in the course of this narrative I believe, or somewhere else, where my learned friend, Mr. Evarts, found it: "It was a grand thing to write that letter of demand, but it would have been grander not to have done it." The opportunity for a witticism could not be passed by my learned friend, and he always does such things so beautifully that he is pardonable, even if he does misrepresent both philosophy and morality. [Laughter.] "This is a queer thing," says the counsel; "a man speaks, and it is grand; but if he had held his mouth it would have been grander!" Well, it was a very pert and witty thing, and an easy way of disposing of that sentiment of Mr. Tilton. But let us look at it a little more philosophically, and with a juster regard to morality. Mr. Tilton had learned from Mr. Bowen to say nothing of his own experience, that this man, so noble and proud and exalted, was but a whited sepulcher, that he was occupying the grandest pulpit position on earth, and that he was an unworthy man; and prompted—assume that he was prompted—by a regard for religion, morality, truth, honesty, he says, "This man shall no longer defile the Church of his God; he shall no longer preach in the robes of his hypocrisy to trusting souls; he shall resign—ignominiously resign." Well, that was grand; it was pretty brave; it was pretty insolent. The man who could assume the hardihood to say that to Henry Ward Beecher, in the position which he occupied, with the grand qualities which he possessed—aye, and surrounded by these 3,000 redeemed souls with uplifted hands and open hearts to sustain him—the man who did that, did a grand thing, in its bravery. But when he came to look about upon that family desolation, when he remembered the wife of his youth, around whom the fresh tendrils of his heart had gathered with a clasp that no subsequent act had broken, when he thought of the peace of that household, of those children whom he loved, although the counsel, I had almost said basely, alleges that he bastardizes them with his breath—when thinking of all the consequences, the ignominy, the sorrow, the disgrace which would follow to that household, and guided and uplifted by the precepts of his Master, he stood up in an attitude of Christian manliness and faith and said, "I will not make this assault, unworthy as Henry Ward Beecher may be; deadly as has been the stab he has inflicted upon my honor and my peace, nevertheless I will forgive him, and stay the hand of my vengeance"—oh, was not that grander, Sir? In the light of Christianity, guided by the example of the Master, clinging hard and close to His teaching and His promises and His commands, is it not one of the grandest sights, the highest exaltation of moral grandeur, to see human infirmity lifting itself above its tendencies and passions, and living close to the heart and the faith of the Redeemer? Grand! oh! no; it is a fit subject for a witticism and a jest on the part of my learned friend. And it is by such treatment of the moral attitudes of this case and these parties, it is

by such ridicule and calumny upon the holy truths of this case, that my friends expect to control the judgment of this jury.

THE PAPER READ AT THE INTERVIEW.

Now, gentlemen, I am not at this moment intending to make an examination, for the purpose of application, of this so-called "confession" of Mrs. Tilton, presented, at the time of this interview, to Mr. Beecher. There is a total misconception upon the part of my learned friends in regard to the character of that paper. It was not a confession, though that term has been applied to it. It was written on the 29th of December. The circumstances under which it was produced, the motives under which it was written, are all explained to you on the evidence. It was not to be preserved as a muniment of this transaction; it was not intended, nor did it purpose, to be a confession. The confession had been made six months before, in full. It had been told to others before this by both the parties—in proof and uncontradicted. The charge of adultery had been made before this—not to Mr. Beecher, but yet under circumstances to which we will refer hereafter, justifying, demanding the communication. This was not the confession. It was a mere statement, or writing, or memorandum, given by Mrs. Tilton to Mr. Tilton for the purpose of inducing him, and as an introduction, to a conversation in which he should scatter the peril which she felt hung over her and her children through the combination which had been made between Mr. Bowen and Mr. Tilton to eject Mr. Beecher from his pulpit, and which she knew and felt would in the end produce a revelation disastrous to herself and to hers. Nobody disputes this. If anything is to be believed in this case, that is to be believed. If you reject all our evidence, if Tilton and Moulton and Mrs. Moulton, and Mrs. Bradshaw, and Woodruff cannot be believed, say so, and send all these people, upon the mere declaration of Henry Ward Beecher and the breath of his counsel, from this court-room, dishonored by a verdict, that they are entitled to no credit, even upon matters wherein they are not at all disputed. If there is anything in this matter, if it is not all a myth and a shadow, if Plymouth Church has been convulsed with nothing, if the whole world has been disturbed, and half of it, if you please, believing in the guilt of Henry Ward Beecher, without any evidence and without any fact, and without any reality in it all, why, let us learn it, and learn it by a bold, frank declaration upon the part of the jury that there is nothing of truth in what four witnesses swear to.

Now, you will remember that we were not permitted to prove what this statement made on the 29th of December by Mrs. Tilton was. We offered that proof. We could have proved it by two witnesses. The counsel objected, and the Court ruled it out. We struggled as best we could for the admission of the evidence. We desired that you should hear what these two witnesses, Tilton and Moulton, would say upon that subject; we wished to give you the opportunity, the privilege, of judging whether they were to be credited or whether they were to be rejected. If you disbelieved them, why the plaintiff's case failed, and their statement of what this writing of Mrs. Tilton contained of course would be discredited and disbelieved; but my learned friends would not have it. These witnesses would have told you, according to their best recollection, I presume, and upon their consciences and oaths, just what was in that writing. Why it was destroyed we will talk of by and by; but I repeat, our friends on the other side would not have it. And who is to be blamed? Mr. Tilton read it to Mr. Beecher. Mr. Beecher, if there is any truth in Mr. Tilton, must have understood what it was. He says that the charge was improper solicitations. Mr. Tilton says it was sexual intimacy.

Mr. Shearman—No; he has never said so.

Mr. Beach—Never said so?

Mr. Shearman—Never.

Mr. Evarts—Not in this case. I don't know what he said anywhere else.

Mr. Morris—Distinctly.

Mr. Shearman—You are talking about the contents of the paper.

Mr. Beach—I am talking about Mr. Tilton's statement.

Mr. Evarts—Oh! the oral part.

Mr. Beach—Yes, that is just what I am talking about. I said that Mr. Beecher testified that the charge made upon that occasion was improper solicitations and that Mr. Tilton swears it was sexual intimacy. Well, gentlemen, if Mr. Tilton and Mr. Moulton could have sworn as to the contents of the statement that Mrs. Tilton made, and which was communicated to Mr. Beecher at that time, then whether it would have enlightened us or not would have depended upon the credibility to be attached to the statements of Moulton and Tilton in regard to its contents.

The Court here took the usual recess until 2 o'clock.

MR. EVARTS'S COMMENTS ON THE WIFE'S CONFESSION.

After recess the argument for the plaintiff was continued as follows:

Mr. Beach—Mr. Evarts criticised the relation given by Mr. Tilton of the confession of his wife on account of the particularity, the circumstantiality of the statement; that it was too precise and formal; that one speaking under the circumstances in which a wife was supposed to be situated, making a relation of this character to the husband, could not by any possibility have so controlled her emotions and their effect upon her mental operations as to descend to the minutiæ of detail—that is, in speaking of the commission of this offense, to say that it was committed at 174 Livingston-st. Well, I suppose a very

reasonable explanation of that phraseology would be that they had resided at two places in Livingston-st., one 48 and the other 174, and in giving the account to her husband of the circumstances connected with her dishonor she says they occurred at the place where they resided. She undoubtedly did not use the term 174 Livingston-st., but Mr. Tilton in communicating the information which he had received from his wife, clothed it with those specifications—with that language.

Well, then, Mr. Evarts contends that it is incredible that Mrs. Tilton should have used the language, "My pastor, Mr. Beecher," when identifying the person against whom this charge was to be made. Well I am not able to appreciate the force of that criticism I confess, and I am referred to a memorable example which, I suppose, will not be doubted in its authenticity, which would equally excite the credulous criticisms of my learned friend. When Jacob asked Laban for his daughter he says: "I will serve thee seven years for Rachel, thy younger daughter." Well, the Scriptures are thought to be tolerably good rhetoric, a pretty reliable standard for the use of language, and if Jacob in addressing a father, in addition to naming the daughter for whom he was willing to serve seven years by her name, should specify her also as his youngest daughter, it seems to be admissible for Mrs. Tilton, speaking of Mr. Beecher, to speak of him as Mr. Beecher, her pastor. And, perhaps, there was an implication in that form of expression a little beyond the especial object of the communication. It implies something of intensity and possibly rebuke—"The man who did this was not only Mr. Beecher but he was my pastor," and there is a wonderful deal of implication in that term as we shall find when we connect it with the different steps in the progress of this seduction. Mr. Evarts says, in answer to the idea which seems to grow out of the testimony of both the principal parties in this transaction, that this woman so exalted and spiritual in her nature, and so devoted in her Christianity as she is represented to be, could not have fallen, unless through some specious sophistry, some spiritual delusion operating upon her senses and her inclinations. Mr. Evarts says: "Why, no man in the history of all the world has used any such arguments to persuade the virtue of a woman as are attributed to Mr. Beecher; that the indulgence of love is innocent; that we cannot control the passions and emotions of our nature; we cannot shut our eyes to beauty and loveliness; we cannot close our hearts to the approach of tenderness and affection for those who are lovable and attractive: therefore, it is justifiable to love, and if that be justifiable by the ordinary forms and expressions through and by which love is manifested and love is intensified, they must be innocent. Nobody could use such language and argument."

Walter Scott is supposed to have been a tolerably good scholar in human nature. No writer has ever pictured so graphically and beautifully all the manifestations of our nature in its highest and best developments. No man has studied more persistently the character of man as expressed in his history and in his actions, and he has been considered as the great master of human passion, as the great printer of human nature. In "Woodstock," which I hope some of you have read, a historic romance which develops to a great extent the wonderful career of Cromwell and his redoubtable "Ironsides," one of them was a Master Tompkins, a man who fought with the Bible on his lips. He was an Independent preacher—as independent as Plymouth Church, a law unto itself, judging for itself, acknowledging no allegiance to Presbyteries and Councils and Synods, but standing upon its own law, yielding no submission to any higher authority. Well, these "Ironsides" who preached at every interval between the battles, and who fought with the courage of religious zealotry, were very remarkable characters. This Master Tompkins, as he is called, was a famous exhorter of the Cromwellian legions; and yet he was touched with the softness of human nature, and even the sternness of his bigotry and the rigidity of his religion could not entirely exclude the temptations of the flesh. And while they were occupying the old ruins of Woodstock, the old but somewhat demolished home of a royalist, he came into contact with the daughter, as it is said, of a bold forester, named Phœbe, while she was drawing water at the well, and attempted to introduce familiarity with her by offering to carry her pitcher. Well, she resented this; and he says to her:

"Stand up, foolish maiden, and listen," said the Independent, sternly, "and know in one word that sin for which the spirit of man is punished with the vengeance of heaven lieth not in the corporal act, but in the thought of the sinner. Believe, lovely Phœbe, that to the pure all acts are pure, and that sin is in our thought, not in our actions, even as the radiance of the day is dark to a blind man, but seen and enjoyed by him whose eyes receive it. To him who is but a novice in the things of the spirit much is enjoined, much is prohibited, and he is fed with milk fit for babes. For him are ordinances, prohibitions, and commands. But the saint is above these ordinances and restraints. To him, as to the chosen child of the house, is given the pass-key to open all locks which withhold him from the enjoyment of his heart's desire. Into such pleasant paths will I guide thee, lovely Phœbe, as shall unite in joy, in innocent freedom, pleasures which to the unprivileged are sinful and prohibited."

Well, here is the very sentiment which is attributed to Henry Ward Beecher by the mouths of two or three—three witnesses. It is the mode in which he is alleged to have addressed this lady, united with all the other influences which clustered around him as a great genius and a distinguished preacher. And we find, under the treatment of a great novelist, of a man versed in all the intricacies of human knowledge and human experience, tracing out the operations of human nature as a romancer but yet with fidelity to nature, the same idea suggested. Well, Henry Ward Beecher has read that undoubtedly.

A man who reads Dumas will not neglect Walter Scott. And very many, as is the case with all of us—very many of the brightest and highest conceptions of our own minds are derived from these sources of information, because there is very little originality in the world. There are original forms of expression; but it would be difficult to indicate a thought, a sentiment, a principle of morality, or nature, or science, that has not been long ago dreamed of and developed. And it is not very surprising, if it be true, that Henry Ward Beecher was, in his intercourse with this lady, governed by his lust, or if, under the forceness of temptation, he yielded to the attraction and the opportunities of the situation, it is not surprising that Mr. Beecher should have used arguments of this character and addressed to this woman this sort of sentiment. Another great man, great as Beecher, as lofty in all the paths of knowledge, as consecrated in the hearts of the world as Henry Ward Beecher, puts into the mouth of one of his characters and gives the authenticity of his name to sentiments and arguments of like kind. And when Mr. Evarts says that no man of intellect ever dreamed of arguments of this character addressed under such circumstances to the seduction of virtue, I present him the example as delineated by Walter Scott.

If your Honor please, a legal principle or two upon the subject of confessions, fortified by authorities, have been submitted to your Honor. I have no occasion, Sir, to contend with them. I admit every proposition of my learned friends upon the subject. I maintain the same doctrine. But don't my friends see that, when they are claiming the benefit of their propositions for their own witnesses, they operate with equal force and efficiency in favor of their adversary? It is said that the confession of Mrs. Tilton is no evidence against this defendant. Granted, Sir. Your Honor has over and over again ruled it, and we again and again acceded to the proposition. It is only when that confession is detailed to the party whom it implicates, when with precision and with emphasis, under all the possible solemnities of a communication of that character, it was made to Mr. Beecher, and he quailed and wavered beneath the charge, and gave the confession of silence, sinking and tottering from the presence of his accuser, and exclaiming, "This will kill me"—it is only then that the confession of Elizabeth R. Tilton becomes significant and important. "Well," says my friend, "it was a forced confession." Ah! there is the mistake of my friends' argument. There is the great error of their position. They assume that the document of December 29 was the confession, and that that was extorted from Mrs. Tilton. Ah! gentlemen, the confession which was related to Henry Ward Beecher, and which then in the moment of detection he dared not stand up and deny, like a brave and an innocent man, was the confession made six months before. That was the narrative submitted to him containing the accusation made against his honor and virtue; and it was the manner in which he received that, the silence, and submission, and broken-heartedness with which he listened to that, that gives to that confession and to its statement the force of convincing, denouncing proof. Now, I care not, for the purpose of this case, whether the statement given by Mrs. Tilton to her husband on the 29th of December was won from her by importunities and solicitations. The situation of things, the condition in which the parties were then placed, the purpose for which this writing was to be used, I submit to you, contradicts any such supposition. Theodore Tilton did not want to use it as a confession. He did not use it as a confession. He did not want to use it for the purpose of making an accusation. He did not use it for the purpose of making an accusation. For, in the very instant when he presented and read it to Henry Ward Beecher, he professed to him silence. He withdrew the demand which four days before he had made upon Mr. Beecher to vacate his pulpit and abandon Brooklyn. What did he want of a confession, so far as the idea of crimination, or accusation, or hostility was concerned? Why, under the teaching and influence of his wife he was throwing off his armor; he was withdrawing the assault made upon Mr. Beecher; he was telling him that for his wife's sake, not for his (Beecher's) sake, or his (Tilton's) own sake, but for the sake of that woman—weary and sick, and fearful and trembling, and anxious, "I spare you; I withdraw this demand; consider it blotted out forever." And then he tells him of the confession made to him by his wife, for the first time lets him know that that secret between Henry Ward Beecher and Elizabeth R. Tilton for six months had been held and hoarded in the heart of hearts of this plaintiff. Now, what of that statement? Of what importance is it, and who cares what becomes of it? It is not the foundation of this accusation; it was not the confession of Mrs. Tilton. It bore the character, originated in the motive, produced the effect which I have described to you. Well, I shall come to the examination of that by and by. My friend says that Mr. Tilton does not deny that it was a forced confession. Well, surely that was a thoughtless expression upon the part of the gentleman, because Mr. Tilton tells you just the circumstances under which it originated. He explains to you that it was volunteered by the wife for the purpose of smoothing the interview, or the approach to the interview, between himself and Mr. Beecher. Well, is not that a denial of any imputation that it was forced from Mrs. Tilton by Mr. Tilton? And under the instructions given to us by the Court, were we not justified in passing through all these details of conflict upon these minor and immaterial circumstances by reëxamining when it was perfectly evident that there was an irreconcilable conflict in the testimony as it then stood?

WHERE MEMORY IS STRONG.

But what effect, if your Honor please, does this doctrine, which I concede, have upon other circumstances and relations in this case? My friends produced to you an authority (Stiles agt. Stiles, I think) where a divorce was sought by the husband upon the ground of the confessions of the wife. Well, the case does not doubt, I apprehend, that upon confessions fortified by circumstances, however forcible or trivial, the Court could properly decree a divorce. But it turned out that these confessions were made by the wife to quiet and control the lunacy of the husband, and to restrain its outbursts and its violence. Well, the Court says:

There is a motive in the confessions; they were made with a specific object, not with reference to the truth of the particular asseverations made by them, but were made for a laudable and commendable purpose, and not with any intention to confess adultery. Therefore, we will disregard the confession.

Your Honor, I think, will approve that idea of the authority and the principle. But, gentlemen, in the same breath, our friends say to Mr. Moulton and Mr. Tilton, "Why, for three years, all through this land, by solemn declarations of mouth, by written asseverations, by letter, by reports, under all circumstances, you have been persistently declaring that Elizabeth R. Tilton was innocent, and that the only offense of Henry Ward Beecher was improper solicitations." And yet we prove to you, by the only proof that by possibility can be given, these declarations were made with the specific purpose of protecting Elizabeth R. Tilton and her family, and concealing from the public the guilt of Henry Ward Beecher. Well, now, we cannot prove this to you by the persons to whom these declarations were made. Mr. Tilton would not have gone to these various individuals and said: "Sir, my wife is as white as snow, and Mr. Beecher has only attempted to seduce her, but for that she repulsed him with indignant scorn. But I tell you this merely for the purpose of concealing the fact that she was seduced." We cannot prove it in that way. No such declarations as that would have been made, because it would have counteracted the very purpose of the assertion. But we prove by Tilton and by Moulton that those declarations which they made were made for that specific purpose, with the approval and concurrence of Henry Ward Beecher and by the professional advice of Benjamin F. Tracy, and repeated in every form to meet every exigency and emergency which arose in this case. And still under the light of their own theory and the authorities which they produce, they still insist, "You are to be concluded by the declarations which you made."

Now, Henry Ward Beecher does not deny that this was the policy. He says it was, and more than that, in his statement given in evidence before the Examining Committee he says that that policy ought to have succeeded. In the treatment of Woodhull, in the treatment of every inquirer, in the attempted circulation of some modified explanation of these outbreaks and these difficulties which were constantly bringing up, through the uneasiness and the suspicions of Plymouth Church and some of its members, these stories were circulated that the public might have something to which they could apply all these outbreaks and belchings forth of this fiery secret, and that those who were struggling to conceal it might have some plausible pretense and ground upon which they could maintain the actual integrity of Mr. Beecher and the entire purity of Mrs. Tilton. Do you not see it, gentlemen? Are we to be misled by the theory of the other side that we are concluded by these statements and representations made under these circumstances? Why it is not only contrary to the teachings of the law, but it is contrary to common sense. No man disputes, Henry Ward Beecher does not dispute it, that from the first it was the resolve of Mr. Tilton to protect the reputation and the integrity of his wife. Every statement made by him under every conceivable circumstance in which they appear is traceable to that purpose, not only entertained, but upon every occasion avowed, and by his oath upon this trial every such statement and averment upon his part is applied to the particular object with which, not the conspiracy, but the league between Henry Ward Beecher and Tilton and Moulton was formed in the first outbreak of this difficulty. But my friend says Mr. Beecher, in the very representation given by Moulton of his declarations, denied this. In the account of one of the interviews, Mr. Moulton represents that in answer to the relation of the charge, or the circumstances of his offense, Mr. Beecher says, "If he had fallen, he had fallen through love and not through lust." Well, my friend argues that that shows a doubt at least, a hesitating uncertainty upon the part of Mr. Beecher whether he had been guilty or not of adultery. Well, that is not the language. It does not profess to give the language of Mr. Beecher. "If he had fallen," he said, "if he had fallen, he had fallen through love and not through lust." What would have been the language of Mr. Beecher, as derived and rendered, and from this phrase as given? Why, he would have said, "Well, if I have fallen, I have fallen through love and not through lust." Well, a man comes to you, to me, and charges me with sinfulness, and I, conscious of my wrong, but believing that there was some redeeming quality to it nevertheless, that, although to human experience I had been gross and sensual and devilish, yet that, nevertheless, there was some palliation for the offense, that I felt that I had not been so brutally offensive to morals and to society as was represented, and I say, "Very true, Sir, I have fallen, but I have not fallen through lust but through love." Is that a denial? And is the conclusion that that is a denial a fair mode of argument, or a fair deduction from the language or the circumstances to which it is applied? Why, no; it is perfectly plain that no such thing was in-

tended to be represented by Mr. Moulton, and that the expression which my friend has seized upon in his hypercriticism does not lead to any such conclusion. Does any one doubt that Mr. Moulton meant to testify in that very conversation—you remember its connections probably—that Mr. Beecher was sensible of his guilt, and confessed his guilt? Why, he states it in that very narrative, and do you suppose that Mr. Moulton, swearing distinctly to the charge and the admission of sexual intercourse in that very conversation, yet imputes a phrase of Henry Ward Beecher which would contradict the whole story he had been telling? That is not the sense in which it was used; it is not the way in which evidence is to be criticised. Why, your Honor surely will instruct this jury that it is their duty to reconcile evidence, to consider the whole testimony, to draw rational and common-sense conclusions by a comparison of the whole of it. We are not searching here to-day for the purpose of condemning the character and the reputation of witnesses; we are seeking for the truth through human infirmity and weakness, through the errors and frailties of memories, through the cloud of passion and prejudice, doing the best we can to reach the truth—believe me, gentlemen, it is all I seek in this case, and my only purpose is to present to you what I confess to be a professional and logical argument upon this case to aid you in your effort to ascertain the true character of this case.

Now, I agree that human memory is imperfect. I believe that there is more involuntary perjury committed in a court of justice than you and I can conceive, with perfect innocence, and merely through our inevitable frailties. But we are not to condemn men upon mere surmise and conjecture. No man can detail the facts of a given occurrence happening years ago. It is not in the power of human frailties to retain the recollection of them, and you remember the illustration of my learned friend, where different parties are looking upon the same transaction, viewing it from different standpoints, impressed differently by its different phases each and every one retains, occurring three years ago. Mr. Tilton, you come here likewise. Mr. Beecher, you are in the same predicament. Bessie Turner, you are still worse off [laughter], and so you go through and apply this lesson—all just, gentlemen. I don't believe there has a witness been sworn in this case, relating conversations, transactions, which occurred three, four years ago, or one year ago, who has given a precise and accurate narrative, a particular memory of distinct and separate parts, and they differ in their relation of that transaction, and it is the best evidence of their truthfulness that they do so, because then there is no evidence of manufacture, there is none of that comparison and agreement which suggest conversations and interviews and arrangement. Well, you will apply that all around in this case. Mr. Moulton, you came here telling conversations of that whole transaction. It would be to my mind impossible; it would be one of Mr. Evarts's miracles if he did it, and contrary to the law of the human mind and the experience of the world. But suppose, four years ago, five years ago, upon a certain occasion I suddenly broke upon your attention and said to you, "Sir, I have just killed a man," and I relate the circumstances, the motive, with a long detail, and I beg you for silence, and you believe that there are palliating circumstances about my guilt, that although justice cries out for my blood, although the law commands you to reveal my guilt, that, nevertheless, those modifying circumstances entitle me to your commiseration and silence. Years pass along. The murder is at last out, and I am charged with it, and you are brought forward as a witness to the fact that I made confession of it, and you give a relation of that confession, of all the palliating circumstances which I stated, of all the surrounding relationships of the transaction. Well, a skillful examiner like Mr. Porter, or Mr. Evarts, gets hold of you, and he involves you in some verbal contradictions, some rhetorical extravagances, some improbable circumstances, some inconsistency of detail. Well, that is all well. You may have been mistaken in regard to those; but could you ever forget the central, vivifying, vital fact of what I confessed, that I had killed a man? You may err in everything else. Memory is defective. There are a thousand things to betray it in our nature, and influences from without. But, I repeat, can the fact ever be eradicated from your mind that I confessed that I killed that man? Mr. Moulton and Mr. Tilton, Mrs. Moulton, all the rest may err in the circumstances and the details of their narration, but when Henry Ward Beecher, with quivering lip and a moistened eye, and bowing his head in shame and agony, admitted the fact of seduction of Mrs. Tilton, there is no human being on earth would let go that circumstance, and the ineffaceable impression which it would make upon the human mind.

Now, gentlemen, I appeal to you, granting all that my learned friends say, conceding all these results of forgetfulness and frailty from whatever cause, there is no possibility that these witnesses could have forgotten the fact that Henry Ward Beecher, so grand, so noble and exalted in his high position, when the accusation of seduction of Mrs. Tilton was made against him, in profound sorrow and remorse admitted his guilt. Mr. Evarts was just about this time in his speech making his assault upon Mr. Moulton, and he found it necessary to say, to give strength and possibility to it, that this man Moulton, who relates with so much precision and particularity, could not even remember at the time of his visiting Mrs. Tilton, upon the 29th or 30th—whenever it was—of December, 1870, whether she was sick. Well, my

friend spent some sonorous words on that proposition. What did Mr. Moulton say about it? Not of very great importance, gentlemen—only as it illustrates the method and the manner of attack which these gentlemen upon the defense have been constantly making upon our case—the plaintiff and his witnesses.

Judge Neilson—He said she was ill, I think.

Mr. Beach—Yes, Sir.

Judge Neilson—And I had occasion to remark that a layman visiting a lady, and saying she was ill, I think, was saying all a man could say on such a subject.

Mr. Beach—Well, yes, Sir; yet it suited the purpose of Mr. Evarts, addressing this jury, to say that Mr. Moulton could not tell, when he was examined by him to that point, whether or not Mrs. Tilton was sick. Well, now, I have exposed——

Mr. Shearman—He could not tell whether she was in bed.

Mr. Beach—He said he could not tell whether she was sick. Yet, if I make any misstatement I am quite willing the gentleman should correct me. I say that was the allegation. Well, it seems to be settled by the remark of the Judge.

THE ALLEGED MUTILATION OF THE CATHERINE GAUNT LETTER.

I should have read the evidence from the page, that he did testify upon that subject, but then the fierce savagery of Mr. Evarts was excited at the charged mutilation by Theodore Tilton of the Griffith Gaunt letter. You remember the letter, and I remember the terrible expressions of disgust and condemnation expressed by Mr. Evarts over the charge that Theodore Tilton had mutilated that letter for the purpose of imputing to his wife disgrace and dishonor, and his character and his name were held up by the counsel to the contempt and the disgust of the world for that, and his eloquent words of invective will ring in the ears and hearts of the world to come. Now, what is the truth about it? The same charge was made on the trial, on the examination of the witnesses. Mr. Evarts says, the subject having been introduced by Mr. Fullerton in these words:

Mr. Fullerton—There is one question here in reference to the publication in *The Graphic*. You asked whether there was not an omission in the Catherine Gaunt letter. You spoke of *The Graphic*. I find *The Graphic* here, and the part which was omitted is lithographed. I think the witness ought to answer the whole question.

The Witness—I respectfully ask the Court that Mr. Evarts may do me justice in respect to the Catherine Gaunt letter.

Mr. Evarts—It is not necessary; I stated that when the publication in *The Graphic* was produced it would of course speak for itself.

The Witness—I desire also, Mr. Evarts, that it shall speak for me. Be kind enough to inform the jury that it was there lithographed as it was written exactly. I would do the same for you under the same circumstances.

Mr. Evarts—I will do exactly as I said I would, that when *The Graphic* was produced with it in I would present it. That I will do.

The Witness—Thank you.

Mr. Evarts—But I look over what appear to be a reproduction of *The Graphic*—what do you call them?

The Witness—*Fac similes*; it is an exact one.

Mr. Evarts—And the Catherine Gaunt letter is not among them in this book.

Mr. Fullerton—That is the difficulty. That book no one seems to be responsible for; it is *nullius filius*.

Mr. Evarts—That I agree to. I do not want to hold any one responsible for it; it was the only material we had.

Mr. Evarts—Now, this is *The Graphic* of Sept. 18, 1874, and that was the first, perhaps the only issue of this? A. That is the only time I ever published the Catherine Gaunt letter, and that publication is correct.

Q. Now, look at that paper and say whether it is the issue of *The Graphic* in which the publication—the lithographic publication or *fac simile* publication of certain letters was made by you and at your request? A. It is, Sir.

* * * * * * * * * * *

Q. And this is the only publication of *fac similes* in connection with your statement that you made? A. Yes, Sir; this is the only time that I published the Catherine Gaunt letter, and I published it exactly correct.

Q. That speaks for itself. But my point is this—whether you made any other publication of *fac similes* except what is found in this number of *The Graphic*? A. I never made any other publication of this letter in *fac simile* or any other way but that which is in your hands.

Then he goes on to other matters.

Q. I do not confine myself to the Catharine Gaunt letter. Did you publish any statement or number of *fac similes* of any of the documents or papers except what are on these sheets which I now hold? A. No, Sir; the other statements were published by Mr. Moulton.

Mr. Evarts—Now I have it. Now, the letter, as here *fac similed*, contains the omitted passage and the omitted word "any," and it answers entirely, I presume, to the original letter. This is *The Graphic* of September 18, 1874.

Well, now, of course this must have escaped the recollection of Mr. Evarts, but it is unfortunate. This dishonorable charge against Mr. Tilton goes out to the world. The sanction of the authority and the high name of Mr. Evarts and the humble defense which is made for Mr. Tilton will never reach the circulation or the extent of the original charge. Is it not unfortunate, gentlemen, that Mr. Tilton, even by the forgetfulness, the indiscretion, the recklessness of counsel, should be subjected to these dishonoring reflections upon his character. My friend Mr. Porter begins with the charge of publishing a letter which reveals the delicate physical condition of his wife. It turns out that the charge is unfounded. Mr. Evarts follows it by charging mutilations of this letter. We refer to the proof. We find that when the charge was originally made, in the evidence, it was refuted as a false charge, and Mr. Evarts very properly acknowledging the refuting proof, and yet, on submitting his case to the jury, he makes a fierce attack upon Theodore Tilton for the very act which he first charged and then withdrew. I don't know, I do not

believe, whatever your conclusion may be, although you should give the fullest testimonial in favor of the integrity and the truth and honor of Theodore Tilton—I do not believe in the years to come he will ever recover from the damage of these accusations. They have been made too long, they come from sources too high, and powerful, and grand as I think him to be in many of the attributes of manhood, learned, cultivated, industrious, truthful and honorable as you may believe him to be, yet he has upon him a weight of calumny and suspicion which even the broad strength of his character must be bravely exerted to lift. What panacea will ever reach the circulation of the opening in this case? How will the defense which is made on behalf of Mr. Tilton, in its corrections of the errors and its repulse of the assault made upon Theodore Tilton, ever reach with an antidote the wide circulation and the powerful impression which such language as that uttered by Mr. Porter and Mr. Evarts will produce? You cannot repair the injury, gentlemen. You can do something toward justice.

MR. BEECHER'S CONQUESTS IN ENGLAND.

But another singular argument was used by the learned counsel, Mr. Evarts. He alluded with becoming pride to the efforts of Henry Ward Beecher among the population of England. It was at a great crisis in our history. A great struggle between the different sections of this commonwealth was waging. The question of liberty or slavery, the question of union or division, was balancing fearfully in the scale of events. There were many brave and true-hearted patriots who disbelieved in the power of the North and the strength of the Union to maintain it indivisible, and it was in that exigency that the animosity of England, in its aid to the South and in its cold countenance to the North, was sustaining the audacious rebellion. As Henry Ward Beecher believed, as many great men of this country believed, with false ideas in regard to the issue of that great conflict, in regard to the cardinal principle which laid at the root of the hostility and the fight, they knew and believed that the great question was one of servitude or freedom for the slave, and Henry Ward Beecher undertook to perform, nobly and gloriously, the task of disabusing the mind of England and reaching the hearts of the middle classes, and of her yeomanry, those classes which after all control and are beginning more and more to control the destinies of the whole country, and he was met with derision and scorn. He was assaulted at his meetings, where addresses were to be delivered upon this subject, with storms of obloquy and hisses and interruptions; but he was a brave man *then*. Nerved by the purity and the spirit of his case, there was no conscious weight of error or sin bearing upon his heart, and he was a man in all the majesty of a great and glorious creation, and he sustained the cause of his country, and I need not imitate or repeat the language of my learned and eloquent friend in telling you how successful and how noble that effort was. I agree with him wholly, unreservedly, in my reverential estimate of the motive, the ability, and the success of that grand performance on the part of Henry Ward Beecher.

But, then, my learned friend says to you: "Are you going to convict Henry Ward Beecher of adultery? Are you going to allow proud and envious England to say, why, in that great crisis, you sent us your greatest man, and he pressed and overcame us, and after all, after all, are you, gentlemen of the jury," says Mr. Evarts, "agoing to convict that man, so that England may say he was a frail and faulty man after all?" Listen to this:

You will understand that this is an issue in which the question is whether Mr. Beecher, who stood by this whole country in the hight and extremity of her perils and disasters against all England, and stood alone, and faced the frowns and jeers and cat-calls and scoffs of great crowds of English gentlemen of the better classes, and faced them down in the name of the United States, alone in England, and aroused, encouraged, developed, amassed a power in our favor that no single man or voice did for a nation since the world began, whether he is of the base, low, coarse, lewd fiber of soul and grossness of body that will allow the aristocratic society of England to return the triumph that they had to submit to by saying: "You sent us the noblest, the strongest, most courageous, most adequate man to subdue us; but you have discovered that his courage was not of the soul and purity from faith, from love, from duty, but from the effrontery of a voluptuary and an adulterer."

And that is an argument which the great advocate of the age addresses to an American jury sitting in a case which has disturbed the world, which that advocate says is the greatest case that was ever tried in a court of justice. I differ from him very largely in that, but he says so, and it must be so—that is an argument which such an advocate, in a case like this, addresses with flashing eye and personal individuality to this jury to convince them of Mr. Beecher's innocence. "Oh, you must not convict him; England will laugh at us. You must not by your verdict send to England the announcement that the great and gifted, the brave and successful Henry Ward Beecher, who subdued all your hostility and won all your convictions, has any human infirmity. You must not tell England that he has seduced a woman, because England will laugh at you. Her aristocracy will meet you with contempt and raillery." Ah, my friend has had too much to do with England. [Laughter.] He has too high a respect for English sentiment and English aristocracy; and if we have got so low, if the administration of justice is so groveling and so debased in this free Government of laws that we cannot pronounce justice as against our great and noble men, for fear of the scoffs of the aristocracy of England, then God help justice and American institutions. [Applause.]

Judge Neilson—I wish you would be silent.

Mr. Beach—Ah, my friend Evarts was too long at Geneva. [Turning to Mr. Evarts.] You associated too much with those Englishmen; you played away too much of your time at Paris; you have lost the simple grandeur of American independence and individuality; and do you expect to carry and control a jury of this country by that sort of argument, by that low appeal to the vulgarest passions of our nature? Whom do you think you are addressing? What sort of men, and what hearts, are you speaking to, in a case involving the dearest questions which can attach to our society and our persons, when important interests are at stake, when far-reaching and terrible consequences may follow your action, is it hoped that you will descend to the debasement of such considerations as, what may be the judgment of England, or of anybody else upon your verdict? You are men responsible in this case. No matter what other people may think, or other people may say, you are pledged to a higher authority than public opinion or foreign judgments, and your consciences are bound by an oath to the Judgment Seat; and we must have from you in this case the clear, honest, independent convictions of your own judgments, and we will have them. The counsel mistakes if he supposes I mistrust this jury. Whatever I may know in regard to the influences surrounding this case, and the means which have been resorted to, full well I know and believe that they fall aimless and powerless before the independence and the truth of each member of this jury; and by no word, by no hint, by no insinuation have I ever, or will I ever, assail the personal integrity of the gentlemen I address. Yes, England will laugh at you. Well, I fancy that there are people in England who are looking with considerable anxiety to the progress and watching the result of this case. Indeed, I know they are, having positive, personal information to that effect. And no one has a deeper respect for the civilization, the intelligence of England than I have. To say that I have a respect for her institutions, the mode of their operation within the sphere and limit of their application, is quite another thing. But she has great men and and learned men, and a great many unjust ones. But I do not fear what England may say, and I don't believe that England, even with all her reverence for potentates and dignitaries and hierarchies—I don't believe that England will stop to consider the question of Mr. Beecher's conviction or acquittal with reference to any association he may have had in former times with her Government or her population. England is not very apt to laugh at American justice or American effort. Indeed, we have grown so fast, that even in the domain of law, in the commentaries of our distinguished civilians and jurists, we have gained the respect of England, and in her courts our authorities and adjudications are received and listened to with as much respect as that with which we accept the teachings of her great lawyers and jurists of old. England will not laugh at whatever verdict you may pronounce. She will have no occasion to; and she has had no occasion to laugh at America ever that I have known. Indeed her associations with this country have rather frequently produced serious emotions upon the part of England. [Laughter.]

Then the gentleman quotes a denunciation from the Scriptures: Woe to him that calls evil good and good evil. Well, what is the application of that sentiment? Nobody disputes the propriety of it or the authenticity of it. God says: Woe to him who calls evil good and good evil. We agree to the sentiment. But we had a long essay from my learned friend, Mr. Evarts, upon that subject, which led me to think that there was some terrible doom about to fall upon some of us—I didn't know whom it was going to hit. [Laughter.] Who is it that calls evil good, and good evil? Is it Tilton? Is it Moulton? Is it myself? Against whom is the woe denounced, and to whom is it applied in this case? This learned gentleman and great advocate ought to have some application for his theories and his moral lessons. Why, Henry Ward Beecher tells us that he was charged with improper solicitation. Benjamin F. Tracy tells us, in his world-wide opening, that the real point in issue in this case is whether the offense was improper solicitations or adultery. Mrs. Tilton over and over again says it is improper solicitations. They do not deny it. They make that the test issue in this case.

A STORMY SCENE BETWEEN MR. PORTER AND MR. BEACH.

Well, Mr. Henry Ward Beecher, whom your friend, Mr. Wilkeson, pronounces the greatest man in all the earth, whom everybody admits is the greatest man in the pulpit of the country, if you have been guilty of improper solicitations addressed to one of your parishioners who worshiped you as her God, how comes it that this gentleman, Mr. Tracy, aided by all the rest, Mr. Porter and Mr. Evarts, paint you as a demigod, upon whom the stain of sin has never rested? Who is making good evil, and evil good? Can the pastor of a great church address to his parishioner solicitations of lustful evil, undenied by his counsel in court, and then be represented to the American community and the world as a demigod just descended from heaven?

Mr. Porter—One moment. I cannot permit the counsel to make a statement, the falsehood of which is known to the Court and to every juror. When have we admitted that Henry Ward Beecher made improper advances to her?

Mr. Beach [to Mr. Morris]—Will you find the place there in the opening where Mr. Tracy states that the issue is between improper solicitations and adultery?

[Turning to Mr. Porter.] My learned friend forgets himself. Those "chords of affection" which have been "growing for 30 years" between us will not stand the tension of an accusation of falsehood. [Applause.]

Mr. Porter—Nor will any chord of friendship permit me to hear a statement made in open court that we admit a charge which Henry Ward Beecher has denied on oath, and against which each of the counsel in this case has argued. [Applause.] The question whether *the charge* was improper solicitations or adultery is another thing; but as to the fact, I am amazed that my friend should claim that either of us has, on any occasion, admitted that Henry Ward Beecher made improper advances to this lady.

Judge Neilson—No doubt the interruption on the part of Mr. Porter was, in his judgment, called for and proper. Still, I think there is a misapprehension. I did not understand Mr. Beach to say that you had admitted it. I understood him to say, in the course of his rapid enunciation, that the charge of improper advances had not been denied—that you had made it the test question—that is, that you had not in terms denied it when it was the subject of discussion. I did not think that he said you even admitted it. I may have misunderstood him.

Mr. Beach—Everybody understands, may it please your Honor, and none better than the counsel, that in discussing this case, and the course of counsel, I am reasoning according to my best judgment and understanding of the case. There is no one more likely than I am to fall into error, but it is not intentional error. I now assert, according to my best recollection and my fairest deductions from the arguments of the learned counsel, that not one word was said by Mr. Porter or Mr. Evarts in denial of the charge of improper solicitations.

Judge Neilson—That is as I understood your expression.

Mr. Beach—Yes, Sir. [Applause.]

Judge Neilson—It is quite impossible, gentlemen, that we can go on with these interruptions.

Mr. Beach—And I repeat the assertion that Mr. Tracy in his opening in this case presented the issue, telling the jury that the real and the true issue in this case was whether the charge and the offense was improper solicitations or adultery.

Mr. Tracy—The *charge*, Mr. Beach?

Mr. Beach—Yes, Sir. [Applause.]

Judge Neilson—I wish you would not compel me to adjourn, gentlemen.

Mr. Tracy—I said that the question was whether Tilton charged him with improper solicitations or adultery.

Judge Neilson—I understand that. Mr. Porter misunderstood you, Mr. Beach. You did not intend to say that they admitted the offense.

Mr. Beach—No, Sir.

Judge Neilson—Well, he misunderstood you.

Mr. Beach—Well, Sir, whether he misunderstood me or not, no gentleman has a right to rise in this court and state that I have uttered a falsehood.

Judge Neilson—He did n't say that.

Mr. Beach—Yes, Sir; he did.

Judge Neilson—No, he said that there had been a misapprehension.

Mr. Beach—No, Sir; I cannot be mistaken when my personal honor is assailed; and I am sorry that the gentleman said it, because he certainly knows that I did not mean to assert falsely.

Mr. Porter—I certainly did not suppose so; and when the gentleman first made the assertion I waited in surprise for the explanation, but when I understood him to renew the charge that that was the admission, that we recognized it, and had not denied it, why then most certainly I had to take him at his word; and no one can be more surprised than he himself is, or will be, when he comes to read what he uttered here. I accept of course his statement as to his intention; but he would be very much surprised if I were to rise and say that he admitted that Mr. Beecher was innocent, and I am equally so when he asserts that we have admitted that he was guilty of improper solicitations.

Mr. Beach—I have exposed the misrepresentations of both these counsel in regard to material facts, by reference to the proof; but I have not ventured to say, and God forbid I ever should say to my learned friend, under whatever provocation, that he has stated a falsehood; and he has no right to say it to me. He knows it is not true; as I believe that these misstatements of the counsel on the other side arise entirely from misconception of proof and without any intention to mislead the jury or to do wrong to any human being. I know that in the ardor of advocacy we are sometimes betrayed into intemperate assertions. We are led into errors and mistakes by our very zeal and by the honesty of our purpose, but we are not deceivers, gentlemen, intentionally; neither my learned friend nor myself utters falsehood to you intentionally; and no one can submit with a more obliging grace than myself to any correction which may be made of any error into which I may fall; but I tell that gentleman again he must not charge me with falsehood.

Mr. Porter—Then the gentleman must not charge me with admitting away the case of my client.

Mr. Fullerton—I insist upon it, your Honor, that my colleague shall be permitted to go on now without interruption.

Judge Neilson—Yes, let him proceed.

THE DRIFT OF PUBLIC OPINION ON THE CASE.

Mr. Beach—Who is it, then, to whom and upon whom this woe is denounced? What is the application of the pretentious philosophy of Mr. Evarts? Wherein have we called good evil? Wherein have we

sought to cover the heinous and the hideous of wrong? Who is laboring to cover up sin? Who is toiling by every device and ingenuity of outside influence and of inner effort to cover up the truth, to conceal the hideousness of guilt? Not we. We do not call evil good or good evil.

"Ah," says Mr. Evarts, "you are not only evil and evil continually, but you have got all the profligate classes on your side; respectable men don't believe this charge. When a scandal is promulguted, then at once there is a vast class of the community that give it ready and a free acceptance," and then (quoting some Latin, which I beg the privilege of skipping) he says; "The idle profligates of New-York believe it, and of all these neighboring towns, and so in every quarter where the wicked classes make their meetings and hold their gossips, with a sneer and smile the scandal is accepted."

Indeed! And how did the gentleman find out that? What sort of association does he keep to make that discovery? [Laughter.] Does he learn it from the declarations of nine-tenths of the press of the country? Why, there are some few who seem to believe it in the audience. Do they belong to the profligate classes? Do they honor us with their attendance out of love for sin and debauchery? Are they giving to this trial the countenance of their presence because of their profligacy and abandonment? Is Fairfield a profligate? Is Judge Lord, who gave a public opinion upon this question in Massachusetts, a profligate? Are the various eminent divines who declare their conviction by their absence, and who do not hesitate to declare it otherwise, are they profligates? And the "jury of the vicinage," to which my learned friend appeals—is this the jury from the vicinage, and are they holding up their hands in acclaim in honor of Henry Ward Beecher? No, gentlemen; the cause of this plaintiff cannot be disgraced by any such association. Hear what the oracle of my learned friend's friend, Mr. Bartlett, says upon this subject. Quoting this phrase of Mr. Evarts, "The idle profligates of New-York believe the scandal," it says, "Mr. Evarts is mistaken. The profligate classes are on Mr. Beecher's side, and those who most fear that he is guilty are the religious, respectable people." And it is true. I know, gentlemen, that there is a large class in this community, pious and moral men, who long and pray that Mr. Beecher may be proven to be innocent; and at the outset of this investigation there was scarcely a respectable man in the whole community who did not pray and hope with all the fervor of his spirit that this would turn out to be a mistaken and a false accusation. But the times are changed. The developments of this trial have wrought their legitimate and inevitable effect. From every section of the country come up the acknowledgements of that effect. Ah, my friend (Mr. Tracy) laughs, but I have quoted the papers; I can refer to the articles; and although he opened that great opening of his with the declaration that he was ustained by the sympathy of the world, I think my friend feels now a little shorn of his supports. [Laughter.]

Now, gentlemen, this is all aside from the true merits of this case, I grant you, but I am not introducing these topics. I have resorted, and shall resort to no such devices to win the favor of this jury. My case does not demand it; my own sense of justice does not approve it. I have no animosity to this defendant which would lead me to resort to any such contrivance; but when these gentlemen flourish in such a magnificent manner, claiming all the purity, and the elevation, and the dignity of the community in favor of their client, and assigning us to the most ignominious association with the profligate classes, why, gentlemen, we are bound to make some little defense.

THE ARGUMENT THAT MR. BEECHER HAD NOT TIME TO SIN.

Well, Mr. Beecher is a busy man. He had no time to commit sin! That is actually an argument made to you by the Geneva advocate [laughter], Mr. Evarts, the man who represented, and ably represented—for I mean no slight upon Mr. Evarts—the man who ably represented the interests of his country in the settlement of the Alabama claims. But it is really an argument made to this jury, in favor of the innocence of Mr. Beecher, that he was too busy a man to find leisure for the commission of this offense! Well, that same busy man tells us that with all the wonderful products of his industry and genius, his work is all done by 10 o'clock in the morning, and he has all the rest of the day for recreation and exercise. Now, that is rather more than you or I can claim. Then he tells us also that he takes Saturday as a holiday—every Saturday; and it turns out that these difficulties in which he got involved occurred on a Saturday [laughter], one of his holidays. He had time enough to visit, too. Although he was not much of a pastoral visitor, yet he did find time to visit Mrs. Tilton, and in the absence of her husband. That was all right; Mr. Tilton solicited it, and it was very proper. He did find time, also, to put the babies to sleep. [Laughter.] Not only that, but he engaged himself for that service in future; and requested Mrs. Tilton whenever the babies were uneasy to send around for him, and he would put them to rest. [Laughter.] There can't be any dispute about that; because Mrs. Tilton writes it, [renewed laughter,] and he acknowledged it. He could find time, too, to take Mrs. Tilton out riding. Well, there is no impropriety in that. He could find time to be out walking with Mrs. Tilton, and to visit a sculptor's studio, I believe, and photographic galleries. Well, now, gentlemen, how pitiful an argument this is, under such circumstances, and in what a desperate strait must a fruitful and ingenious minded lawyer be to resort to an appeal of that character under the proof in this case!

And so with the statement of the learned gentleman

that Mr. Beecher's person was so well-known that he could not move anywhere without being an object of observation. What if it is so? Was there no opportunity for him to have intercourse with Mrs. Tilton, of whatever kind that intercourse may have been? Didn't he visit her? Didn't he see her, and see her alone where there was opportunity, if opportunity was desired? What arrant nonsense it is, with known circumstances admitted by Mr. Beecher himself, to argue that he was too busy and too well known to commit adultery!

MR. TILTON NOT A CRUEL HUSBAND.

There is one subject which, in passing, I desire to speak of, because I would be glad to disabuse every mind of the idea that Mr. Tilton was a cruel and brutal husband. I know Bessie Turner calls him so, but she is the only witness in this case who imputes any such conduct to Theodore Tilton. If we may judge from his letters, if we may judge from Mrs. Tilton's letters, if we may judge from the evidence of the man, from his demeanor upon the stand, from every revelation of his inmost character which he has given, from the sentiments he has expressed, from the doctrines he has avowed, from every act of his, so far as it is proven by any other human being except Bessie Turner, why he is a man who would revolt at any indecency or outrage toward his wife. Ah! gentlemen, except as you get it from the lips of Bessie Turner, where and when has Theodore Tilton ever breathed a lisp against the peace and the honor of Elizabeth R. Tilton? When has he ever professed anything but love and reverence and duty?

He may have sinned; I don't know; you may believe it from the evidence. But so far as we can trace the character and the career of the man, from his writings and declarations and publications, it has been a life of unswerving loyalty and of unlimited devotion to this woman; and even when he comes upon the stand and swears that she confessed to him her impurities with Henry Ward Beecher, his adoration for that wife was still so profound, his belief in her spiritual integrity so immovable, that he yet, in the presence of his God, avows his belief that she is pure in soul and white as snow. Now, can you conceive that that man, under such circumstances of temptation, if he be the base conspirator and adulterer charged by my learned friends, and when there were no scruples of conscience, and no seductions of interest to lead him to the declaration of that belief in the white purity of his wife, can you conceive that the villain he is represented to be would have made that declaration? I shall comment upon it by and by. But it strikes every man as being an open avowal of a condition of spirituality and character utterly at war and inconsistent with the theory of this defense. But Theodore Tilton believed it; I think he believes it still; and he had the honest manliness to avow it, and not only to avow it, but, without question or interrogation, to volunteer it. Nobody asked him a question calling for it; but, in the impulsive fullness of his nature, and in his desire to tell the whole truth, in his love and consecration to that woman who has deserted him, he did make an open and an uncalled for avowal of this belief. And yet that man is represented as a cunning, subtle schemer and conspirator, planning a long arranged and studiously developed conspiracy against the pocket and the honor of Henry Ward Beecher; and he is held up to you, in the denunciations of counsel, as a reckless profligate and a remorseless debauchee, preying upon virtue and integrity, setting at naught all the civilities and proprieties of social life, fallen from his old Christian grace, regardless of his early education and teachings, and with all his powers and faculties misleading the morality of the age! It all exists in the imagination of the counsel. Why was not some one else from that household produced to prove this baseness and brutality? Why not some of the members of Plymouth Church, who, three or four years ago, were intimate and familiar with the hospitality of that household? Why not some of the numerous ladies attached to Plymouth Church and still clinging to Henry Ward Beecher, who again and again have been beneath that roof, and who knew all the conditions of the household?

If Theodore Tilton was the monster he is represented to be, why does this defense rest upon the pert and puerile Bessie Turner? And what is the meaning of the testimony borne by Joseph Richards, by Kate Carey, by Catharine McDonald, by Mrs. Mitchell, by Mrs. Bradshaw by Mr. Maverick, all witnesses pronouncing it a harmonious and a happy household, a loving, cultured and beatific home?

Mr. Beecher himself, too, bears testimony to it. And yet with this evidence, upon the simple testimony of this girl, Bessie Turner, with no better proof than that, and in the face of this exculpatory evidence, this Court-house has rung for days, and the echoes of the voices of my learned friends are still traveling all over the world in bitter and disgraceful denunciations of the conduct of Theodore Tilton in his family. Well, that may be justice, gentlemen. That may be the sort of proof which conscientious and intelligent men require upon which to rest their consciences in determining a great question; but if so, I am mistaken in the judgment and in the character of this tribunal. I know you are prejudiced against Theodore Tilton. There is not a man about me, I fancy—not a man about me who, in consequence of this storm which has beaten upon him, the thunders of which were closed but a day or two ago, and the echoes of which still linger in the arches of this court-room—not a man who has not been influenced against him by this, and because he is a fearless and self-sustained independent man, who will crawl at the foot of no human being and court the confidence or the applause

of no member of this jury, or of this community, with any degrading sycophancy, a man who stands up in his own single and independent manhood and demands in a court of law justice founded upon the evidence. And he will get it. Sometime and somewhere he will get it if it is denied him by this jury. If there be a Providence which overrules the destinies of men as well as of nations; if there be a retributive justice which in the end overtakes sin and transgression, Theodore Tilton will get vindication and justice and Henry Ward Beecher will meet *his* due reward. [Loud applause.]

The hour of 4 having arrived, the Court adjourned until Monday at 11 o'clock.

103D DAY'S PROCEEDINGS.

OPENING OF THE TWENTY-FOURTH WEEK.

FOURTH DAY OF MR. BEACH'S SUMMING UP—COUNSEL REFERS TO PUBLISHED STATEMENTS OF ALLEGED NEW EVIDENCE—MR. TILTON'S LAWYERS DECIDE TO TAKE NO ACTION CONCERNING THEM—CORRECTIONS AND EXPLANATIONS FROM MR. BEACH—THE MISUNDERSTANDING ABOUT THE DEFENDANT'S POSITION IN REGARD TO IMPROPER PROPOSALS—ANSWERING OF ARGUMENTS MADE BY MR. BEECHER'S LAWYERS CONTINUED—CORRESPONDENCE OF MR. AND MRS. TILTON CONSIDERED—MR. TILTON DECLARED NOT TO HAVE PROMPTED THE WOODHULL SCANDAL—MR. BOWEN'S CHECK TO MR. TILTON—CHRISTIANITY AND THE TRIAL.

MONDAY, June 14, 1875.

The twenty-fourth week of the Tilton-Beecher case was opened to-day, with a continuation of the argument of Mr. Beach in summing up for the plaintiff. Replying to the arguments of opposing counsel and taking up questions of probability in the affirmative presentment of the plaintiff's case comprised the main features of the proceedings of the day.

A tribute of respect, given by the orator to Mrs. Beecher's character, as shown by her undeviating faith in her husband and by her acting as a ministering angel to him in his hour of suffering and sorrow, called forth applause.

One of the most oratorical efforts of the day on the part of Mr. Beach was his word-picture of justice, which, given in his most earnest and deliberate tones, excited the deepest attention and interest. This was succeeded by another outburst from the orator, in which he paid a glowing tribute to the majesty and dignity of law, both natural and municipal.

About half of the session of to-day—the fourth day of the summing up for the plaintiff—was consumed by the orator in replying to the arguments of the opposing counsel. After the making of corrections and explanations in regard to the misunderstanding about the concession of the truth of the charge of improper proposals, and about the authorship of the articles in *The Sun* attributed to William O. Bartlett, and also the correcting of the statements with regard to the Rev. Dr. Southard, Mr. Beach went on to criticise further the strictures made by defendant's counsel against the characters of Mr. Richards and Mr. Martin. The latter's testimony, said Mr. Beach, was inadvertently false where it was asserted that the porch behind Mr. Tilton's house was shaded from the sun by a wall. The wall was not there, but there was a large tree and an umbrageous grape vine which answered the same purpose and afforded shade. In reviewing Mr. Moulton's connection with the Proctor libel suit, the orator said that the assertion in Mr. Moulton's statement in regard to Miss Proctor was put there by advice of counsel. Furthermore, Mr. Moulton did not assert the truth of the statement and paid the damages awarded. The speaker then took up and discussed the Woodhull publication, which he said was not prompted by Mr. Tilton, nor did the information therein contained come from Mr. Tilton. Concerning Mr. Tilton's connection with Mrs. Woodhull, Mr. Beach said he knew of no evidence in the case which tended to show that Mrs. Woodhull's character was so bad as to make all association with her disreputable. The slip of paper accompanying the $7,000 check from Mr. Bowen to Mr. Tilton was spoken of by Mr. Beach, who declared that it was a bald misstatement on the part of defendant's counsel to assert that Woodruff & Robinson kept $6,000 of the amount. In beginning the affirmative portion of his argument, the orator referred to the many influences which had been at work in the court-room, to the alleged theatric exhibitions and displays on the part of Plymouth Church, all designed, said counsel, to influence in an indirect and insidious mode the conclusions of the court. Mr. Beach censured the attendance in court of Mrs. Tilton and Mrs. Beecher as being part of the display. If Mr. Beecher were innocent, declared the orator, he needs no such trappings, no such aid, but he could have bravely met the accusations without any of these policies or stratagems. The letters of Mrs. Tilton to her husband were

considered, their expressions analyzed, and their bearing on the relations of the parties to the suit shown. Mr. Beach then struck the keynote of his argument, which he based on his and the jury's knowledge of human nature after a consideration of the peculiar circumstances of the case. Mr. Beecher's address on "The Seducer" was then taken up and a portion of it read. "How Mr. Beecher succeeded in seducing Mrs. Tilton," said the speaker, "only Henry Ward Beecher can tell." The counsel scouted the notion that Christianity was in any way at stake in the trial. There need be no fear, said he, of the consequences, from Henry Ward Beecher's fall, upon the progress of Christian civilization or Christian influence.

THE PROCEEDINGS—VERBATIM.

MUTUAL EXPLANATIONS AND CONCESSIONS BY COUNSEL.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Beach—If your Honor please, a publication in *The Herald* of this morning has possibly fallen under your Honor's notice. Its character seems to demand that some application should be made to the Court founded upon the facts stated in it, but before making any application to your Honor connected with the subject of the article, I would be glad to have a consultation with my associate, Mr. Fullerton, who has not yet arrived, and I do not wish to appear to be guilty of any delay in making whatever suggestions may seem to us important to the Court, and if your Honor will permit me at the opening of court after recess to say whatever may be needful to say, I shall be very much obliged, Sir.

Following the example, Sir, of my learned friend in his allusion to Mr. Willard O. Bartlett, I quoted, in the course of the remarks I had the honor to submit to yourself and the jury the other day, from an article in *The Sun*, a paper with which he is connected, and inferentially, though not by assertion, perhaps, imputed to him the authorship or some connection with that article. Mr. Bartlett has addressed a note to my friend, Mr. Porter, disclaiming all connection with the article in *The Sun*, and I deem it proper, therefore, that I should make that announcement to your Honor.

My friend Porter has also been kind enough to say to me, Sir, that in the course of my argument I attributed to him a neglect in regard to a supposed assertion, not directly made, but, as I supposed, by silence, in the argument of my learned friend, that Mr. Beecher or the defense substantially conceded the fact of improper solicitations addressed by Mr. Beecher to Mrs. Tilton. He has assured me that I misconceived entirely the character of his allusion in his address to the Court and jury upon that subject, from examination made; and I am quite satisfied, Sir, that he is correct, and that I misconceived the nature of his remarks upon that point. And it has been a matter of gratification to me also, Sir, to have had a brief conversation with Mr. Porter, in which I learn that he was unconscious of the severity of the terms which he applied to my apparent misstatement; and it affords me great pleasure to say, Sir, that any temporary misconception which may have existed between us has been very happily and cordially removed.

Mr. Evarts—I may be allowed, if your Honor please, to say a single word. It was a matter of great surprise to us that the distinction which we supposed was so manifest in the discussions as to whether or no Mr. Tilton's charge was adultery, as now, or whether it was of improper advances, of improper proposals, seemed to be confounded by the course of the discussion of our friend Mr. Beach with the consideration of the fact as to whether the fault of this defendant was of one kind or the other. As for the charge, it no doubt was conceded that there was a charge made of one kind or the other—of a certain kind, which we discussed. It is also apparent that it was withdrawn by the wife the same night, and then it was explained, &c., and we did not think of there being any confusion about the point that we were discussing. That was our view of the matter.

Mr. Porter—Perhaps I ought to say a single word to your Honor. My friend's statement the other day was undoubtedly broader than he intended to make it, and I perfectly appreciate the fact that we are all of us very liable to fall into them in the heat and fervor of argument. Unquestionably in my reply I evinced something of the same degree of heat which would naturally arise upon a question of so much importance. I wish, however, that the Court may be corrected in the misapprehension that the charge of undue proposals was not emphatically denied. It was denied, your Honor will remember, in the first place by Mr. Beecher on oath. In the next place, we claimed, though my friends don't concede it, that Mr. Tilton in the "True Story" admitted that Mr. Beecher denied the charge. We claimed that it was retracted by Mrs. Tilton. Gen. Tracy argued upon the various aspects of the case, but at no time conceded in the slightest degree that the charge of improper proposals was true. In various portions of my argument I took occasion to advert to that as a charge entirely unwarranted in the evidence and entirely untrue, and my friend Mr. Evarts did also. My friend Mr. Beach, though, in the heat of argument, evidently misled by an erroneous recollection of the language of Mr. Tracy, assumed that this was a point which we conceded. It would not answer for us to allow such a statement as that to go uncorrected.

MR. BEACH'S ARGUMENT CONTINUED.

Mr. Beach—Well, there is enough said about it. Illustrating by examples the fallacy of Mr. Evarts's proposition, that it was unnatural and impossible for Mr. Beecher to be guilty of sin, reasoning from his high character and his supposed reputation, I referred to the case of the Rev. Mr. Southard of New-Jersey.

Judge Neilson—Mr. Beach, will you allow me one moment?

Mr. Beach—Certainly, Sir.

Judge Neilson—Officer, go in the other court-room and bring a chair for that lady. [Referring to a lady who was standing in the audience.]

Mr. Beach—Since then a collateral relative of Mr. Southard, a gentleman of very distinguished lineage and of high personal merit and distinction, has corrected the information upon which I made the original statement to the jury. It is represented to me that Mr. Southard was a gentleman of brilliant genius and promise; that he was of a highly delicate and sensitive organization, and suffered during his life from an exceedingly painful disease; and either from his constitutional predisposition, possibly, or from the great anguish which he daily endured, that he fell into some excesses in the use of stimulants, either narcotic or otherwise, but that he never was charged in any responsible or authentic form, whatever may have been the gossip of the neighborhood upon that subject, with licentious conduct; nor, I am assured, is it true that his last hours were spent in any degrading or ignominious condition; and it of course is my duty, as it is my pleasure, to render to the survivors of Mr. Southard every reparation in my power for a statement which seems to have been entirely inaccurate. I of course recognize the delicacy of my position in alluding either to living or departed gentlemen, who were supposed to have fallen from their high position, and I endeavored to render as authentic as possible the information upon which I ventured to allude to any such subject. It seemed to be necessary, arising from the nature of the evidence in this case, and the character of this defendant, and I can only express my deep regret and grief that I should have made use of any statement in regard to that gentleman which will mortify or pain those who naturally cherish his memory with affection and with pride.

STRICTURES UPON MR. RICHARDS ANSWERED.

Pursuing, gentlemen, the line of argument which I have hitherto followed, of answering so far as I might the propositions advanced by the learned counsel for the defense in their arguments to the Court and jury, I have one or two references further to make to their addresses. It is an unfortunate feature of this case—perhaps I may say it is one of the unfortunate necessities of this case—that it has been thought desirable to make severe and harsh comments upon the character of many of the witnesses who have been introduced to the court and jury, witnesses who have not been assailed by any of the ordinary means of impeachment, and who have not been attacked through the mode of general reputation or character, who at least have occupied that position in the community where they have earned the respect and the confidence of their fellow-men, and if they are guilty of any errors, of any conduct which should detract from their credibility as witnesses, their misdeeds at least have not been so public and notorious as to impair their standing in the community. In the course of those criticisms, especially upon the part of my friend Mr. Porter, and imitated, though not with so much of severe reprehension, by Mr. Evarts, Mr. Richards was attacked. It is not my purpose just now to discuss the force and the weight of his evidence. That will more properly occur in a future stage of this discussion; but the remarks of the gentleman justify me, I think, in saying that Mr. Richards is a gentleman of the highest personal character and merit. Connected with various institutions, "charged in various situations with the highest duties of trust and confidence, he has performed all the obligations resting upon him as a Christian man and a man of honor, with fidelity and signal success. Attached to the largest Christian persuasion of this country, one of the largest in numbers, one of the most eminent in all deeds of Christian charity and benevolence, he has maintained a rank in that denomination which has secured him the confidence and respect of all with whom he has come in contact; and, indeed, in the City of New-York, if it were desirable to select a lay member of the Methodist denomination who best illustrated the principles and the piety of that sect, Mr. Richards would be selected as that individual. The strictures upon him have been founded upon the simple circumstance that he appears here as a witness, the brother of Mrs. Tilton, to testify to his knowledge in regard to her association with Mr. Beecher. After what occurred upon the stand it surely is not necessary for me to say that he is here as an involuntary witness, brought here after great reluctance and repeated efforts, under the mandate of the process of this Court, which it was not possible for him to resist. It is not therefore a subject of complaint as against him that in this public position he has been called upon to utter facts or words of reproach against a sister. You and I properly estimate the delicacy and the pain of the position in which he was placed, but reflecting upon his duty, upon the emotions which might with great propriety have influenced him, it has seemed to me that if Mr. Richards had voluntarily appeared as a witness in this case, however distressing and agonizing the performance of that duty may have been, that he would yet in that position and under those circumstances have exhibited a proper degree, a proper sense of the obligations of his position.

I do not know how a brother might feel with the

knowledge that a sister had been corrupted by the arts of a seducer. Neither you nor I can properly estimate the condition of his feeling. But you will remember that when Mr. Richards is presented as a witness in this case the fact of the fall of his sister had become notorious. It was bruited through the whole community; the disclosure of her sin had been made public; and whether under such circumstances a brother would feel that there was an imperative duty owing to the law and to society, whether he would cherish any of those natural resentments against the wrong-doer, is a question which might be differently decided according to different temperaments and to the different ideas which every gentleman might indulge in regard to those obligations. I can imagine, though I by no means assert, that that was the condition of feeling upon the part of Mr. Richards; but I can very well imagine when he looked upon the distress and the anguish of that sister, upon her broken relations, upon her severed household, upon her condition of disgrace and suffering, it might very well be that there were sentiments of indignation and resentment which, when her seducer was called to an account, would lead him to become one of his principal accusers. But it is sufficient to say that from the manifestations of Mr. Richards upon the stand, it is perfectly apparent that he was an unwilling and reluctant witness; and when you come to examine his testimony, I think you will concede to us, on behalf of the plaintiff, an exceeding delicacy and reserve in the extent of the evidence which we sought to produce from him. He was not pressed by close and urgent questions. He was permitted in his own way and according to his own discretion to reveal just so much as he pleased of the sight which he viewed upon that occasion, when he ventured into the parlor of Mr. Tilton and found Mr. Beecher and Mrs. Tilton in the attitude which he stated. It is quite possible that if there had been a more critical examination there might have been more detail in the statement of Mr. Richards which would have been more afflicting to his feelings, and perhaps more detrimental to the character of his sister. It is enough to say that he was not pressed beyond the most general statement of the circumstances falling under his observation. The attack upon Mr. Richards produced from Dr. Currie of *The Christian Advocate* some comments, all of which I do not deem it proper to state to the Court and to the jury, but a portion of which, representing the position and the character of Mr. Richards, I propose to adopt as my own.

Some ten days since the papers told of the appearance of a new witness in the notorious Tilton-Beecher case, Mr. Joseph H. Richards, a brother of the inculpated woman. He began his statement upon the witness stand with deprecation of his most painful position, and made an appeal to the consideration due to him in view of it. This the Court recognized with great delicacy, but not so the counsel for the defense, Mr. Evarts, who, suiting his manner to his words, remarked, with mingled scorn and defiance in his tone, "We know your position, and we will show you what it is before we are through with you." To us this seemed, when we first read it, too brutal to have been as it appeared, but later developments do not at all relieve the matter. In opening the case for the defense, a few days later, another of the attorneys at the very beginning made a cruel and wicked attack upon Mr. Richards, presenting him to the Court and to the jury, and to all who read or hear of the case, as virtually a conspirator with those who were seeking to blast his sister's good name, going there voluntarily to make a speech from the witness stand, and connect it with such witnesses as Kate Carey. One must know something of the outside facts in this case to properly estimate the measure of this brutality on the part of the counsel, and our relations to the assailed seem to make it our duty to state them. Mr. Richards is a man in middle life, brought up in this city, where during his entire manhood he has been engaged in honorable business, residing for several years in Brooklyn, and for the last seven or eight years in New-York. He has been all these years an honored and eminent member of the Methodist Episcopal Church, and neither in business nor in society, nor in the church, has there ever been a shadow cast upon his reputation. But it was his misfortune, while casually calling at his sister's house some years ago, to be personally cognizant of something between her and Mr. Beecher, the knowledge of which made him unhappy. He told the story to only two persons, his wife and her brother, and with them it remains a secret still, except as partially told upon the witness stand. Neither the plaintiff nor the counsel knew what his testimony would be until they heard it, but suspecting that he would testify something to their advantage, they brought it forward, &c.

Yet in the face of these facts Mr. Tracy holds him up as a miscreant of the vilest type, conspiring to blacken the name of his own sister; and for what? If the other witnesses in this case against whom equally severe things are said, are as worthy of credence as we know Mr. Richards to be, then we are prepared to indorse them as incapable of bearing false witness. Nor do we believe that he would suspect the harm that he did, without what seemed to him to be incapable of any other construction.

I do not read the further comments. But my learned friend, Mr. Porter, has appealed to the jury of the vicinage. In the long residence of Mr. Richards in this city he has occupied positions of trust; he has been engaged in works of the highest Christian charity and benevolence; and I may with great confidence appeal to the reputation which he bears in this community, to vindicate him from what I deem to be the unfounded and outrageous attacks of counsel.

A. B. MARTIN DEFENDED.

Another witness fell under the vituperation of my learned friends. It was Mr. A. B. Martin, another Christian man, known by the jury of the vicinage, as it is called: whose works in the ways of piety and of humanity have been and are remarkable; a gentleman who has devoted himself with zeal and piety to the advancement of religion and of the culture of those institutions which daily and hourly diffuse their blessings throughout society. And he has been denounced as the

spy of Mr. Tilton, from the circumstance that he happens to be an inmate of his dwelling, and in the face of his uncontradicted evidence, that he was in the daily habit of visiting Mrs. Tilton during her stay at Mrs. Ovington's, and rendering to her those services which a brother in her unfortunate situation might perform. Was that true? Was he thus devoted to this lady in her perilous and straitened circumstances? Did he daily give to her the consolation of his presence, and his aid, and his service in whatever line or department she might choose? Mrs. Ovington was upon the stand; if his representation in that respect had been unfounded it was very easy for my learned friends to have contradicted it. If he was unfriendly in spirit; if he was uncharitable in comment; if he was undutiful in the respect and the service which he rendered to Mrs. Tilton under those circumstances, Mrs. Ovington had the fullest knowledge and the amplest opportunity to expose his hypocrisy and treachery. But that lady was silent, and it stands as an admitted and uncontradicted fact upon this record that all the sympathies of this Christian man, and all the kindness of his charitable nature, were expended in rendering the best and the highest service he could render to this lady. Under these circumstances it seems to be rather hard that he should be denounced as the spy of Mr. Tilton, hanging about this lady in her misfortunes for the purpose of gathering whatever he might collect to her disadvantage, and appearing upon this stand as a witness to publish it to the world. Has he spoken anything unfavorable to Mrs. Tilton? Has he endeavored to prejudice her character, her position, her relation to this unfortunate transaction—not a word of disrespect or condemnation—not a syllable. And he stands now as he did before his appearance upon the stand as the truest and the best friend she has had in all her complications with this affair. But then it is said that he has fabricated the condition of things under which, visiting Mrs. Tilton, he was accidentally brought to the information that Mr. Tracy and Bessie Turner, just before her appearance before the Committee on the same afternoon, were in long and earnest consultation. The subject he did not understand—the matter of discussion he did not hear. He did not pretend to state, to make any representations in regard to any influence which Mr. Tracy might have thought fit to exercise over the memory and the mind and disposition of Bessie Turner. But Bessie Turner had represented that that interview was limited to ten minutes. Mr. Tracy had extended that interview by his evidence to an hour, and it was in confirmation of the testimony of Mr. Tracy, somewhat enlarging the time, that Mr. Martin was produced as a witness. His narration was that upon a hot Summer's day, visiting Mrs. Tilton in her room, the heat was oppressive, and that she and himself went upon the back piazza of Mr. Ovington's house for the purpose of enjoying a chat. And we have had evidence presented here to show that when Mr. Martin on his cross-examination represented that that piazza was shaded, that the heat was not oppressive, that there was a freer circulation of air and more convenience and comfort upon the piazza than in the room of Mrs. Tilton, he was guilty of misrepresentation. Upon cross-examination he was led to state, without any particular observation or reflection, but with the knowledge that the place was by some means shaded—he was led to state that the walls of one of the adjoining houses projected beyond the residence of Mr. Ovington and cast a shade upon this piazza. Well, he was mistaken in this that the next adjoining house did not itself project, but that one of the other houses more distant did. And when we came to send down our surveyor to examine into the condition of the thing, we found that there was a large tree in an adjoining garden, and that there was a large grape vine upon a rack, extending nearly the whole length of the piazza, which afforded the shade which Mr. Martin erroneously attributed to the projecting wall of a neighboring house, and to this day, this jury and my friends would find, if they observed, that that grape vine is in full bloom and foliage, and affords just the protection of which Mr. Martin spoke. Well, gentlemen, if it seems consistent to my learned friends, under these circumstances, to charge an unimpeached witness with willful misrepresentation in regard to circumstances of this character, in which a witness might readily be in error, the principal fact on which his mind is fixed being true and demonstrably true—if they think that the necessities of their case demand that an honorable and Christian and respectable gentleman shall be charged with perjury and falsification upon such slight circumstances, why it is not for me to question the good taste or the propriety of such an accusation It does not seem to me to recommend itself to the acceptance of fair-minded and intelligent gentlemen.

MR. MOULTON'S REFLECTIONS ON MISS PROCTOR.

Something was said—intimated rather than expressed—by my friend, Mr. Porter, in regard to the controversy arising out of the statement of Mr. Moulton before the Investigating Committee connected with a reflection in that statement upon the character of Miss Proctor. I believe my learned friend said that it cost Mr. Moulton $5,000. It is proper for me to say, in answer, that, in the statement to which my friend alluded, reference was made unfavorable to Miss Proctor. No accusation was made against her reputation by Mr. Moulton. But he was guilty of the inexcusable indiscretion of relating in that statement a communication in regard to that lady, which he averred was made to him by Mr. Beecher, of occurrences between that gentleman and that lady. It appeared that that reference was made under the advice of counsel and against the wish of Mr.

Moulton. Miss Proctor brought an action. The friends of the parties, looking at the statement, inquiring into the motives and circumstances which induced its publication, counseled the withdrawal of that action from court, and its submission to a gentleman of high legal attainments and position in this city. The publication of Mr. Moulton was unquestionably actionable, founded, as I have said, upon the representation made by Mr. Beecher, reflecting directly and personally not at all upon the character of Miss Proctor. Miss Proctor disclaimed any desire for damages, and without full examination of the case, without an examination of the question whether or not Mr. Beecher did make the communication to Mr. Moulton which was charged upon him in that statement, upon a general and informal submission of the case to the gentleman, arbitrator, he awarded, as against Mr. Moulton, the payment of the expenses and the counsel fees of the action, and that payment was made, and that is the history in general of that transaction. It is resorted to here for the purpose of conveying the impression that Mr. Moulton is a habitual libeller, that he is accustomed to misrepresent and to slander his fellows and his lady acquaintances, that he is possessed of that degraded and vulgar spirit which leads him into the publication of offensive slanders of this character against others; and this statement will remove any apprehension of that kind.

THE TROUBLE BETWEEN MR. MOULTON'S FIRM AND THE GOVERNMENT.

Another allusion, which I may as well notice here, was made to Mr. Moulton, that he and his firm had been in unfortunate conflict with the Government of this country in consequence of some violation, I believe, of the Internal Revenue laws, in which litigation Mr. Tracy was the adviser of Mr. Moulton. We know nothing of the details of that transaction, gentlemen. One thing is certain, that it is apparent from the evidence of Mr. Moulton that there was nothing personally dishonorable to him or to his firm in those details, and it is quite certain that no judgment was ever entered, or any conclusion ever reached which reflected, in the remotest degree, upon the integrity of that firm or its individual members. If I was disposed to imitate the spirit that led my learned friend to obtrude a subject of that character into the discussion of this case, it might be possible for me to retaliate with something of severity and justice, founded upon better data than those upon which my learned friend spoke. I shall not indulge it, gentlemen. I mean no reflection upon any one when I say I would not be guilty of the unworthiness of making such disreputable allusions to the conduct or situation of any party or witness in any case in which I may be engaged, unless upon the evidence that party or that witness had been permitted to present his justification and reveal to the court and jury all the circumstances connected with the supposed transaction.

THE PUBLICATION OF THE WOODHULL SCANDAL.

Very much of your attention in this case, gentlemen, has been, it seems to me, without any essential pertinency to this action, bestowed upon the character and career of Mrs. Victoria C. Woodhull, and Mr. Tilton's connection with that lady. My friends have endeavored, with great pertinacity and at great length of proof, to attribute to Mr. Tilton the publication of what is called the "Woodhull Scandal," and it has been said substantially by my friend, Mr. Evarts, that that scandal embodied all the truths as revealed by the evidence of its condition and progress, while the truth is that none of the essential features developed by the proof in this case, none of the pregnant, and, as we maintain, conclusive evidence upon which the plaintiff's right of action is founded was ever hinted at in that scandal. There was a charge of adultery as against Mr. Beecher with Mrs. Tilton. But the proofs, the circumstances, the details of their connection as exhibited by this record are entirely absent from the statement in that paper. And in that paper I am justified in saying, from the allusion made to it by my friends upon the other side, that Mrs. Woodhull states that in Washington, in the Winter of 1871, she learned from Mrs. Hooker that Mr. Beecher was in the habit of preaching to twenty of his mistresses, and that there she got the first information upon that subject.

Mr. Evarts—Do you think that is in the article?

Mr. Beach—Yes, Sir.

Mr. Evarts—I only ask if you think it was in the article?

Mr. Beach—Yes, Sir, I said it is in the article, and it is in answer to your general statement that it contained all the features presented in this trial.

Mr. Evarts—I only ask you, as matter of fact, whether you think that is in the article?

Mr. Beach—Yes, Sir. [To Mr. Fullerton.] Is it not—in company with Mrs. Hooker?

Mr. Fullerton—Stated in her presence.

Mr. Beach—In her presence. Perhaps it may be erroneous to say that she learned it from Mrs. Hooker, but she learned, in company with Mrs. Hooker, that fact. That article contains the statement, also, that Mrs. Paulina Wright Davis told her of the criminality between Mr. Beecher and Mrs. Tilton, and that is before the date—both these circumstances before the date of Mr. Tilton's acquaintance with Mrs. Woodhull. She next states that in the Spring of 1871 Mrs. H. B. Stanton told her the same story, also before their acquaintance. And she states, as her authority for making the publication of May 20, 1871, before her acquaintance with Mr. Tilton was commenced, and as its basis, the statements derived from Mrs. Hooker, Mrs. Davis, and Mrs. H. B. Stanton. She does state undoubtedly, and it is but candor for me to avow it, that after that she had conversation both

with Mr. Tilton and with Mr. Moulton upon the subject. But she also states that the most important information which she derived upon that subject was in conversations with the Rev. Henry Ward Beecher himself. And in the columns of that scandal she makes Mr. Beecher confess to her the particulars which it contains. Now, Mr. Tilton might with great propriety say that that statement was a lie. He might with great truth say that in its circumstantial details it was all false, as he did repeatedly say, and he says now, not in the material averment, the essential and central fact which it states, but in the surroundings of her narrative, in all its details, as connected with that principal fact, it is erroneous and false. But, gentlemen, this statement of Mrs. Woodhull is most remarkable for its omissions. The "Letter of Apology," or the "Letter of Contrition," of January, 1871, given by Mr. Beecher was not alluded to in the statement. Theodore Tilton's letter to Bowen of January, 1871, was not alluded to; the letter of Mr. Beecher of Feb. 7, 1871, where he speaks of Mr. Moulton as having "tied up the storm ready to burst upon us"—there is no allusion to that in the statement. The "Nest-Hiding" letter of Mrs. Tilton is not mentioned in the statement. The letters of Mrs. Morse to Mr. Beecher, and the manner in which he met those letters, are not mentioned in the statement. What is called the "Ragged Edge Letter" was not mentioned in the statement. The Tripartite Covenant was not mentioned in the statement. And all these essential and material facts which, if Mr. Tilton had been the author of that statement, would have necessarily been contained in it, have no appearance there. Now, is it possible if Mr. Tilton was the informant upon whom Mrs. Woodhull made her communication to the public, possessed of all this information, if he was instigating the assault of Mrs. Woodhull upon Mr. Beecher for any purpose, for blackmail or for revenge, if he stood behind this woman in this brutal public attack upon Mr. Beecher and the reputation of Mrs. Tilton, would these matters, so pregnant, so conclusive, have been omitted from that statement? It is perfectly apparent, aside from the other evidence in this case, studying the characteristics of the paper, and the motives and purposes which are attributed to Mr. Tilton, it is perfectly apparent that he had nothing to do with the authorship of that instrument, or with its publication. If he desired any public statement of that character, he would of course have made it in a form of authenticity, and founded it upon that evidence which he presents to this Court and jury to-day as evidence of the truth of his accusation. It would not have contained falsehood in detail, misstatement in regard to facts, but would have presented, in the form, and mode, and style of the logic of argument of Theodore Tilton, this, the first serious accusation publicly made, founded upon these disclosures of the relations of Mr. Beecher to Mrs. Tilton.

MRS. WOODHULL

I don't know but I may as well here, gentlemen, say a word in regard to Mrs. Woodhull. I am not here as the apologist or the advocate of Mrs. Woodhull. I have neither studied her doctrines, nor do I know anything of her personal character. I do not choose to defend any of the dogmas belonging to the school to which she is attached; and yet the course of examination of some of the witnesses who have been produced upon the part of the defense has revealed features of the tenets of that school which may very properly be the subject of discussion and consideration. But I have been at a loss to know how it is assumed in the course of this trial that Mrs. Woodhull is a lady of depraved and obnoxious character. What do you know of her doctrines? What do you know of her life? What do you know of the principles of morality or Christianity which govern that life? and upon what principle is it that you are to assume that association with Mrs. Woodhull is disgraceful to an intelligent gentleman? There has been no proof given of it, but you are asked, upon vague rumor, upon irresponsible gossip, and upon the assumptions of counsel, to denounce that woman as discreditable, and all association with her as damaging. Is that the way you have assumed under your oaths and in your responsible position, to determine the character and the rights of parties? and is Mr. Tilton in this case to be denounced as corrupt and vicious, as lewd and debauched, because, forsooth, he has had communication, intercourse, association with Mrs. Woodhull? putting out of sight entirely the motives which led to the intercourse, the inducements which led to that acquaintance, and pronouncing simply upon the character of the woman, and, without any evidence whatever, pronouncing her infamous and her associates discreditable. What does Mr. Wilkeson say about it?—this man of genius, as properly represented by my learned friend. Mrs. H. B. Stanton, a lady whose characteristics of womanhood, whose high intelligence and purity of life lift her above the suspicion of improper associations, was not only the acquaintance of Mrs. Woodhull, but her visitor. Miss Anthony, a lady much belied and ridiculed by the public press, but yet a woman of high ladyhood and accomplishments, cherished in the society where she lives, at Rochester, was an acquaintance and an associate of Mrs. Woodhull. You have heard from indubitable proof that what are called advanced minds, those speculative thinkers who deal with the great problems of society, who are called reformers, who seem to be in advance of their age, and therefore are always scouted by the public thought, were accustomed to collect at the house of Mrs. Woodhull and there indulge in discussions upon the themes which occupied their daily attention. You have seen Mr. Pearl Andrews. He has been referred to somewhat slightingly sometimes in the course of this discussion, but does he impress you with an idea of his

depravity or his looseness of principle? I know he is spoken of with something of raillery as a "Pantarch," and as dealing in theories and doctrines which fail to attract public attention or confidence; but he is a man of education, of learning, of character. He was long a resident, with his wife, in the house of Mrs. Woodhull; he was accustomed to meet there, in daily and friendly converse, the polished and cultivated thinkers of the day, and he ventured to say—which has again excited somewhat of ridicule—that the gatherings at her house resembled the coteries which were wont to collect in the *salon* of Madame Roland in the exciting days of French history. Well, was not the comparison deserved? Where else more prominently and remarkably than in the house of Victoria C. Woodhull were those gatherings accustomed to congregate, where these subjects of high and liberal thought were wont to be discussed? Now, I repeat, I know nothing of Mrs. Woodhull, of her principles, her doctrines, or her character, except as they are revealed upon this stand; but I say it is an outrage on the forms of justice, it is a disgrace to this tribunal, that a lady who has not been assailed by proof, who stands thus represented in the evidence, should be decried and dishonored by the flippant references and smiles and jeers of counsel. I shall have occasion hereafter, in considering the tenets which have from time to time been advanced by Mr. Tilton, to refer more particularly to the notions of marriage and divorce, and what is called "free love," which are attributed to him, and the principles which we have, through Mr. Pearl Andrews, developed in the proof.

TO WHOM MR. BOWEN'S $7,000 WENT.

There is but one other subject, gentlemen, to which I desire to ask your attention as especially connected with the argument of Mr. Evarts; and I listened to what he said upon that subject with as much amazement as the counsel on the other side heard what appears to be my mistake in regard to their views concerning improper solicitations from Mr. Beecher to Mrs. Tilton—the truth of those solicitations we will discuss by and by. Mr. Evarts made the astonishing declaration that the $7,000 which was received from Mr. Bowen by Mr. Tilton was at once passed into the hands of Woodruff & Robinson, and that $6,000 of it was at once taken by Woodruff & Robinson—or the "old friends" of Mr. Tilton—for the purpose of repaying his arrearages to them.

Mr. Evarts—They and the other subscribers took the $6,000—Southwick, Schultz, and the others.

Mr. Beach—Why, gentlemen, upon what proof in this case was that assertion founded? Will anybody refer me to any evidence looking, even distantly, to such a conclusion? This assertion is made in the face of the books of Woodruff & Robinson, or of an account transcribed from them and produced here, in which it appears that the $7000 was placed immediately to the credit of Mr. Tilton, and from him and by him, from time to time, drawn out at his pleasure and to meet his own wants. There is no disputing the proof. It appears, not only by the account, the record, but it appears by the testimony, in perfect conformity with the record, that every dollar of that money passed at once into the hands and to the credit of Mr. Tilton, and was by him appropriated to his own purposes; yet, in the face of this conclusive evidence, the astounding proposition is submitted by the counsel that $6,000 of that money was seized and appropriated by Woodruff & Robinson and the other subscribers to *The Golden Age*. I repeat, gentlemen, there is not a particle of proof in this case to sustain that allegation; and [turning to Mr. Evarts] I will very readily give my learned friend an opportunity to refer to any such evidence. It is a bald misstatement—I suppose uttered unconsciously; but it has a most mischievous effect upon Mr. Tilton and upon the question in this case of a conspiracy to blackmail Mr. Bowen and everybody else connected with this affair. Well, it seemed necessary for the learned gentleman to resort to this *misapprehension* for the purpose of giving a construction, an application, a meaning, to the little scrap of yellow paper which was presented by Mr. Partridge: "Spoils from *new* friends for the enrichment of *old*." Well, it requires a pretty strong imagination to give any unfavorable effect to that paper. Mr. Partridge does not say that the paper was in any way connected with the check when it was delivered to him. It probably was not; from the fact that Mr. Partridge thought it consistent with his duty as cashier of the firm of Woodruff & Robinson to put the memorandum in a different place from the check. I do not care to speak, gentlemen, of Mr. Partridge with any sort of incivility or unkindness; but the circumstances under which that memorandum was withdrawn from the custody of the firm by which he was employed, and of the production of it here, would, I think, give just opportunity for some strictures upon Mr. Partridge's views of the duty of an agent toward a principal, under such circumstances. But I have no taste for reflections of that character, and I do not deem them either beneficial or influential. But look at the contents of this paper, and let us see whether it has any rational connection with that check or with the affair out of which it originated. "Spoils from new friends for the enrichment of old." Well, the spoils came from Bowen. He was not a "*new* friend." For fifteen years the most intimate association had existed between him and Mr. Tilton. "For the enrichment of old." Why, Woodruff & Robinson and the other gentlemen connected with the contributions to *The Golden Age* were not "*old* friends"—not so old as Bowen. There was no significance, there is no significance, attached to the paper in connection with this check; and every other person associated with the affair professes entire ignorance in regard to the connection of

that paper with that check, in any form. It has passed entirely from the recollection of Mr. Tilton. Mr. Woodruff has no memory of it; he says the check was delivered to him, but he has no recollection of this paper—somewhat remarkable in its appearance, and, if connected with the check, more singular in the possible significance which might have been attached to it. Well, it was not for the enrichment of old friends, because if anybody was enriched by it, it was Mr. Tilton exclusively; but my friend, for the purpose of giving an application, a meaning to this paper, chose to say that these "old friends" referred to at once apppropriated $6,000 of the fund.

[Mr. Evarts here gave an assenting nod.]

Mr. Beach—Well, my friend may nod his head, and I suppose there is a good deal in it. [Laughter.] But I challenge him to the production of any proof which will furnish the shadow of justification for the statement he made.

Mr. Evarts—I gave all the circumstances and all the proof, and I argued the matter to my satisfaction, and I presume, to the satisfaction of the jury.

Mr. Beach—Yes. Well, gentlemen, he gave *no* proof upon the subject; he stated *no* circumstances upon the subject (for the extract from his speech is before me), except the simple statement that when the money was passed over, $6,000 of it was grabbed for the benefit of the subscribers to *The Golden Age*.

COMMENTS ON "THE PLYMOUTH SECTION."

Now, gentlemen, thus far in my argument I have endeavored to follow and answer as well as I might the various suggestions which were made by my learned friends in their submission of this cause. I have anticipated a very considerable part of the argument I intended to submit to you in the outset, and I hope not to be tediously lengthy in the remainder of the observations which I ask you patiently to hear.

There are one or two attendant circumstances connected with this trial which seem to me to merit a passing notice. You cannot but have observed the unusual features with which this trial was introduced to your notice, and which have attracted something of public comment. It is somewhat difficult to determine whether or not Henry Ward Beecher is the real defendant in this case. The management of it has been apparently assumed by Plymouth Church, and my friends have taken great credit to the defense and to Mr. Beecher, that upon this occasion he appears surrounded by a multitude of earnest and devoted adherents. You remember the circumstances ushering the trial. The procession daily of the members of Plymouth Church surrounding this bar and this jury, and by their presence and their countenance and their action, endeavoring to influence the deliberations of this court. Not an accidental gathering of spontaneous friendship, but an organized array under the lead of their gallant usher [laughter], who has assumed, or for a time did assume, the apparent control of this court-room; and throughout the whole trial, in the presence of the jury, and as I say, for the purpose of overawing justice, this unusual gathering of Plymouth Church has been collected about this court and jury. And the influence has not been silent or repressed. Every mode by which it could operate, every avenue by which it could reach, insensibly and unconsciously, the court and jury and influence them, has been most freely and unscrupulously employed. I have a great respect for Plymouth Church. It is a great church; it is a wealthy and influential church. It embraces three thousand communicants, it is said, from the midst of this society, embodying character, position, influence, wealth I admit; and that is the "jury of vicinage" to which my friend Porter would be glad to appeal. One appeal has been made to it, through the Committee of Investigation, and I don't think that either the parties interested or the public would be gratified by any repetition of that proceeding. But Plymouth Church, as I have said to you, is an independent church, standing upon its own strength and its own merits—very properly for aught I know. But they are an aggressive church; and they come into this court-room as if this trial were a sort of gala day. For the first days of this trial—nay, for the first weeks of this trial—we were delighted with the floral displays made by Plymouth Church. Henry Ward Beecher was decorated not only with the devotion and the idolatry of his communicants, but around this trial was thrown a scene and a spirit of lightness and joy, as if all that was to be done was for Henry Ward Beecher, with his Plymouth Church at his heels, to appear in a court of justice and demand the confidence and the verdict of a court and a jury. They reminded me of the words of the satirist poet as belonging to the church militant:

> "Who found their faith upon
> The holy text of pike and gun,
> And prove their doctrines orthodox
> By apostolic blows and knocks."

It was not perfectly safe for any gentleman who was not in entire sympathy with Plymouth Church and Henry Ward Beecher to make his appearance around this bar. Why, I remember, but a few days ago, that estimable and pious lady, Mrs. Bradshaw, attracted by the eloquence of my learned friend, ventured to come into this court-room; but she had been upon the stand adversely to Mr. Beecher and she was frozen by the chilliness of Plymouth Church. Why, the stately Caldwell—[laughter]—towering, as Mr. Phillips says of Napoleon, above Mrs. Bradshaw "like some ancient ruin whose frown terrified the glance his magnificence attracted"—[laughter]—stood over her, and the poor lady was in terrible alarm. And there was my friend Mr. Murray, the downy-cheeked Apollo of Plymouth Church—[laughter]—why, when he saw Mrs. Bradshaw venturing into this court-room his

countenance assumed the fierce ruggedness of Mars, in his worst aspect. [Laughter.] And so, whenever any one—any one who was not submissive entirely to the dictation of Plymouth Church—made his appearance in this bar, he was displaced to accommodate the phalanx which was brought here to support Henry Ward Beecher—and for what? Cannot Henry Ward Beecher stand alone? Must he be bolstered up by his adherents, and must these influences be pressed upon a court and jury to control the deliberations in a court of justice? It was not long, gentlemen, not long, before these other displays gave place to the impression of seriousness and awe which belong to a place like this. Gentlemen soon found that we were in the presence of the law, in the presence of a court and a jury administering justice under the forms of the law, and a little more of sobriety, a little more of decency, of absence of floral displays, and exulting in anticipated triumph, came over the representatives of Plymouth Church.

Another circumstance alluded to also by Mr. Evarts—and I make no allusion to it with any sort of disrespect to the lady to whom I refer. In a case of this character, necessarily involving imputations upon her husband, developments which must pierce the sensitiveness of her woman heart, Mrs. Beecher has been a constant attendant at this trial. I do not except to it, gentlemen. It is but another evidence of a woman's trust and a woman's fidelity, but it seems to me a little singular that a lady like Mrs. Beecher should have been forced into constant attendance upon a trial involving such an investigation, listening day by day to the revolting evidence of her husband's unfaithfulness, whether true or not, and she, I presume—I assume does not believe it; it is a little singular that she should be forced to what must be a sacrifice of her womanly and wifely feeling through a protracted investigation of six months. She exhibits the best aspects of the poet's language when he exclaims:

> "Oh! woman, in our hours of ease,
> Uncertain, coy, and hard to please,
> And variable as the shade
> By the light quivering aspen made;
> When pain and anguish wring the bow,
> A ministering angel thou."

Doubtless she has been, but yet it seems to me that there is an air—I will say, adopting the language of my friend—a theatric air about the arrangement. I will not say that this gentle and venerable matron has been forced into this unseemly place for the purpose of awaking the sympathies of the jury; I have no objection to your indulging them, gentlemen. I have no objection that this jury should consider all the serious consequences which may result to Mr. Beecher and to this connection with him by this trial. They are a proper consideration for you. Not to exonerate him against evidence, not to diminish by a feather's weight the proof in this case, not to allow sympathy to overcome a sense of justice, but to impress upon each of your minds the solemnity of the duty and the responsibility which rests upon you. No judgment should be pronounced in this case without a careful consideration of all its results, and without a proper regard to the immense interest which may depend upon your conclusion; and yet I must say, as a duty to this case, that it seems to me as if there had been an organized plan of defense, an array imposing in its extent and in its characteristics in this court-room, to influence, by the indirect and insidious modes, the conclusions of this Court.

There has been another appearance in this court-room; another lady was forced early into this arena where her virtue was the foot-ball of contention; where she day after day, upon her own confessions, upon inculpating evidence of others, was exhibited as a woman who had fallen from the virtue and the grace and the dignity of her character. She came here not as the friend or the ally of her husband, this plaintiff, but she came here as the adherent of this defendant, who had enticed her from her home, who had produced her before his packed committee, who had led her into an attitude of hostility to her husband, home, and children; and she is brought here to listen to the details of her sin, and hear the jeers and the mockery of an insulting crowd. Do you doubt under what influences she came? When she was first enticed from her home, Frank Moulton, anticipating all the consequences which have followed from that most injudicious act upon the part of Mr. Beecher, reproached him with it, and says:

I told Mr. Beecher that Mr. Tilton never would have written that card if it had not been for the publication of his correspondence with the Committee and the desertion of his wife, and I said to Mr. Beecher at that interview: "Don't you know that you are doing yourself, or are liable to do yourself a great hurt by keeping Elizabeth away from Theodore? Don't you know perfectly well the influence that that woman has had over him? If you keep her away from him it will only incense him, and you ought to send her back to him," and he said: "That can be arranged if this other matter is fixed up properly."

[To Mr. Fullerton.]—He didn't contradict him, did he.

Mr. Fullerton—No, Sir.

Mr. Beach—Mr. Beecher was on the stand. That accusation of withdrawing Mrs. Tilton from her husband and her home stood upon the record under the evidence of Mr. Moulton against Henry Ward Beecher, and he uttered not a word of denial—not a word of denial. And you remember with what particularity my learned friend carried him through the relations of Mr. Tilton and Mr. Moulton as to matters which he considered important, and which were possibly subject to denial by Mr. Beecher, and this most pregnant circumstance was omitted. And there is nothing in the general testimony of Mr. Beecher, nothing in his relation of circumstances or intercourse which contradicts this allegation of Mr. Moulton. It stands uncontradicted that this woman had thus withdrawn from her home, and for the purposes of production before the In-

vestigating Committee, giving evidence which I shall comment upon hereafter; that she is permanently seduced from her home; that Mrs. Ovington, who is pronounced one of the princesses of the earth, was the agent by which this act was accomplished. She became suddenly and at once intensely interested in Mrs. Tilton, taking her out on rides, inviting her to the hospitalities of her house, intimating to her that when it became necessary her house might be made her permanent refuge. You remember the note addressed to the Investigating Committee to know whether Mr. Tilton was upon the stand, and whether any necessity was arising for any movement upon the part of Mrs. Tilton. You remember how Mrs. Ovington visited Mr. Beecher, and how Mr. Tracy came as the agent of Mr. Beecher in to the operation, and through the evidence you see the machinery by which this woman was brought to leave home and children, and to accept a residence with Mrs. Ovington, and that woman a widow though a wife, homeless though a mother, who is now wandering, subject to the control of Mr. Beecher and Plymouth Church, supported by Plymouth Church, or by money derived from its adherents; she is brought into this court-room, and along the first days of this trial, how unctuous, how expressive were the greetings between Mr. Beecher and Mrs. Tilton—shaking of hands, smiles of welcome, and exhibitions of that character between a charged seducer, whose guilt was under examination, and the refugee wife, the victim of his arts, made in the presence of a court and jury, and continued until the expressions of public disapprobation satisfied these gentlemen that their play could not be conducted in all its parts without reprobation.

Oh, gentlemen, Plymouth Church may, if it pleases, support a guilty pastor; the wife of Mr. Beecher, with clinging and devoted fidelity, may adhere to him during all the phases of this most remarkable trial; but what an indecency it is and it was to parade Mrs. Tilton in this court-room, and under these circumstances, to stand up by the side of Mr. Beecher, to hold him up in his trial with justice, and all these things I submit to you are but confessions on the part of Mr. Beecher. If he is innocent he needs no such trappings, no such aid. The righteous are bold as a lion. Like any other man, he could have appeared before this tribunal, and with manly bravery and defiance meet this accusation without resorting to these policies and stratagems to protect himself from the truth. I do not object—I do not object that the friends of an accused man should manifest their interest, their friendliness in his trial, but I insist it should be done with a decent regard to the proprieties of a court-room, and with ordinary respect to the proprieties of life.

My friend has said again and again, and I most heartily join in that declaration, that Mr. Beecher is to be judged like any other man. The law is no respecter of persons; the law does not respect high position and exalted talents; the law makes no distinction between the rich and the poor, the high and the low. You remember its symbol. That does not represent it fully. It is the statue of justice, stony, holding out its scales with an unquivering and unsympathetic arm; no heart-beat disturbs its rigor or its sternness; its eyes are bandaged; it sees not litigants before it; it is intellectual wholly, unsympathetic wholly. It regards only the evidence with a clear and unmoved, unwavering judgment, criticising proof, giving judgment unswayed by those tumultuous passions which control the judgment of men outside of her temple. It is thus that the law is administered. It is thus that justice is to be applied, and yet, gentlemen, how often in the course of this trial have you been moved by your sympathies? How often, when looking upon this defendant, grand and noble in his nature, testifying in this case, now quivering with anguish and tears starting in his eyes and appealing to Heaven, and anon changing to all the various moods and tempers of the human mind, you did not look upon that spectacle unmoved. You could not but see the man in all the grandeur of his nature, and you could not but look beyond his present position to that to which by the force of your verdict he may possibly come. But is that justice, justice in her spirit, justice in her truth, justice in that impartiality and stern vigor, with which her penalties are administered to the wrong-doer? Why, gentlemen, have you ever considered the character, the power, the universality, the necessity of law; how everything under the heavens and above the heavens is regulated by immovable, fixed, unchangeable law, applied to all the departments of creation and life? How every atom in this vast universe is subject to law—law established by Omniscience, and that Omnipotence which will uphold it to the end. From this great o'erhanging canopy, this majestical roof, fretted with golden fire, down to the humblest flower which blooms at your feet, there is not an atom that moves not in obedience to the law of God; and suspend but for one instant the operations of that law, and all this magnificent creation would rush at once into darkened chaos. And so it is with the law of our bodies. Violate it, depart but for one instant from that fixed and regulated law established by the Creator, and you suffer; you are diseased; pain, anguish, and death come. Violate the law of society under which you sit, and which you are to-day administering, and the same consequences, though possibly not in immediate perceptible effect, but the same consequences follow. The purity and the integrity, the immobility of the law must be preserved. If you violate it to-day you establish a precedent which operates upon the future. Nay, gentlemen, you do harm to your own conscience, to your own sense of right; you disorganize society, you unsettle the principles established for its government, you introduce a series of irregularities and mischievous results which will have their

effect sometime and somewhere—I cannot tell you when—but every violation of law is as sure to be punished as that God reigns above us. This life is a life of compensations. Whether it be true that sin and error shall be punished by its own consequences; whether it be true that sin carries within itself the ingredient of its own punishment, or whether God Almighty, by a special interposition of His providence, interferes to control and punish, I cannot say; but this I do know, if there is truth in God, and truth in Scriptures, that no man can violate any law of God, that no man can violate any municipal law for the government of society, without imposing upon himself and upon the others the certain punishing consequences of that violation.

Now, what have all these things to do with the deliberations of this jury? What heed are you to pay to this array of imposing and seductive influences which are brought to bear upon your judgments and sympathies when you stand up before your Creator and before the world, and avow your ability to determine this case upon the law and the evidence, and give to your declaration the most solemn sanction that can be applied to the conscience of man, that you will thus exert your prerogative and discharge your duty—what have you to do with all those overlying influences? I can but exhort you, gentlemen, in the spirit of your oaths, in the spirit of justice, and with a conscientious regard to your duty to God and to man, to disregard all foreign and outlying circumstances of this case, and to give heed only to the instructions of law you shall receive from his Honor, and to the evidence to which your consideration will be asked.

"THE TILTON SECTION."

And consider, if you please, for one moment, the difference in the conduct of this brutal and depraved husband, this debauched and cruel libertine, toward a wife who left him without any new cause at least, without any immediate offense at least, who left home and children—contrast his treatment in its delicacy, its reverence, its continual and out-mouthed testimonial in favor of that woman, with the conduct of the man who has thus exhibited her in a court of justice to the scorn and derision of the world. I ask you again, when has Theodore Tilton ever exhibited the brutality of his nature in any accusation against his wife, in any persecution of her honor, her virtue, or her peace? When has he ever exposed her to misrepresentation or wrong, or ever failed, with a manly fidelity and with a proud defiance, in maintaining her purity and excellence everywhere and before every man? Theodore Tilton uses none of these audacious influences. He resorts to no shabby stratagems. He has not gathered influences about this court-room. In plain manliness he has met the duty of this hour. He has no troops of friends around him to bolster him up, and to cheer and encourage him; he is alone and desolate, a scarred man, and in the nobility of his nature, standing up upon the truth of his case, and demanding only a considerate and a fair judgment from this jury. If he cannot gain it in the old and organized ways of the law, if he cannot win it by a lawful and a just appeal to the judgment and consciences of his triers, why, he will relapse back into the ignominy and shame which Henry Ward Beecher and Plymouth Church have succeeded in fastening upon his name. But not until then, not until that judgment shall be pronounced by this jury, will Theodore Tilton ever falter in his confidence in the integrity of the law and the jury box. [Applause.]

Mr. Evarts—If your Honor please, my learned friend, in citing from Mr. Moulton's testimony on the subject of Mr. Beecher's connection with leading Mrs. Tilton away from her husband, spoke of it as a statement made by Mr. Moulton and not contradicted by Mr. Beecher. My learned friend, by referring to the second column of page 894, will see how entirely he is mistaken in that matter.

Mr. Beach—I was in error; it is contradicted.

Mr. Evarts—It is contradicted in every point, and in every circumstance.

Mr. Beach—Yes, Sir; no such conversation occurred. I was in error, Sir.

The Court here took a recess until 2 p. m.

THE POWERFUL INFLUENCE OF A GREAT INTELLECT.

The Court met at 2 p. m. pursuant to adjournment.

Mr. Beach—There are a few sentences in Macaulay's Miscellanies, in an essay reviewing Basil Montagu's Life of Lord Bacon, which seem to me, gentlemen, exceedingly appropriate and expressive to this inclination on the part of all of us kindly and intelligently to consider the faults or the vices of those who have ministered to our intellectual enjoyment, either as authors, or as statesmen, or as orators, and these suggestions of Mr. Macaulay meet very many of the sentiments which I have felt in regard to this case, in regard to Mr. Beecher, and in regard to other distinguished, prominent men, and I have no doubt will find a response in your own emotions connected with that topic. Mr. Macaulay says:

Our estimate of a character always depends much on the manner in which that character affects our own interests and passions. We find it difficult to think well of those by whom we are thwarted or depressed, and we are ready to admit every excuse for the vices of those who are useful or agreeable to us. This is, we believe, one of those illusions to which the whole human race is subject, and which experience and reflection can only partially remove. It is, in the phraseology of Bacon, one of the *idola tribus*. Whence it is that the moral character of the most eminent in letters or in the fine arts is treated—often by cotemporaries, almost always by posterity—with extraordinary tenderness. The world derives pleasure and advantage from the performances of

such a man. The number of those who suffer by his personal vices is small, even in his own time, when compared with the number of those to whom his talents are a source of gratification. In a few years all those whom he has injured disappear, but his works remain and are a source of delight to millions. The genius of Sallust is still with us, but the Numidians whom he plundered, and the unfortunate husbands who caught him in their houses at unseasonable hours, are forgotten. We suffer ourselves to be delighted by the keenness of Clarendon's observation, and by the sober majesty of his style till we forget the oppression and the bigot in the historian. Falstaff and Tom Jones have survived the gamekeeper whom Shakespeare cudgeled, and the landlady whom Field liked. A great writer is frequently the benefactor of his readers; and they cannot but judge of him under the deluding influence of friendship and gratitude. We all know how unwilling we are to admit the truth of any disgraceful story about a person whose society we like, and from whom we have received favors, how we struggle against evidence, how fondly, when the facts cannot be disputed, we cling to the hope that there may be some explanation or some extenuating circumstance with which we are unacquainted. Just such is the feeling which a man of liberal education naturally entertains toward the great minds of former ages. The debt which he owes to them is incalculable. They have guided him to truth. They have filled his mind with noble and graceful images. They have stood by him in all vicissitudes, comforters in sorrow, nurses in sickness, companions in solitude. These friendships are exposed to no danger from the occurrences by which other attachments are weakened or dissolved. Time glides by; fortune is inconstant; tempers are soured; bonds which seemed indissoluble are daily sundered by interest, by emulation, or by caprice, but no such cause can affect the silent converse which we hold with the highest of human intellects, &c.

That extract suggests a thought, gentlemen, as applicable to Mr. Beecher. All of us have been delighted with his intellectual efforts. All of us have been instructed by his sermons. All of us have admired his efforts in the way of patriotism, statesmanship, politics. We know that he has been a great force in many of the crises of our history. We recognize him as a great preacher, as one who has exercised immense influence over the moralities and the christianity of the age; and it is hard to attach to such a man, and to such a name, the idea of degrading sin. It is repulsive to our sympathies, to our nature, you feel it. A great many say, in very homely language, "He is too big a man to be killed." Now, these are generous and exalted sentiments in one aspect, in the idea of the recognition of intellectual greatness, and gratitude for pleasure, intellectual and moral and instructive, conveyed to us. It is an honorable consideration in private and social life, to be extended to the faults and failings of real greatness. But, gentlemen, I desire to impress upon you, if I can, the utter impropriety of any such sentiment in a court of justice. My friends have appealed to us; it is the staple of their argument. Their strong appeals to this jury are founded upon the idea of the services Mr. Beecher has rendered to the world in the past, upon the assumption that those services, those efforts, those manifestations of personal character could not by any possibility be associated with sinful tendencies or corrupt actions; and upon this theory and this assumption they have reasoned, I have no doubt with strong influence upon the hearts and sympathies of this jury. Well, it is very obvious, if such considerations are to control us in the positions which we now occupy, if I am to be restrained in speaking of Mr. Beecher upon this evidence as I conceive him to be in the light of the proof, and if you are to judge him from considerations of this character instead of by the teachings of the evidence, it is obvious we shall not reach a just and legal result, nor shall we reach that conclusion which the intelligent mind of the world will form upon a consideration of this evidence. Conceding all the great services rendered by Mr. Beecher, conceding all the remarkable qualities of his character, upon what conclusion is it that our learned friends reach the proposition that Mr. Beecher has been in the past so pure and spotless as they assume in his habits of life? The Court will instruct you, my learned friends well understand, that we could not assail the private life of Mr. Beecher except in connection with this charged offense. If we had had our hands full of evidence that Mr. Beecher had been licentious in his private life; if we could have produced proof of numerous examples where he had been guilty of the especial offense now charged against him, it was impossible for us to prove it. Evidence to that effect would be inadmissible. We could not prove special acts of sinfulness; and, like every other man, as a party or as a witness, he is to be judged only by the public character which he has won by the exhibition of his life to public observation. True, as Mr. Evarts insinuated, we could have asked Mr. Beecher; but then it would have been presented as a question to the Court whether even a party or a witness was compelled to expose himself to infamy or disgrace by answering such a question. In a recent case tried in England, in which the Prince of Wales was inculpated, a high dignitary of the bench announced in that case that the witness was not bound to answer to the question whether or not he had been guilty of adultery. But we were not compelled to rest this question of private life and of private morals upon a cross-examination of Mr. Beecher, the man who was sought to be inculpated. Now, the law, in view of this condition of things, presumes that every man, whether standing as a party or as a witness, is presumed to possess an ordinary good character, and nothing more. He is placed upon the same level, in the aspect of the law—where he stands unassailed by direct proof—he stands precisely as the ordinary examples of life and character surrounding him, and you have no right in considering this case—you have no right to presume that up to this charged intercourse with Mrs. Tilton, Mr. Beecher had been a man entirely relieved from any suspicions of a like or previous offense. We know, we

know that he was accused of it, whatever may have been the fact of the accusation; whether under any influence or control those accusations were withdrawn. To what extent by the Tripartite Covenant they may have been abandoned we will see by-and-by; but that he had been suspected, that he had been charged, appears upon the record; and in the face of that evidence, as well as under the injunction of the law, our friends upon the other side have no authority in assuming that the life of Henry Ward Beecher has been so exemplary and so unsuspicious as they chose to present it in their argument to this jury. I do not say that he ever has been guilty of any such sin; far be it from me; but I say the only consideration which is to be given to this idea of good character upon the part of Mr. Beecher is no more extensive or emphatic than would be given to any other gentleman standing in a like position in a court of justice.

DR. E. B. FAIRFIELD ON PLYMOUTH CHURCH.

Before I pass from this topic I submit to the Plymouth Church a few words of plain advice, which is given to it and its members by Mr. Fairfield, in the pamphlet to which I before alluded:

But how about the *defense* of him by Plymouth Church? Now, if they do not know how the outside world looks at the matter they ought to. Everybody outside of that church and its immediate friends, sees that *they have every earthly motive* for defending this man to the very last.

1. Their friendship for Mr. Beecher. I know the strength of that motive myself. It is hard to resist it, and see the truth when it militates against those whom we have loved, admired, and believed in. I have heard more than one man say: "If this man is guilty, I don't want to know it!" It has been publicly stated that at least one of the Committee of Six said that very thing. It is natural. All this power of personal friendship presses upon Plymouth Church to make them shut their eyes to facts. And "none are so blind as those who will not see."

2. Their prejudice against Mr. Tilton. [Prejudice.] It has been very strong in Plymouth Church for years. He is known to have denounced Mr. Beecher, and many of their church have been for a long time fostering their prejudices against this man, as Mr. Beecher's chief accuser. This is a very strong motive to explain the wrong action of the Committee, and of the church generally.

3. All their *church pride* has been against a fair trial of their pastor. And such pride is hard to conquer. They have been the most noted church in America. It is very hard to overcome such pride, and see the truth in spite of it.

4. They have been financially a very successful church. Their income has been without a parallel.

And thus everybody sees that in defending Mr. Beecher, *friendship, prejudice, pride, and self-interest* conspire to blind their judgment. The strongest of all earthly motives press upon them to lead them to a wrong decision, in upholding and vindicating him in spite of the clearest proof of guilt.

It is well-known that in a court of law any one of these four considerations would exclude a man from serving on a common jury. A blood relation of the accused—even through there be no proof of friendship—is excluded, because his family pride would stand in the way of a fair verdict. Their family pride in their pastor, and their natural vanity and ambition as the most popular church on the continent, is a motive quite as strong as either of the other three. And everybody knows that special friendship for the defendant, special prejudice against the plaintiff, and pecuniary interest in the result, are everywhere in courts of law deemed valid reasons for excluding any one from a jury.

When, therefore, gentlemen, these strong appeals are made, as they have been by each of the counsel who have addressed you upon the part of the defense, and the circumstance that this large congregation gather with idolatrous unanimity about Henry Ward Beecher, you must remember the motives and the influences which may blind and mislead their judgment, and lead them to this inconsiderate action toward this defendant. I think I had occasion in the course of the discussion upon some interlocutory point in this cause, to state that a gentleman for whom I have the most profound respect, one of the counsel for the defense in this case, before this judge, in this court, in substance stated that whatever might be the verdict of a jury in this case, he would still believe in and adhere to Mr. Beecher. Well, I take no exception to that expression. It is an indication of the most extraordinary fidelity, but yet that gentleman has stood in very close and confidential relations to Mr. Beecher, and he may prefer to use his own judgment, from his own knowledge of the character of Mr. Beecher, rather than accept the regular and legalized mode of judgment to be expressed by your verdict. But it evinces the devotion of that church, and it is a striking illustration of the great power and magnetism of the character of Mr. Beecher, and I have not the slightest hesitation in giving him the fullest acknowledgment of the possession of abilities which eminently control human nature and attach to himself human affection.

MRS. TILTON.

The most remarkable feature about this trial, one which has attracted the most observation, one upon which my learned friends found one of their strongest appeals to the jury, is that a husband, complaining of the adultery of his wife, and the accused adulterer, both unite in ascribing to the woman an exalted and perfect character. In judging of the probability of the relations existing between Mr. Beecher and Mrs. Tilton, in considering this extraordinary testimony upon the part of both these parties to the purity and exaltation of this woman's character, in construing their actions in the different exigencies which have arisen in the course of this transaction, we must accept this conclusion that, so far as these two men are to be judged and their acts are to be construed, we must assume that each of them sincerely entertains that idea of the character of Mrs. Tilton, be-

cause, of course, without doing so we never can arrive at a just construction of their motives of action, or of the character of that action. Mr. Beecher, throughout the whole of this association, would consider and treat Mrs. Tilton as he describes her, as a religious enthusiast, as a woman of such exalted and spiritualized piety that in another age and under other circumstances she would be inspirational and of religious ecstasies. And so with Mr. Tilton; in construing his acts and his declarations we must conceive so far as we can, whatever may be our views, that Mr. Tilton has acted under the idea to which he has testified, that his wife was a pure and white-souled woman. I do not agree with that conclusion. It is not possible for me to conceive any such condition of womanhood I cannot imagine any idolatry of a Christian minister, any holiness attached to association with him, anything in the possible influences of that association upon the weal of the Church and Christianity, which would lead me to conclude that an intelligent and pious woman could submit to personal degradation without a conception of the impurity of the act. But, gentlemen, I have not the means of forming as accurate a judgment as either Mr. Beecher or Mr. Tilton. Unfortunately, I have had none of those experiences which enable me to judge of the possible effect upon human conduct, and the reasoning of the human conscience upon a particular line of conduct such as Mr. Beecher with his moods and alternations of exaltation and depression, and as Mr. Tilton, with what is called the moods of his genius. I do not understand it; I judge like an ordinary man—a common sinner—and I have no such conception of the character of Mrs. Tilton. But, I repeat, when I am judging these two men and reasoning upon their conduct, their acts, their opinions, I judge them from their own standpoints, and we must assume, with reference to both, that Mrs. Tilton was a lady of this most exemplary piety, of this sublimated, etherealized, spiritualized religious character which fitted her for those conditions of mind, for those states of emotion, for that devotion to church and religion which overcame all the scruples of womanhood, and all the instincts of a lady in reference to the idea of personal impurity.

We are to see, gentlemen, whether with this understanding of the character of this lady, if there is any possibility for the idea that she was seduced by Mr. Henry Ward Beecher, and that she, with reference to the character of the man, the holiness with which she invested him, the idolatry which she extended to him, with her devotion to the interests of the church, this woman may have fallen under the delusion that she was rather rendering a service to God and the Church than defaming her own womanhood. I have said that nobody disputes the great love which Mrs. Tilton bore to Mr. Beecher. But yet it is necessary that I should draw your attention to some of its expressions, and I think we can gather from the written professions of this lady something in regard to the peculiar nature of her religious temperament and sentiments, as well as pretty clear indications of the devotion she felt and expressed toward Mr. Beecher [reading]:

About 11 o'clock to-day Mr. Beecher called [Mr. B.]. Now, beloved, let not even the shadow of a *shadow* fall on your dear heart because of this now, henceforth, or forever. He cannot by *any possibility* be much to me, since I have known you. I implore you to believe it, and look at me as in the Day of Judgment I shall be revealed to you. Do not think it audacious in me to say I am to him a good deal, a rest; and can you understand it, I appear even cheerful and helpful to him.

Well, now you recollect the temperament of Mr. Beecher as it was described by himself, exalted in certain conditions of mind, so that when looking out upon the bay glistening in the moonlight, and upon the Orange hills, and the sleeping city, he seems to be exalted until he could clasp the gates of Heaven; and then, again, he is down—dismayed, depressed, hopeless, despairing. In these moods he goes to this woman, as he did to Mrs. Moulton, bearing about him in every lineament and expressing in every word the depression and despondency which afflicted him He appealed at once to the warmest, most sympathizing feelings of a woman's nature. He scarce seemed an ordinary man. Invested with all the greatness of his reputation and position, suffering these extreme agonies and sorrows, no woman of ordinary sensibility could resist the appeal made to her affection and tenderness. And you find this man in every relation, and toward everybody, exerting that sort of attractive influence, the power of a great emotional nature, the magnetism of a strong character, a will bending to him every heart and every mind, and wherever he has moved throughout society, in whatever relation, in whatever position, this has been the commanding and controlling influence of the man—one of the most wonderful characters whom we have ever seen—I mean wonderful in all the departments of human character, not only in intellect, in emotional nature, in physical constitution, but in all those graceful and winning attributes which at once attract the reverence and the affection of every acquaintance. Again, she says, in the same letter, speaking of Mr. Beecher:

You once told me you did not believe that I gave you a correct account of his visits, and you always felt that I repressed much. Sweet, do you still believe this? I strive in my poor word-painting to give you the *spirit* and impression which I give him and he to me. It would be my supreme wish and delight to have you *always with me*. This trinity of friendship I pray for always.

Ah! yes, there was the idea of that trinity of association between herself and these two men, Tilton and Beecher. It implies unity—community. And this woman had invested this association of herself with these two men with the idea of a trinity, of a connection as between the three, identity of interest, identity of all considerations constituting the substance of a trinity.

This letter was written on the 1st of February, 1868. What meant these expressions directed to Mr. Tilton, apparently to satisfy some uneasiness which at that time he seems to have felt in regard to the association between Mr. Beecher and his wife?

Now, beloved, let not the shadow of a shadow fall on your dear heart because of this, now, henceforth, or forever.

Was it any expression upon the part of Mr. Tilton, any manifestation of uneasiness or jealousy on his part, or was it in February, 1868, before the October of that year, from the consciousness of this woman herself, from the feeling, the sentiment that there was growing up between her and Mr. Beecher a dangerous element in their intercourse, that she was loving him too much, that he was loving her too much? Was it a prescience of the coming evil, a foreshadowing of that spirit and act which would lead to the consummation which we are examining? In an earlier letter of the date of Jan. 28, 1867, she says:

Mr. B. [Beecher] called Saturday. He came tired and gloomy. But he said I had the most calming and peaceful influence over him—more so than any one he ever knew.

Now, it is very important, gentlemen, this feature of the intercourse between these two people. Mr. Beecher, a grand man, appeals to this woman for comfort and rest. He is a great worker in the vineyard. For thirty years the energies of his whole being have been devoted to the public offices of benevolence and charity, of Christianity. He is the leader of a church, the pastor of this woman. Every week she listens to the inspiring tones of his eloquence. Every week she feels the power of his public character. She sees his identity with the interests of the church. She sees how much depends upon his position and efforts, and this man, so great and attractive, comes to her, a delicate and feeble woman, and professes to her that she is the deepest inspiration and rest he finds in the whole earth. Well now, with this is associated all these connections of greatness of character, of extent, of influence, of necessity, of preservation, of the man and his abilities to the cause to which they are devoted. Speaking of Mrs. Bradshaw, Mrs. Tilton writes in February again, 1868:

I think she feels a little sore that Mr. B. visits here. See how great a power he and your dear self have over the heart. She said: "Lib, I heard through Mrs. Morrill that Mr. B. called on you Wednesday. I believe he likes you ever so much." Now, my darling, I have often urged him to visit Mattie, believing he would find her more comforting and restful than I can be. *She* would be refreshed and cheered, while for me—I who am rich in the fullness of your delicious love, have no need save for his sake. I am gratified if I may minister, and thank God the while.

I do not quite understand that expression. In a letter bearing date January 25, 1867, which I think I read to you in another connection, she says:

I think in reference to Oliver's opinion of Mr. B.—as his remarks were made to Mr. Bowen, and they are embittered toward one another, that what Mr. B. said of you may appear very different through the coloring that Mr. Bowen may give of it. Oh! now my soul yearns over you two dear men. You, my darling, are higher up than he; this I believe. Will you not join me in prayer that God would keep him as He is keeping us? Oh, let us pray for him! You are not willing to leave him to the evil influences which surround him. He is in a delusion with regard to himself, and pitifully mistaken in his opinion of you. I can never rest satisfied until you both see eye to eye, and love one another as you once did. This will not come to pass as quickly by estrangement. But with all the earnestness of my being, I commend you both to God's love. He has signally blessed you both, and he will keep His own beloved. Why I was so mysteriously brought in as actor to this friendship I know not, yet no experience of all my life has made my soul ache so verily as the apparent lack of Christian manliness in this beloved man. Mattie feels as I do. I saw her to-day. She said she received two letters from you to-day. I do love him very dearly, and I do love you supremely, utterly—believe it. Perhaps, if I by God's grace [and she needed it] keep myself white, I may bless you both. I am striving. God bless this trinity.

Well, it is a very dangerous position when a woman gets into that condition of mind and affection that she can identify in her love, in her prayers, and in her hope, another man with her husband, and when she can associate herself with them in the idea of a unified trinity, and when she is in that condition of apparent self-possession and control, that while acknowledging her deep love for a man like Mr. Beecher to her husband, she can yet hope for a continuance of an association which will be likely to deepen the affection—the sentiment.

Mr. Beecher called. He is in fine spirits making calls. He devotes Wednesdays and Thursdays, "till further notice;" has 300 to make; made 20 to-day; enjoys it immensely. Called on the Wheelocks to-day and kissed them all round, Lizzie Wood included, he said.

It only shows that the demonstrations of feeling on the part of Mr. Beecher of whatever kind they are, are not altogether reserved. On the 28th of December, 1866, she writes thus:

My Beloved: I have been thinking of my love for Mr. B. [Beecher] considerably of late, and those thoughts you shall have. I remember Hannah More says: "My heart in its new sympathy for one abounds towards all." Now, I think I have lived a richer, happier life since I have known him. And have you not loved me more ardently since you saw another high nature appreciated me? Certain it is that I never, in all my life, had such rapture of enthusiasm in my love for you—something akin to the birth of another babe—a new fountain was opened, enriching all—especially toward you, the one being supreme in my soul. "I love thee with the breaths, smiles, tears, of all my life! And if God choose, I shall but love thee better after death." * * * But to return to Mr. Beecher. He has been the guide of our youth, and until the three last dreadful years when our confidence was shaken in him—we trusted him as no other human being. During these early years the mention of his name, to meet him in the street, or, better still, a visit from him, my cheek would flush with pleasure—an experience common to all his parishioners of both sexes.

Well, that I believe.

It is not strange, then, darling, that, on a more intimate acquaintance, my delight and pleasure should increase. Of course I realize what attracts you both to me is a supposed purity of soul you find in me. Therefore it is that never before have I had such wrestling with God that He would reveal Himself to me, and ever in my ears I hear, "The pure of heart shall see God." Oh! fulfill this promise to me, my Lord and my God. Darling husband, I have endeavored to express to you, without cant or any such thing, my true feelings as they appear to me. It is true that I live in an agony of soul daily. Nevertheless I am profoundly happy in my privileges, opportunities, and blessings.

Ah! there was in this woman's heart at that day some little misgiving in regard to the character of her love toward Mr. Beecher, in regard to the manifestations proceeding toward her from Mr. Beecher. What were the communings of these two spirits in those hours when Mr. Beecher went to her moody, and restless, and depressed; what were the kindly and womanly services, under this appeal to her pity, which Mrs. Tilton made upon those occasions, we are not permitted to know except by the declaration of Mr. Beecher that, under no circumstances was there any conduct as between himself and Mrs. Tilton which would deserve the reprehension of the most pure and most exemplary. Well, there is a remarkable letter, gentlemen, written on the 20th of February, 1868:

My Beloved: I am so lonesome and heartsick for your companionship to-night that I hesitate to write lest my mood may depress you. Yet I cannot wish you home.

Longing, lingering for the association of her husband:

Yet, I cannot wish you home, for I am pursuaded you are happier where you are. While I long to be with you I am haunted continually with fears that your cheery face will soon be shadowed, and your dear head will drop. This thought is agony to me, and I have spent many hours since your absence weeping because of it.

What was it that led this woman, in this language, to say to her husband that he was happier where he was, and though she was longing for his presence she did not wish him home? Why that apprehension resting upon her mind that soon his dear head would drop and his heart be agonized? In October, 1868, after these long years of love toward Mr. Beecher, after Mr. Beecher's continuous resort to her house for cheeriness and encouragement, for the lifting up of the moodiness and depression of his spirit—after these years of womanly office and kindness extended to Mr. Beecher in the privacy of her home, what was it that rested with this oppressive fear upon the heart of this woman, and led her to say that she apprehended full soon the disaster which would break upon the heart of Theodore Tilton and the happiness of his home? I don't know, gentlemen, but it seems to me that those instincts of womanhood which are never absent from the heart of a woman were telling her, whispering to her of the danger of her position; that during all this time, while, as we see, Mr. Beecher was pressing his designs against her chastity, she resisting, that nevertheless she saw what the consummation must be, and she was living in an agony of prayer to her God that that time might be averted.

MRS. TILTON'S TEMPTATION.

Now, gentlemen, it was under these circumstances, with a woman so refined and spiritualized, with a devotion to church and minister and God which overpowered every other affection, and controlled every other consideration, it was upon this woman who had poured out upon this man, Mr. Beecher, her love for years, and these offices of kindness, that Mr. Beecher wrought his will. From our knowledge of human nature; nay, gentlemen, judging from our own self-knowledge, is it wonderful that under these circumstances what we charge against Mr. Beecher happened? With his own descriptions of his character and tendencies; with his own conviction of the power of his own appetites and passions, with this knowledge of the predominance of this strong and powerful spirit over this weak and loving and trembling woman, with abundant opportunities, with a temptation irresistible upon a man of his passions and his temperament, is it surprising that these people felt, and is it surprising that Mrs. Tilton should attribute to that intercourse, under the ideas which you see she maintained in regard to this man, her association with him, and her influence upon him, that she should attribute to this intercourse a spirit of self-devotion and self-sacrifice of piety? Why, gentlemen, a woman does not fall from mere carnal appetite. It is the ennobling and the absorbing love of womanhood; it is because her devotion to its object is etherealized and pure in it, in whatever sacrifice it demands she sees nothing but a cheerful duty rendered, and disassociates from it all idea of impurity or lust. Why, gentlemen, if the history of these pitiful creatures who sell their bodies for gold could be traced to the first sin, it would not be found a sin of carnality and lust, but a sin of pure, devoted, trusting love, and I can well conceive that a woman of the character of Mrs. Tilton, as given to her by both these persons who best know her, that this woman may have surrounded her yielding to the solicitations of Henry Ward Beecher with an atmosphere of exaltation and purity not at all consistent with her character and her devotion to the man and to the interest to which he was consecrated.

And what were the reasonings addressed by this man to this woman? I have shown you that they were not of so extraordinary a character as not to have been thought of before they were expressed by Mr. Beecher. But what are they, as testified to by witnesses, denied, it is true, by Mr. Beecher? In the testimony of Mr. Tilton, on page 396, in the detail of the interview had with Mr. Beecher, Mr. Tilton swears that he communicated to Mr. Beecher the representation of his wife as to the argument and persuasions which were used by Mr. Beecher to overcome her scruples.

That she had done so in her own thought, until finally she had been persuaded by him that as their love was proper and not wrong, therefore it followed that any expression of that love, whether by the shake of the hand, or the kiss of the lips, or even bodily intercourse, since it all was the expression of that which in itself was not wrong, therefore that bodily intercourse was not wrong. That she had said to me that Mr. Beecher had professed to her a greater love than he had ever shown to any woman in his life, &c.

Mrs. Moulton also says at page 188:

And Mr. Beecher had said to me, with great sorrow, weeping, that he had loved Elizabeth Tilton very much, that through his love for her, if he had fallen at all, he had fallen, and that the expression, the sexual expression that love was just as natural in his opinion—he then thought it—as the language he had used to her; that if he had fallen at all he had fallen in that way, through love and not through lust, or words to that effect.

I have already commented upon that expression, if he had fallen at all he had fallen in that way, and it is not necessary to refer to it again, though I see it disturbs the quietude of my learned friend (Mr. Evarts). In another part of his testimony Mr. Tilton says:

She always used to say, Sir, she was not to be judged either by her mother or by me, but by God. She believed that God would judge her tenderly. She said she loved God, and she did not believe that God would have permitted her to enter into those relations if they had been sinful, and she said particularly that neither her mother nor I had made it the business of our lives to understand what was right and wrong, as Mr. Beecher did. Mr. Beecher was a clergyman, that he was a great and holy man, that he had repeatedly assured her that their relationship was not sinful, and she did not see how it could be sinful. That he told her that love justified all things, that love had various expressions, that one expression was the shake of the hand, another expression was the kiss of the lips, another expression was sexual intercourse, and it made very little difference what the expression was if that love was right; that love itself made rightful or justified all the various expressions of it, and that she believed before God that her love for Mr. Beecher was right, and his for her was right, and therefore she did not see how any of the various expressions of it could be sinful. She said she rested on Mr. Beecher's authority for it. That he had told her so over and over again.

Now, gentlemen, you see the trust of this woman in the man, and you see that that illimitable trust, that unhesitating confidence in what Mr. Beecher taught and said was not at all irrational in view of the feeling that this woman entertained toward Mr. Beecher, in view of her conception of his character and of the great position which she thought he was destined to fulfill in this world. And it was upon this woman, so ductile and impressible, so subject to his will, so entirely under his control that Mr. Beecher exerted his power, and through the veneration as well as the adoration which she felt toward him, he impressed these lessons of criminal sophistry which are thus related by the witnesses.

One other aspect of this case will close my consideration of this topic. It is in the testimony of Mrs. Moulton. Speaking of a conversation that she had with Mrs. Tilton, the question was put to her:

State, if you please, what it was? A. I think that was at the time when Mr. Beecher and Mr. Tilton appeared down at the church that I called to see Elizabeth, and said, "If you are called before the church, what are you going to do to save Mr. Beecher?" She said, "I shall sacrifice my husband, and deny everything." I said, "Will you allow your husband to go down with the truth?" She said: "I think I shall be justified in stating a falsehood under the circumstances. I think, for the sake of Mr. Beecher, for the sake of the influence on the world, for my own position, for my children, I think it is my duty to deny it."

And upon her cross-examination the question was put to her:

Did she tell you that she should not tell the truth? A. She told me distinctly that she should sacrifice her husband and deny everything for Mr. Beecher; that she felt, under the circumstances, that she would be justifiable in telling a lie.

Well, gentlemen, I assume for the present that you will believe the testimony of Mrs. Moulton. Whether she is entitled to credit we will discuss hereafter, after we have discussed what is called the "Griffith Gaunt Letter," after the disclosure of the sin of Mrs. Tilton had been made, after she had confessed. It was when this matter was assuming an attitude of public investigation that this woman, then awakened to a knowledge of the wrongfulness of her act, as I suppose, deliberately came to the conclusion that the character of Mr. Beecher, his connection with the great interests of humanity, the possible effect of her wrong upon her children and herself, all justified her in denying her former confession and deliberately falsifying the truth to save these interests, and Mr. Beecher among them. It is the usual and the ordinary result of associations of this character. It is very rarely you have seen in the history of human nature (my friend says it is unexampled) of a seduced woman being received again to the confidence and the trust of an abused husband. That this woman should lie for Mr. Beecher, that this woman should follow the fortunes of Mr. Beecher, that she should forsake husband and children was just as natural and as inevitable as that she should sacrifice to him her chastity, the honor of her womanhood. You always find the adulteress with the adulterer, and I agree with the learned counsel that there are very rare examples where any other result has followed. It is not altogether unparalleled, because my learned friend will remember the case of Gen. Sickles. Gen. Sickles, who murdered the adulterer, and after trial was acquitted, again took his wife to his bosom and his home. Gen. Sickles was subsequently honored by the Government of the country. It was not thought disgraceful to him. There were modifying circumstances connected with her offense which the world saw and Gen. Sickles appreciated. He loved her with unstinted devotion, and he was not condemned, because, as my learned friend says, or,

as Mr. Beecher originated the expression, because he condoned his wife's fault. But I say it is the most natural conclusion, as evidenced by the nature of the association and the passions moving the party, as well as demonstrated by the history of liasons of this character, it was the natural almost inevitable conclusion that Mrs. Tilton should associate her fortunes with Mr. Beecher after they had become united in the investigations and judgment of the public. I cannot tell you how this woman was overcome; I cannot tell you how this skilled man of the world, this master of human nature and of men's passions, worked upon the weakness and spirituality of this woman, but I can tell you what Mr. Beecher says about it:

The seducer! Playing upon the most sacred passions, he betrays innocence.

How?

By the tenderest faculties, by its truest but its unsuspecting faith, by its honor. The victim often and often is not the accomplice so much as the sufferer. Betrayed by an exorcism which bewitched her noblest affections and became the suicide of her virtue. The betrayer, for the most intense selfishness, without one noble motive, without one pretense of honor, by lies, by a devilish jugglery of thought, by blinding the eye, confusing the conscience, misleading the judgment, and instilling the dew of sorcery upon every flower of sweet affection, deliberately, heartlessly damns the confiding victim. Is there one shade of good intention, one glimmering trace of light? Not one. There was not the most shadowy, tremulous intention of honor. It was sheer, premeditated, wholesale ruin from beginning to end.

This is the mode by which he accomplished it, and he alone could describe it. Says the preacher, "There are three things too wonderful for me; nay, four, which I know not of—the way of an eagle in the air; the way of a serpent on a rock; the way of a ship in the midst of the seas; the way of a minister with a maid." [Laughter.] By what devilish jugglery of fraud, by what imposition upon the pious nature of this woman, by what appeals to her pity, by what insidious approaches to her affections, he not only controlled her body but exalted her spirit to the belief that submission to him was not sin, no one but Henry Ward Beecher can describe. That the thing was done, human evidence is to be credited, if the injunctions of the law to which I shall by and by direct your attention are to be obeyed, if we may reason from the character of the persons involved, from their relations to each other, from their disposition, from their intrinsic character—if by any of the modes by which truth upon subjects of this kind is ascertained we can be governed, there is no reasonable earthly doubt that this woman was made the victim of Henry Ward Beecher's lust.

MR. BEECHER NOT TOO GREAT TO FALL.

Another topic has been alluded to which comes properly in the line of my observations. It was an element of reflection in the minds of all thinking men when this accusation was made against Mr. Beecher, that the influence of his conviction would be pernicious to the interests of Christianity. It was one of the arguments used to excite sympathy and consideration for Mr. Beecher: "he is too great to be lost; his position and his influence are too important for the interests of religion and Christianity that he should fall." Well, it never yet has been the teaching of inspiration or of human piety, it never yet has been the lesson of the experience of the world, that Christianity or the interests of religion have been advanced by indulgences to impurity and sin. I do not believe that the fate of Henry Ward Beecher in any sensible degree involves the condition of Christianity. That does not depend upon Henry Ward Beecher. Christianity, with divine energy, has its mission to fulfill, and it will fulfill it. It has stood a great many worse catastrophes than the loss of a man like Henry Ward Beecher. The disasters of sects, of conflicting dogmas, of hypocrisy, of irreligion, of the assaults and sneers of the outer world—all the obstacles of sin and Satan have been interposed in its progress toward the evangelization of the world; and Christianity has survived them all. Through barbarism and through effeminacy and the dark ages of the world; through all convulsions of society and of nations, the march of Christianity has been still onward, never stayed. The white banner of the cross has been borne on triumphing, and it will continue to triumph until every knee shall bow and every tongue confess that God is the Lord. [Applause.]

That is not the importance of this case. There is no fear from the fall of Henry Ward Beecher for the progress of Christian civilization and Christian influence. The Church will survive. All its influences will be just as extensive, just as reforming as ever. But the great question which attracts the interest of men, the great question which involves the duty and the responsibility of this hour, is whether the wealth and the influence of Plymouth Church, and the power of a great name, shall overcome the force of proof, the lessons of the law, and the instincts of justice. It is whether this jury can lift itself above these degrading and destructive considerations, and, in the spirit of that justice which it is called upon to administer, *do* justice to Henry Ward Beecher. You know how difficult it is, and so do I. On behalf of Henry Ward Beecher an appeal is made to our sympathies and judgments by his very greatness, by the magnitude of the man, and by his intimate connection with the interests of society; and it is hard to judge such a man; it is hard to condemn such a man; and it needs upon the part of every one called upon responsibly to examine this

question the exertion of a vast degree of circumspection in the discharge of his duty. And the interest of the public in this case now is, gentlemen, allow me to assure you, that very anxiety, that very interest, to know whether the law and justice are strong enough to overcome the power of Henry Ward Beecher's character and position, reënforced by the vigor and devotion of Plymouth Church. You may not, perhaps, perceive the importance of this interest. You may not, perhaps, understand what are the expectations and the interests which every good man feels, which every intelligent and honest man feels, in regard to the manner in which this cause shall be considered and determined, because you have not been permitted by the court to have access to the usual and ordinary means of information. But we know and you know the sympathy and the excitement which for many months before you were impaneled in this case had convulsed the community. You know the efforts which were made to maintain the integrity and the innocence of Henry Ward Beecher, and the universal sympathy which all men felt with those efforts. Christian learning, Christian zeal, Christian faith, were all exercised for his vindication. It was the natural impulsive sentiment of the Christian mind throughout the world, that it would be for the interests of humanity that Henry Ward Beecher should be proved innocent, and all legitimate means, at least, were exercised to prove his innocence. But, gentlemen, the developments of this trial, as I have said to you, have worked their legitimate results, and one has been that pamphlet from which I have read. Another has been the different manifestations to which I have alluded, and, whether you believe it or not, your verdict has been anticipated by the judgment of the world, and it makes but little upon the interests of society—beyond the immediate interests of these parties it is of but little consequence, what your conclusion may be. You cannot reverse the judgment of the world. It is said that the voice of the people is the voice of God, and when you get the gathered sentiment of the conscience of a whole nation upon a subject of this character, you do get something akin to the solemnity and the certainty of God's judgment. It is not for you to consider it, but you are to consider the question whether or not this case is to be determined in conformity to those rules and precepts given to us in wisdom for our guidance.

THE WEST CHARGES.

What have been called crises and emergencies in this case have from time to time arisen, and there has been a strenuous effort upon the part of my learned friends to force upon Theodore Tilton the responsibility for those agitations. I have not been able to perceive the importance of those subjects, except that through this effort of counsel they attempt to impute to Mr. Tilton and to Mr. Moulton and to various other actors in this transaction, a conspiracy to blackmail Mr. Beecher, or in some way to elevate Mr. Tilton upon the strength of Mr. Beecher's generosity and magnanimity, or upon his ruin. The first of these efforts after December 30, 1870, was the publication of the Woodhull card on the 22d of May, 1871. Well, certainly Mr. Tilton had nothing to do with that. That is not pretended. That was before his acquaintance with Mrs. Woodhull.

Mr. Evarts—That is not our view of it.

Mr. Beach—Not your view?

Mr. Evarts—No.

Mr. Morris—It is the evidence.

Mr. Evarts—We spent a considerable time in our argument to the jury showing them that she knew him and he knew her before that.

Mr. Beach—Well, there is no evidence of it in this case.

Mr. Evarts—Mr. Andrews, your witness, swears to it.

Mr. Beach—Mr. Andrews does not swear to it.

Mr. Shearman—He does swear to it.

Mr. Beach—What? before May 22, 1872?

Mr. Evarts—Before May 22—yes, three weeks before.

Mr. Beach—Well, I confess I am astonished at that declaration. [To Mr. Morris.] Will you please look at the evidence on that point? [To the jury.] I will examine that question of evidence, gentlemen, for I am very free to say—

Mr. Evarts—Our witnesses make it several months earlier, but your own witness makes it early enough.

Mr. Beach—Well, Mr. Andrews introduced Mr. Tilton to Mrs. Woodhull, and I am certain—I may be mistaken, but I feel certain—that that was subsequent to the 22d of May, 1871. Well, we will see about that, gentlemen, we will see about that. I do not now recall that evidence. The gentleman asserts it with entire confidence; perhaps he will be kind enough to mention the witnesses who show that there was any acquaintance between Mr. Tilton and Mrs. Woodhull two or three months before that.

Mr. Shearman—Mrs. Palmer, Mr. Woodley, and Mr. Gray.

Mr. Beach—Not Mr. Woodley, certainly.

Mr. Shearman—Yes.

Mr. Beach—Does he antedate it?

Mr. Shearman—February, 1871.

Mr. Beach—Well, I supposed, gentlemen, that when we brought an inmate of Mrs. Woodhull's house connected with her business enterprises, of respectability, who testified that he introduced Mr. Tilton to Mrs. Woodhull, and when we have the evidence of Mr. Tilton and of Mr. Moulton as to the circumstances that induced the acquaintance, arising out of this card of May 22, 1871, and the positive oath of Mr. Tilton that he did not know Mrs. Woodhull prior to that—I had supposed that that made that question sufficiently clear; and if Woodley—without saying an-

other word in regard to him—or if Mrs. Palmer—without saying another word in regard to her—in your judgment overcome this evidence. why, then, you may date the acquaintance between them prior to the publication of that card.

I shall speak of Mr. Beecher's connection with the policy which induced Mr. Tilton and Mr. Moulton to seek that acquaintance, by and by. Well, certainly, the "Tripartite Covenant," which followed next in the way of publication, was not the act of Mr. Tilton. There was, in the commencement of the examination of witnesses, a kind of tendency toward an imputation that Mr. Tilton was responsible for that, but it very soon turned out that he had no connection with its publication. Mr. Beecher, by his card, settled that question, as a matter of course, and, if not, it was pretty definitely determined by the testimony of Mr. Wilkeson. That publication, that "Tripartite Covenant," whatever was published of it, was published by Mr. Wilkeson. Then there was this church difficulty, this uneasy and unsettled feeling among the members of Mr. Beecher's own church, which commenced festering and bubbling and rising constantly in the year 1871, and continued throughout the succeeding year. I wish you to have something of an idea of that difficulty. Mr. West, who, you remember, was a deacon of the church from 1870 to 1873, testified in regard to it:

I want to call your attention to what occurred in the Autumn of 1871, after the publication of what is known as the Woodhull biography—if there was any action taken in regard to that matter, and, if so, what was it?

Mr. Evarts interfered, and finally the question was put:

What occurred between you and Mr. Beecher, if anything, in reference to the Woodhull biography? A. Mr. Beecher made a request of the Examining Committee, of which I was then a member, that he should be appointed as a Committee of one to confer with Mr. Tilton with regard to it.

Q. What action was taken in pursuance of that request? A. The Examining Committee appointed Mr. Beecher such a Committee.

Q. Were any instructions given to the Committee after he was appointed, and, if so, what were they?

* * * * * * *

Q. Was the object of appointing a Committee stated at the time of the appointment? A. It was; the Committee was to confer with Mr. Tilton with reference to the severance of his relations with the church; it was thought by the Committee—

* * * * * * *

The Witness—Mr. Beecher reported to the Committee that he had seen Mr. Tilton; that he was in a very critical position. I am not repeating Mr. Beecher's words now. I took no memorandum of them at the time; I am simply giving from memory the substance of the report; if there is anything incorrect with reference to it, the books of the Committee will show where my memory fails me. Mr. Beecher reported that he had seen Mr. Tilton; that Mr. Tilton at that time was in a very critical position; that he had many troubles, pecuniary and otherwise; that he had been surrounded by bad influences, and that he thought it would be better to leave Mr. Tilton to the influence of his friends, and for the church to take no action, or for the Committee, rather, to take no action with reference to his severing his relations with the church. That report was adopted and no action taken.

* * * * * * * * * * *

Q. What did you say to Mr. Beecher in reference to what Halliday had communicated to the Committee? A. I called upon Mr. Beecher at his house; I cannot fix the date exactly; it was in November—the early part of November, 1872—and informed him that he had been appointed by the Examining Committee a member of a Sub-Committee, to confer with Mr. Tilton in regard to his position in relation to the Woodhull scandal.

Q. Did you tell him at whose request the Committee was appointed? A. This Committee was appointed on my motion.

Q. Did you tell him so? A. I told Mr. Beecher so.

Q. What was Mr. Beecher's reply to that information? A. Mr. Beecher told me that he thought it would be better to meet this whole scandal by silence—to make no effort to investigate it; and I replied to him that I thought that was mistaken policy; that the church was suffering very much from the scandal; that I thought that the only way to meet the scandal was to strike it down and utterly destroy it. I told him that Mr. Tilton was a member of the church, as I understood it; that he was named by Mrs. Woodhull as her authority for the scandal; that I thought Mr. Tilton should be called upon to explain his position in the matter. Mr. Beecher replied that there was some force in what I said, and he said that he would meet with the Committee, but he was very busy at that time; that it would be two or three weeks before he could find time to meet with the Committee. I replied to that that the church was suffering very much; that I thought a meeting should be held at once. We were interrupted at that stage of the conversation and went to the other room. This conversation had taken place in Mr. Beecher's study. We then went into the front parlor, and Mr. Beecher resumed the conversation there by saying that this whole story rested solely upon the assertions of two prostitutes; that if he should pay any attention to it, that no prominent man in the country would be safe from their attacks; but he said that if any person of responsibility would make such an attack upon him that I would see how quickly he would reply to it. I told him that it seemed to me that Mr. Tilton was a responsible person; that he was named as the author—the originator of the scandal; that I thought it was his duty to deny the assertions made by Mrs. Woodhull; and if he did not do that that the church should take the matter up; and if he did not explain his position satisfactorily that he should be dismissed from the church; and, as the result of this conversation, Mr. Beecher named a day when he would meet with the Committee at his house, some two weeks after that time.

Well, the Committee did meet at his house in the latter part of November, or the early part of December, and the witness says:

Mr. Beecher told the Committee that he had seen Theodore with regard to this matter; that Theodore had expressed to him his great grief and sorrow at the publication by Mrs. Woodhull, and had offered to do anything in his power to neutralize it. He spoke of the friendship which existed between Mr. Tilton and himself, and said that he did not think Mr. Tilton had intentionally done anything to injure him; that he thought Mr. Tilton would in a short time—before the first of January succeeding—publish in *The Golden Age* a card in which

he would denounce Mrs. Woodhull, and in which he would deny the truth of her story; and he advised that the Committee should take no action, that they should await the publication of the card. The Committee decided to do this—that is, to recommend such action to the Examining Committee; but also to recommend, at the same time, that this Sub-Committee should be continued, in order that if Mr. Tilton did not publish such a card he might be waited upon by the Committee afterward.

That was in 1872.

The hour of 4 o'clock having arrived, the Court adjourned until Tuesday at 11 a. m.

104TH DAY'S PROCEEDINGS.

PROGRESS OF MR. BEACH'S ARGUMENT.

TESTIMONY OF MR. WEST AND THE WEST CHARGES GONE OVER—ALLEGED EVIDENCE OF MR. BEECHER'S EFFORTS TO SUPPRESS THE SCANDAL—THE ACCUSATIONS OF BLACKMAIL ANALYZED—A CONSPIRACY AGAINST MR. BEECHER DECLARED TO BE IMPOSSIBLE ON ACCOUNT OF LACK OF MOTIVES—IMPORTANCE OF MRS. TILTON'S ALLEGED CONFESSION—MR. BEECHER'S DENIAL OF GUILT ASSERTED TO BE UNSUPPORTED—THE CONFRONTING TESTIMONY OF THREE WITNESSES AND OF CIRCUMSTANTIAL EVIDENCE.

TUESDAY, June 15, 1875.

In the suit of Theodore Tilton against Henry Ward Beecher to-day Mr. Beach continued his summing up for the plaintiff. The counsel described and compared the actions of plaintiff and defendant toward the publication of the scandal, and argued against the theories of conspiracy and blackmail alleged by the defendant.

Mr. Beach, in opening his argument for the day, briefly recalled to the jury the evidence of Mr. West as evincing the uneasiness and disturbances in Plymouth Church during 1871, 1872, 1873, and 1874, which it was claimed greatly annoyed and excited the fears of Mr. Beecher. He then glanced at the history of the West charges, and showed their connection with the case.

Mr. Beecher's action in the matter of the Congregational Council, the speaker argued, was only an instance of his whole course of action in endeavoring to suppress all investigation into the subject of his relations with the family of Theodore Tilton.

The counsel next read various portions of the testimony of the case, as showing the circumstances which called forth the Bacon letter. He also read the history of the Investigating Committee, claiming that Mr. Tilton was not responsible for its creation, and that Tilton and Moulton, in partial conjunction with Mr. Beecher, labored to control the Committee's deliberations and prevent it from uncovering the scandal to the public gaze.

Mr. Tilton's letter to Bowen and the Tripartite Covenant were then touched upon, after which the speaker recurred to the subject of the Investigating Committee of Plymouth Church, who, he said, were "organized to acquit Beecher and convict Tilton." He thought that, considering the means of inquiry which they adopted, it was "not surprising that their report should have received the scorn and denunciation of the world."

Mr. Beach then addressed the Court, citing numerous cases, mainly from the English Ecclesiastical reports, on one of the legal aspects of the case. He claimed that Mrs. Tilton's "confession," acquiesced in by Mr. Beecher, was sufficient of itself, in a case of this character, to justify a verdict. The speaker further said that the issue of the case was an action by a husband alleging himself to have been wronged in his dearest relations, against the alleged wrong-doer. They did not ask for damages, as "Theodore Tilton disdains the idea of touching the gold of Henry Ward Beecher."

The charge of conspiracy was next referred to by Mr. Beach. The very first step in the alleged conspiracy, he said, brought them to the figure of Mrs. Tilton whether they believed her "white as the snow though fallen like the snow"—no matter what they thought of her—how could they imagine her with her devotions conspiring against her lover? Theodore Tilton's condition at the time of the beginning of the alleged conspiracy was referred to, and Mr. Beach scouted the notion of his conspiring without any motive. Mr. and Mrs. Moulton's alleged absence of motive was also commented on. The speaker then went on to argue the impossibility of the creation of so vile a conspiracy where no motive could be shown on the part of the participants.

The theory of blackmail was then discussed, Mr. Beach arguing that all the evidence and probabilities were against such a hypothesis. He referred to Mr. Beecher's testimony as showing that he had not entertained the theory until persuaded by his counsel, "and" continued the speaker, "I wish he had done nothing worse under their advice."

In taking up the suggestions of defendant's counsel to the effect that Mr. Tilton was envious of Mr. Beecher's fame, and wished to rise above its ruin, Beach said that Mr. Beecher was no obstruction to Mr. Tilton's path of fame. Again recurring to the

conspiracy, he claimed that that idea had been exploded by Mr. Beecher himself. The vital question of the case was whether Mr. Beecher's sole denial, unsupported by other proof, should be deemed sufficient to overcome the testimony of three witnesses, and the accumulated force of such circumstances as had been shown, and against which the character of a saint would be no protection.

The alleged confession of Mrs. Tilton to her husband was then touched upon and its importance in the case noted. The letter of recantation was also spoken of, Mr. Beach claiming that it was written at Mr. Beecher's dictation, while at the time of the alleged confession Mrs. Tilton was not under her husband's coercion.

THE PROCEEDINGS—VERBATIM.

MR. BEACH'S ARGUMENT CONTINUED.

The Court met at 11 a. m. pursuant to adjournment.

Mr. Beach—I purposed, gentlemen, to reprodnce to you the evidence of Mr. West in regard to the uneasiness and disturbance which, through the years 1871-'2-'3 and '4 in Plymouth Church, greatly annoyed, excited the fears, and exasperated Mr. Beecher. It is inexpressibly wearying to me to do it, and it must be tedious to you, and I am fearful if I pursue that line of argument it will result in an uncomfortable protraction of the argument I am bound to submit to you, and I therefore omit it. You will recall at once to your minds the circumstances detailed by Mr. West, how persistently he pursued the idea of presenting charges against Mr. Tilton for slander of his pastor, and how vigorously and indignantly Mr. Beecher endeavored to influence Mr. West to their suppression, and I pass therefore that particular crisis which was supposed to have exerted an influence upon the mind of Mr. Beecher to accomplish the imagined purposes of this alleged conspiracy. Certainly Mr. Tilton, nor any friend of his, was not at all responsible for the agitation of that topic in Plymouth Church, and that could not have been one of the means resorted to by him for the purpose of furthering any attributed purpose of influencing Mr. Beecher.

THE COUNCIL.

Then followed the council of the churches, which you will remember, and with that Mr. Tilton had no possible connection. You remember that Mr. Beecher very earnestly requested Mr. Tilton not to mingle with the proceedings of that council, or by any appearance of his before that tribunal to complicate the difficulties in which Mr. Beecher and the Plymouth Church, through that judicatory, were involved. But there is a very remarkable letter upon that subject written by Mr. Beecher to Moulton, to which a moment's attention may not be uninstructive. It was written as late as March 25, 1874, indorsed "Confidential:"

My Dear Frank: I am indignant beyond expression. Storrs's course [referring to the Rev. Dr. Storrs of this city] has been an unspeakable outrage. After his pretended sympathy and friendship for Theodore he has turned against him in the most venomous manner—and it is not sincere. His professions of faith and affection for me are hollow and faithless. They are merely tactical. His object is plain. He is determined to *force* a conflict and to use one of us to destroy the other if possible. [That is, referring to Mr. Tilton and himself.] That is his game. By stinging Theodore he believes that he will be driven into a course which he hopes will ruin me. If ever a man betrayed another, he has. I am in hopes that Theodore, who has borne so much, will be unwilling to be a flail in Storrs's hand to strike at a friend. There are one or two reasons, emphatic, for *waiting* until the end of the Council before taking any action.

And then, giving those reasons, he proceeds to say:

At any rate, while the fury rages in council, it is not wise to make any move that would be *one* among so many, as to lose effect in a degree, and after the battle is over one can more exactly see what ought to be done. Meantime I am *patient*, as I know how to be, but pretty nearly used up with inward excitement, and must run away for a day or two and hide and sleep, or there will be a funeral. Cordially and trustingly yours, H. W. B.

March 25, 1874.

No one can tell under first impressions what the effect of such a speech will be. *It ought to damn Storrs.*

Now, that letter betrays to you, gentlemen, the state of mind under which Mr. Beecher was laboring with reference to his difficulties with Mr. Tilton, as late as March, 1874. It shows you the sort of appeal which he made to the consideration and charity of Mr. Tilton, not to permit himself to be used by a supposed adversary in the person of Mr. Storrs, as a flail with which to attack Mr. Beecher. Now, review the attitude of Mr. Beecher as represented by himself upon the stand, toward Mr. Tilton, and toward this case and Mrs. Tilton. What was the apprehension weighing upon the mind of Mr. Beecher? Why did he deprecate the appearance of Theodore Tilton before the Council, defending himself against a wrong imputation? for I will show you by-and-by what it was. Why should Mr. Beecher have been anxious to prevent the presentation by Mr. Tilton of a just vindication against an attack by Mr. Storrs, as Mr. Beecher represents, detrimental to the character and the honor of Mr. Tilton? What was there in all Mr. Beecher's connection with this affair which should lead him to dread the outspoken and manly defense and revelation which Mr. Tilton might have made upon the occasion of his appearance before the Council? Now, these are suggestive inquiries, and they will become more significant and important as you trace along through the evidence these other indications of the anxiety and trepidation of Mr. Beecher, and the efforts he was constantly making to suppress not only the West charges, involving this very accusation against him, but every other movement and

agitation which by any possibility could lead to an investigation of his relations toward the family of Mr. Tilton.

Now, of this Council, of all its proceedings, of every effort to turn it into the means of an accusation against Mr. Beecher, Mr. Tilton is entirely innocent. Listening to this appeal of Mr. Beecher, and willing to submit to injustice before precipitating any examination that would lead to unfortunate revelations, he submits to the imputation made by Mr. Storrs upon his manliness and honor, in his speech before the Council. Well, gentlemen, I have spoken to you in regard to the Bacon letter, and I must read to you a few words of the evidence for the purpose of more fully explaining the origin and purpose of that letter. It is contained in the cross-examination of Mr. Tilton by Mr. Evarts.

Q. Now, did you regard your letter to Dr. Bacon as disclosing an imputation against the honor of your wife and your children? A. I did not, Sir; on the contrary, I took particular pains in framing my letter to Dr. Bacon to speak in complimentary phrase of my wife; and I intended that letter, while vindicating me, should also vindicate her.

Q. You did not then consider that letter as carrying any imputation upon the honor of your wife or of your family? A. I did not, Sir; on the contrary I considered it carried her vindication and mine also, and I think, if you refer to the letter, you will see that it does.

Q. Well, that is your view of it. As I understand you, the object of writing that letter was your own vindication? A. Yes, Sir.

Q. Against the imputations that had been thrown upon you in the various ways that you have suggested? A. Yes, Sir.

Q. Did you regard Mr. Beecher as in any way responsible for this council that had been got up against his church? A. The Council was got up with reference to actions in Plymouth Church which he might have controlled and suppressed.

Q. And which you think he did not, when he might? A. Yes, Sir; I think he did not.

Q. And in that way, then, you think he is responsible for the Council? A. Oh! I don't know how to trace responsibility for a public body to an individual man.

Q. Do you think Mr. Beecher was responsible for any of Dr. Bacon's speeches or articles in *The Independent*? A. Mr. Beecher had given the occasions concerning which Dr. Bacon wrote them, and in that degree he was responsible.

Q. How do you mean the occasions? A. Mr. Beecher's affairs; Mr. Beecher's crime; Mr. Beecher's measures against me in the church; Mr. Beecher's defense before the Council, which was to my detriment—all those together were the text of Dr. Bacon's articles.

Q. What measures against you in the church had Mr. Beecher taken? A. Mr. Beecher, as I have just said, was arraigned before the Council—practically, morally—and his defense was a paper presented before the Committee, the essence of which was that my retirement from the church should not fling a shadow on the church, because I had brought dishonor on the Christian name * * * * If you will read the documents sent by Plymouth Church to the Council you will see Mr. Beecher vindicated himself at my expense.

Q. Where is this paper of the church, as you say, or of Mr. Beecher, that takes any such grounds as that? A. I presume it is in Mr. Shearman's tin box.

Q. Are you speaking of the action of the Council? A. No, Sir; I am speaking of the documents which Plymouth Church itself sent to the Council to be its own vindication in that body. It was an unmanly vindication by striking me.

Q. Very well; you thought, then, that this vindication of Plymouth Church before the Council carried an imputation upon you? A. I know it did, Sir.

Q. That was your opinion at the time? A. No, Sir; Dr. Bacon took it up and quoted it in his letter, and threw it at me as straight as an arrow to a mark. Dr. Bacon said, in so many terms, that Plymouth Church accused me of bringing dishonor on the Christian name.

* * * * * * * *

Q. Then you don't impute, or didn't impute, in your opinion, any design on his part in this relation, but inability or want of courage to exercise a will that he might have exercised? A. I think in the year 1871 and 1872 it was a mere lack of courage; I think that later Mr. Beecher felt that, as soon as the opportunity was safe in which he could turn upon me and strike me down, he meant to do so. That is my judgment. I submit it with deference.

Q. How early did you come to that latter conclusion? A. I came to that conclusion after my last interview with Mr. Beecher, in Mr. Moulton's study, in which I gave him the opportunity to rectify the mischief which the Council had done, and which Dr. Bacon had done, and which the church had done; and during the three months which followed, when he did nothing, I came to that conclusion—that Mr. Beecher was going to turn upon me, to strike me, and I then said to myself: "The time has come in which I must defend myself against him and the Church;" and hence the Bacon letter.

Q. And you then resolved, did you not, that you would vindicate yourself, no matter what happened about the scandal or your wife and family? A. No, Sir; I then resolved that I would vindicate myself, and I sought my wife's vindication in mine; and the Bacon letter includes my wife's vindication in mine, like a jewel set in a ring, with honor and praise. I never sought any vindication at the expense of Elizabeth.

THE EFFECT OF DR. BACON'S ARTICLES.

Now you perceive, gentlemen, under what circumstances this Bacon letter originated. I have spoken of the vile attack—in language, I mean—made in the article of Dr. Bacon upon Theodore Tilton. He gave the text of those epithets which have been so freely scattered upon this trial. Tilton was a knave and a dog, subsisting at the mercy of Mr. Beecher, who was represented as a man of great magnanimity and forbearance. The reputation of Mr. Theodore Tilton was suffering, and could not but suffer under the attack of a gentleman so eminent as Dr. Bacon. He applies to Mr. Beecher and calls upon him to vindicate him, to repel this assault, to state to Dr. Bacon and the community, that Mr. Tilton instead of being the offender was himself the sufferer; instead of being a knave and a dog, as the letters of Mr. Beecher give ample testimony, and in this last one directed to Moulton in regard to Storrs, he was acting with magnanimity and generosity toward Mr. Beecher.

Again and again Beecher exclaims, "How generous the man has been; he is the man that must suffer most in this policy which we are pursuing for the purpose of suppressing this scandal, and in every effort which shall be made for the purpose of reuniting this dissevered family and restoring its lost peace and honor." Was that appeal unjust? Could not Mr. Beecher have stated then what he stated afterward in his formal submission of the facts to his examining, investigating committee? Could he not have said, "I have been guilty of an offense against Mr. Tilton. He is no knave or dog; he has been generous and indulgent, trusty and faithful, to the honor and the interests of his wife and his household. He has suffered misrepresentation, and you, Dr. Bacon, have misrepresented his relations to me?" If there had been any manly courage about Henry Ward Beecher, if there had been any proper conception of his duty to the man whom he had wronged, and who had been thus maligned, if he felt any of the conscious penitence and remorse of which he has spoken so volubly and feelingly upon the stand, the natural impulses of an honest man would have been at once to have revealed the true condition of his relations to himself in, at least, the modified form in which he subsequently submitted them to the public; and what would have been the result if that had been done? There would have been no Bacon letter; there would have been no future disturbance; there would have been no appeal to the community on the behalf of Theodore Tilton, and no attempt to vindicate his aspersed name; and all these mischievous consequences which have flowed from that moment of weakness, and irresolution, and cowardice on the part of Henry Ward Beecher—all these unfortunate results that have followed. And what was there in the Bacon letter, gentlemen? I repeat, there was no accusation against Mr. Beecher, no charge of criminality, nothing which should have stirred his resentment. A portion of his own letter was copied into that production: its most offensive and abusive parts omitted, with great discretion and intelligence on the part of Mr. Tilton. And why this fiery indignation? Did Mr. Beecher then suppose that things were culminating to a point where he had Theodore Tilton in his power, and where, in the strength and power of his position, aided by his influential and numerous friends, he could vindicate himself, and at the same time crush, inexorably and hopelessly, his adversary? But this Bacon letter contained—[consulting with counsel]—I was about to state, gentlemen, under a misapprehension, that this Bacon letter contained, also, a quotation from the Bowen letter, in which I was mistaken.

THE INVESTIGATING COMMITTEE.

Then followed, gentlemen, the Investigating Committee, called by Mr. Beecher in June, 1874, soon after the publication of the Bacon letter, the precise date of which I do not now recall. Well, most certainly Mr. Tilton is not responsible for that proceeding. Most certainly both Mr. Tilton and Mr. Moulton labored with great assiduity, in partial conjunction with Mr. Beecher, and with a limited concurrence and effort on his part, for the purpose of controlling the action of that Committee, and preventing such an investigation as would result in exposing to the public the scandal. May I ask your attention to a word or two? There was a statement prepared, which is described in the testimony of Mr. Moulton, for Mr. Beecher to submit, upon the submission of which neither Moulton nor Tilton would make any efforts before the Committee toward a thorough examination of this difficulty. It was prepared for Mr. Beecher. The question is put to him:

And what was it? A. The substance of it was that he took upon himself great blame for his conduct toward Theodore Tilton and his family, and exonerated Theodore Tilton from all blame so far as concerned Tilton's action toward himself. And I said to him, "Mr. Beecher, I think that I may be able to induce Theodore Tilton not to write the statement which he is writing, if I express to him fully the ground that you take with regard to him, because I cannot see that you can do anything more unless you confess absolutely to the Committee the crime which you have committed against him and his family; and I will try to influence Mr. Tilton upon the basis of what you have told me;" and he said, "I hope you will succeed in doing that; if Theodore publishes the fact, as he has threatened to, of my relations with Mrs. Tilton, it will ruin me, but it will kill him;" and he wept in expressing to me at that time his sorrow for the crime that he had committed; and I, Sir, was deeply affected with the presentation of his contrition, and I went to Theodore Tilton and told him that I thought he should not write the document which he was preparing if he intended in that document to state, as he said he had, in *The Argus* newspaper, the facts; that he ought not to do it, etc.

Then followed, as you remember, gentlemen, two reports which were prepared by Mr. Tilton to be presented by the Committee as the conclusion of their investigation; and they were to be founded upon an appearance of the several parties—Beecher, Moulton and Tilton—before the Committee; and making such a reserved statement of the difficulties between Beecher and Tilton, an admission of a qualified offense upon the part of Beecher toward Tilton and his family, so that while the report should exonerate Mr. Tilton, vindicate Mrs. Tilton, and at the same time relieve Mr. Beecher from the odium of a harsh and dishonoring imputation, all this matter upon the strength of the apology which had been offered and received in full as between Beecher and Tilton, this whole matter could have been ended and suppressed, and all these unfortunate consequences avoided. Well, now, gentlemen, this does not show much vindictiveness upon the part either of Mr. Tilton or of Mr. Moulton. The prevailing desire, followed by appropriate action on the part of Mr. Tilton, was to protect the honor

of his family, his wife and his children. And I think I shall be able to satisfy you that in no instance has he departed from that policy or seriously for any length of time forgotten his devotion, loyal, true, unswerving, to the wife whom he honored and loved notwithstanding her fall, and to the children it was his duty to protect.

THE BOWEN LETTER.

Now we come, gentlemen, to this Bowen letter; and in connection with the course of evidence which has been pursued upon the part of the defense in this case it is a letter of great significance. Recollect, for a moment, the circumstances which produced it—Tilton asserting that Mr. Bowen had made to him infamous revelations regarding the conduct and character of Mr. Beecher upon which the letter of demand was presented by Bowen, at his instigation, to Beecher, he, Bowen, pledging himself to Tilton to support that demand by abundant evidence.

Mr. HENRY C. BOWEN—*Sir:* I received last evening your sudden notice breaking my two contracts; one, with *The Independent;* and the other, with *The Brooklyn Union*—

And this bears date of Jan. 1, 1871.

With reference to this act of yours, I will make a plain statement of facts. It was during the early part of the rebellion, if I recollect aright, when you first intimated to me that the Rev. Henry Ward Beecher had committed acts of adultery for which, if you should expose him, he would be driven from his pulpit. From that time onward your references to this subject were frequent, and always accompanied with the exhibition of a deep-seated injury to your heart. In a letter which you addressed to me from Woodstock, June 16, 1863, referring to this subject, you said: "I sometimes feel that I must break silence, that I must no longer suffer as a dumb man and be made to bear a load of grief most unjustly. One word from me would make a revolution throughout Christendom, and, I had almost said, 'and you know it.'"

This was addressed to Tilton.

You have just a little of the evidence from the great volume in my possession. I am not pursuing a phantom, but solemnly brooding over an awful reality. The underscorings in this extract are your own. Subsequently to the date of this letter, and at frequent intervals, from then till now, you have repeated the statement that you could at any moment expel Henry Ward Beecher from Brooklyn. You have repeated the same thing not only to me but to others. Moreover during the year just closed your allusions to the subject were uttered with more feeling than heretofore, and were not unfrequently coupled with your emphatic declarations that Mr. Beecher ought not to be allowed to occupy a public position as a Christian preacher and teacher. On the 26th of December, 1870, at an interview in your house, at which Mr. Oliver Johnson and I were present, you spoke freely and indignantly against Mr. Beecher as an unsafe visitor among the families of his congregation.

Mark that, gentlemen—in the presence of Oliver Johnson.

You alluded by name to a woman, now a widow, whose husband's death you had no doubt was hastened by his knowledge that Mr. Beecher had maintained with her an improper intimacy. You avowed your knowledge of several cases of Mr. Beecher's adultery. Moreover, as if to leave no doubt on the mind of either Mr. Johnson or myself, you informed us that Mr. Beecher had made to you a confession of his guilt, and with tears implored your forgiveness.

A further part of the letter was read by Mr. Fullerton, omitting some portions.

During your recital of the tale you were full of anger toward Mr. Beecher. You said, with terrible emphasis that he ought not to remain a week longer in his pulpit. You immediately suggested that a demand should be made upon him to quit his sacred office. You volunteered to bear to him such a demand in the form of an open letter which you would present to him with your own hand, and you pledged yourself to sustain the demand which this letter should make, namely, that he should, for reasons which he explicitly knew, immediately cease from his ministry of Plymouth Church and retire from Brooklyn. The first draft of the letter did not contain the phrase "for reasons which he explicitly knew," and these words, or words to this effect, were incorporated in a second at your motion. You urged, furthermore, and very emphatically, that the letter should demand not only Mr. Beecher's abdication of his pulpit but cessation of his writing for *The Christian Union*, a point on which you were overruled. This letter you presented to Mr. Beecher at Mr. Freeland's house.

And what becomes of all this controversy upon the evidence in regard to the place where the meeting was held between Mr. Beecher and Mr. Bowen, when this record is made, immediately after, on the 1st day of January?

Shortly after its presentation you sought an interview with me in the editorial office of *The Brooklyn Union*, during which, with unaccountable emotion in your manner, your face livid with rage, you threatened, with a loud voice, that if I ever should inform Mr. Beecher of the statements which you had made concerning his adultery, or should compel you to adduce the evidence on which you agreed to sustain the demand for Mr. Beecher's withdrawal from Brooklyn, you would immediately deprive me of my engagements to write for *The Independent* and to edit *The Brooklyn Union*, and that, in case I should ever attempt to enter the office of these journals, you would have me ejected by force. I told you that I should inform Mr. Beecher, or anybody else, according to the dictates of my judgment, uninfluenced by any threats from my employer. You then excitedly retired from my presence. Hardly had your violent words ceased ringing in my ears when I received your summary notice breaking my contracts with *The Independent* and *The Brooklyn Union*. To the foregoing narrative of facts I have only to add my surprise and regret at the sudden interruption, by your own act, of what has been, on my part toward you, a faithful friendship of fifteen years.

Now, gentlemen, consider that letter. Consider the charges which it makes, that Mr. Bowen as early as the year 1860 had commenced with his accusations against Mr. Beecher of adultery with various persons, and connecting himself with those acts. Consider that that relation was made, not alone in the presence of Theodore Tilton, but of Oliver Johnson, the prominent and trusted friend and witness of Henry Ward Beecher. Ah! how important it was, gentlemen, if this was an untruthful

statement upon the part of Mr. Tilton, if a single representation in that narrative was untrue, if Henry C. Bowen was not the public and the open accuser of Henry Ward Beecher, if Theodore Tilton was not stimulated to this arrogant demand upon Mr. Beecher—how important it was for my learned friends to contradict that formal and recorded statement by Mr. Tilton. And how easy it would have been, if it was false, to have involved Mr. Tilton in a series of deliberate and atrocious falsehoods, both as against Mr. Bowen and as against Mr. Beecher, which would have destroyed his credibility before this Court and this jury. We put Mr. Bowen upon the stand with that letter standing upon this record. Theodore Tilton defied all contradiction. Standing upon his own truth and integrity, and knowing of the necessary hostility of Mr. Bowen toward him, he yet put him as a witness, and subjected him to the cross-examination of my learned adversaries. Why didn't they examine him? Why not ask Mr. Bowen whether these injurious charges were made by him against Mr. Beecher? Whether he was the author of the demand for resignation and retirement? Whether he pledged evidence and action on his part to maintain that demand? Whether he did afterward, in his communication with Mr. Beecher, promise to be the friend of Mr. Beecher, and, in a towering rage, threaten Theodore Tilton if he alluded to the revelations he, Bowen, had made to him concerning Mr. Beecher? Why was not Oliver Johnson examined upon that subject? The allegation of that letter is, with a fearlessness which defied all contradiction, that Johnson, the friend and the witness of Beecher, was present at that communication. Here again Mr. Tilton exposed himself to possible contradiction. You have no doubt of the disposition of Oliver Johnson in regard both to Tilton and to Beecher. And I press it, gentlemen, upon your intelligence and convictions that this omission on the part of this defense either to examine Bowen or to examine Johnson, their own witness, in contradiction of Tilton, is the highest testimonial which can be given to his truth and integrity.

But that is not all gentlemen; that very letter was incorporated in the "Tripartite Covenant" between Henry C. Bowen, Henry Ward Beecher, and Theodore Tilton. Why, think of the amazing fact that the charge of Theodore Tilton against Bowen of these charges against Mr. Beecher, when this settlement of the difficulties of these three parties was made, in a document intended to be private and confidential, and which never has been published in full until this trial, these three men, incorporated these dishonoring charges against Mr. Beecher, and not a single word of disclaimer or denial on the part of Henry Ward Beecher in that instrument. I deem this, gentlemen, a matter so essential that, at the risk of wearying you, I must ask your attention to this "Tripartite Covenant" that you may see all its significance. How it answers in the most authentic and authoritative form, the idea, upon which this defense rests, that Henry Ward Beecher has been too elevated and pure in character and life, ever to have been suspected or to now be believed to have sinned.

We three men, earnestly desiring to remove all causes of offense existing between us, real or fancied, and to make Christian reparation for injuries done or supposed to be done, and to efface the disturbed past, and to provide concord, good-will, and love for the future, do declare and covenant each with the others, as follows: I. I, Henry C. Bowen, having given credit, perhaps without due consideration, to tales and innuendoes affecting Henry Ward Beecher, and being influenced by them, as was natural to a man who received impressions suddenly, to the extent of repeating them (guardedly, however, and within limitations, and not for the purpose of injuring him, but strictly in the confidence of consultation), now feel that therein I did him wrong. Therefore I disavow all the charges and imputations that have been attributed to me as having been made by me against Henry Ward Beecher; and I declare, fully and without reserve, that I know nothing which should prevent me from extending to him my most cordial friendship, confidence, and christian fellowship. And I expressly withdraw all the charges, imputations, and innuendoes imputed as having been made and uttered by me, and set forth in a letter written by me to Theodore Tilton, on the first of January, 1871, (a copy of which letter is hereto annexed) and I sincerely regret having made any imputations, charges or innuendoes unfavorable to the christian character of Mr. Beecher. And I covenant and promise that for all future time I will never, by word or deed, recur to, repeat, or allude to any, or either of said charges, imputations, and innuendoes.

There is no denial here of the truth of these charges. There is a disavowal. There is a tender of Christian forgiveness and fellowship. But this declaration of Mr. Bowen is very carefully and scrupulously worded. While he does not deny that in the letter of Jan. 1, 1871, he made these charges against Mr. Beecher, and as to a portion of them made them upon his alleged personal knowledge, he does not in this "Tripartite Covenant" declare that those accusations are untrue or unfounded. But under the influences which were then brought to bear upon these three men, with the hope upon the part of their friends in Plymouth Church that this whole matter could be suppressed, and that all danger of future agitation could be avoided, they enter into this covenant, making, so far as their consciences would permit, and their charity indulge, the most favorable declarations in regard to each other.

II. And I, Theodore Tilton, do, of my free will and friendly spirit toward Henry C. Bowen and Henry Ward Beecher, hereby covenant and agree that I will never again repeat, by word of mouth or otherwise, any of the allegations, or imputations, or inuendoes, contained in my letters hereunto annexed [*i. e.*, the Bowen letters] or any other injurious imputations or allegations suggested by or growing out of these, and that I will never again bring up or hint at any cause of difference or ground of complaint heretofore existing between the said Henry C. Bowen and myself, or the said Henry Ward Beecher.

You will perceive that the undertaking of Mr. Tilton was limited entirely to these injurious charges originating, proceeding from Mr. Henry C. Bowen.

III. And I, Henry Ward Beecher, put the past forever out of sight and out of memory.

Ah, that is a very pleasant declaration in print. Whether it can ever be fulfilled in his experience is quite another question.

I deeply regret the causes for suspicion, jealousy, and estrangement which have come between us. It is a joy to me to have my old regard for Henry C. Bowen and Theodore Tilton restored, and a happiness to me to resume the old relations of love, respect, and reliance to each and both of them. If I have said anything injurious to the reputation of either, or have detracted from their standing and fame as Christian gentlemen and members of my church, I revoke it all, and heartily covenant to repair and reinstate them to the extent of my power.

Then, gentlemen, there is an addendum to that instrument which contains a very severe accusation by Mr. Tilton against Mr. Bowen. I believe it has never been read to you. I do not care to read it.

Mr. Evarts—It was a part of the slip that was introduced.

Mr. Beach—It was a part of the "Tripartite Covenant," I know.

Mr. Evarts—It was a part of the threatened publication by Mr. Tilton.

Mr. Beach—That is a question I am not just now discussing. I am discussing the contents of the "Tripartite Covenant."

Mr. Evarts—But you were speaking of it as if it were a part of the "Tripartite Agreement."

Mr. Beach—I do speak of it, Sir, as a part of the "Tripartite Agreement."

Mr. Evarts—And in that I was endeavoring to correct you.

Mr. Beach—Wasn't it a part of the "Tripartite Covenant?"

Mr. Evarts—It was a part of *The Golden Age* slip that was threatened to be published.

Mr. Beach—Well, what of that, Sir? I am saying it was adopted by the "Tripartite Covenant."

Mr. Evarts—Yes.

Mr. Beach—By the action of these three parties.

THE JUSTIFICATION FOR THE BOWEN LETTER.

But, gentlemen, a word further ought to be said, perhaps, in regard to the object of this Bowen letter. Mr. Tilton, ten days before that letter, had surrendered the position of editor of *The Independent*, and had entered into two contracts with Mr. Bowen, one as editor of *The Brooklyn Union* and the other as a contributor to *The Independent;* and Mr. Bowen on that change of relations between Mr. Tilton and himself had published a very complimentary notice of Mr. Tilton in *The Independent*. It is described by Mr. Tilton in this way:

This letter of Mr. Bowen was read to Mr. Beecher. Mr. Moulton read the letter aloud. He told Mr. Beecher that I had written it, feeling that I must make some explanation to the public for the sudden cessation of my relationship with *The Independent* and *The Christian Union*. I say Mr. Moulton stated that—possibly it was I who stated that—I am not clear as to that; at all events, after Mr. Moulton or myself—and on second thought I am rather inclined to think it was I who said my relationship with Mr. Bowen had been suddenly terminated in a manner to excite public comment, namely, that the last copy of *The Independent* or the one next to the last in December, 1870, had announced to the public that I was to be no longer the editor of that paper, but its special contributor, and that I was to be five years the editor of *The Brooklyn Union*. I said that the announcement had been made in *The Independent*, with a great flourish of trumpets, and with much eulogy and glowing reference to myself, that I was to be hereafter the editor of a daily paper, and to be a special contributor to *The Independent*, that Mr. Bowen had put forth the announcement in a very complimentary manner to myself; and that the next intimation which the public had concerning me through the press at large was that these contracts had been suddenly terminated, that I was not to be a contributor to *The Independent;* that I was not to be editor of *The Brooklyn Union* for five years; and no reasons were given; and I said that in view of the extraordinary announcement, and in view of the sudden cessation of the promised engagement, some explanation was due by me to the public to account for that event, and that the explanation which I designed to make to the public was a plain and simple recital of the exact facts narrated by Mr. Bowen in an interview with me on the 26th of December; also the exact facts that occurred between him and me two or three days after that interview when he grew angry and violent; also the exact facts of his terminating my engagement with these two papers a day or two after that interview; that I felt that duty to myself required a plain statement of the facts in the case; that, accordingly, under that sense of duty, I had written a letter to Mr. Bowen reciting all the facts; that I had written it very carefully, taking the advice of Jeremiah P. Robinson, of Mr. Moulton, and of Mr. Gordon L. Ford; that, acting upon their advice, and particularly upon the advice of the oldest of those gentlemen, Mr. Robinson, I had studiously kept out of this letter all ground of trouble between Mr. Beecher and myself.

Now, was not some explanation upon the part of Mr. Tilton justified under these circumstances? First honorably mentioned with reference to his past connection with *The Independent* and *The Christian Union*; eulogized for his faithfulness and ability; then announced as the editor of *The Union* and a special contributor to *The Independent*; and then, in ten days, the public advised that he had been dismissed from his position, without any explanation, without the statement of any cause; leaving him open to the imputation of dishonorable conduct; leaving the public at liberty to speculate on the possible causes which might have produced this degradation; the fact itself, as Mr. Theodore Tilton was then a prominent man in the literature of the day, attracting necessarily the observation of the community, and they speculating upon the possible causes of his downfall. Was there any impropriety gentlemen—in your good sense and fairness will you say that that letter thus prepared for that object by Mr. Tilton deserves any reprobation from counsel or from yourselves? It was an

act of self-justice; it was an act of that self-defense which a consciously true and manly person will always make when an accusation unjust and dishonoring is brought against him. It is not Mr. Beecher's way of dealing with things; but it is the direct, prompt, ready answer which Theodore Tilton then made, and always has made, except when governed and restrained by the motives and principles to which I have alluded, to every attack upon his honor and fame.

Now, I had noted "Sir Marmaduke's Musings," the "Letter to a Complaining Friend," the "Letter to a Friend in the West," and the "True Story" for comment, but enough has been said, it seems to me, upon that subject, as to the motive which induced those publications upon the part of Mr. Tilton, they, in every instance, being preceded by an adequate cause, which called upon him as an honorable gentleman, either for the vindication of himself or of his wife, to make some statement to the public. The Bowen letter was never made public; Moulton controlled him, Elizabeth R. Tilton controlled him; and when Mr. Tilton revealed to her the fact that he had entered into this league with Bowen, and that this demand had been made, he, upon her protestation and her tears, at once went to Mr. Beecher and withdrew the accusation; and everywhere, upon every occasion, and in every place where Mr. Tilton has contemplated any action seeming to him to be just for his own protection, he has yielded to the influence of those specific motives and the policies which have been adopted by Mrs. Tilton, by Mr. Moulton, and by Mr. Beecher, and acquiesced in by himself, for the purpose of avoiding all agitation of this subject.

THE INVESTIGATING COMMITTEE CRITICISED.

Now, gentlemen, I submit to you that it was the Investigating Committee—no other proceeding, no other act, no other temptation—which produced this controversy. You have seen how Mr. Moulton struggled to avoid the consequences of that intemperate and unwise act upon the part of Mr. Beecher. You have seen how Mr. Tilton, cooperating with Mr. Moulton in the acceptance of the proposed card of Mr. Beecher, in suggesting the form of the report for the Committee which, while exonerating him, would yet protect this man from revelation—how they struggled; how Mrs. Tilton everywhere and always has besought and entreated Moulton and Tilton and Beecher to avoid all agitation and disturbance of this scandal. But Mr. Beecher, without the advice of Mr. Moulton, whom he had trusted until that hour and act, without the knowledge of Tilton (for he was not aware of the calling of the Investigating Committee until his wife had been before that body), without any consultation with any of the parties interested, unless it was with Mrs. Tilton, without consulting the interests of anybody but himself—Mr. Beecher organizes a Committee from the chosen members of his own church. Ah! it is said this was for the purpose of impartial and independent investigation; that Mr. Beecher was bold, brave, and defiant; that he had borne as long as he could the burden of the opprobrium of the policy of silence, in which for three years he had acquiesced. Well, was it a noble and a just means of self-vindication to select a committee as this Examining Committee was chosen by Mr. Beecher? How arduous and anxious were the deliberations with which that selection was made! The efforts between Tracy, and Shearman, and Beecher, and Cleveland, speculating upon the qualities and relations of each member of the Committee; with the astute aid of these two gentlemen, discussing the probable tendencies of each member of the Committee; selecting as a member of that Committee a gentleman who had expressed himself to Mr. Beecher in terms of decided and manifest hostility to Mr. Tilton; in homely but expressive phrase, *packing* a court organized to acquit Beecher and convict Tilton; and then parading before the world the noble and magnanimous courage of Henry Ward Beecher in throwing off the shackles of restraint and braving at once a public and notorious examination! How comical and laughable it is! This man putting on the aspect of nobility, of bravery, under such circumstances; gathering six of his most intimate and devoted friends and adherents, whose influence was known, whose fidelity and attachment were trusted, who had the interests specified by Fairfield in the maintenance of the position and the character of Henry Ward Beecher and the protection of the purity and the position of Plymouth Church, to sit in an investigation and decision of the controversy between Beecher, the pastor, and Tilton, the odious and therefore persecuted enemy of the church! Did not that Committee know, and did not every man on it during its sittings already know, that this was a controversy for life or death between Henry Ward Beecher and Theodore Tilton? Did any man ever doubt that while that pretended to be a Committee for the investigation of the conduct of Henry Ward Beecher, it was really for the purpose of accusation against Mr. Tilton? And how was the investigation conducted? Was the accused man permitted an open appearance by counsel and an opportunity to cross-examine witnesses? Was there the obligation of an oath upon the consciences of the witnesses? Were there any of those accompaniments of a fair trial which are the essence of justice and a protection of the rights of parties? Nothing of the kind. It was a Star-Chamber investigation; it was held with closed doors. The wife of Theodore Tilton, enticed from his home and a witness before that Committee without his knowledge, then making a favorable declaration toward her husband, speaking of him in such terms of commendation and respect and love as at once modified the indigna-

tion he felt when he found that his wife had been abstracted from his house and was giving evidence before a Committee of that character; again appearing before the Committee, and implicating that husband by accusations and charges which, if true, would render him infamous; and then, through influences to which I have alluded, withdrawn entirely from the protection of that husband and her home, and now living, a wanderer, upon the charity of Plymouth Church. Is that the kind of tribunal, and are those the forms and ceremonies of justice, through which the honor, the character, the reputation of a citizen shall be defamed and condemned? Why, think of it! This tribunal thus investigating a great and important question between two distinguished men, involving the fame and the position of each, refusing to receive the statement and the evidence of Mr. Moulton, after he had made his first statement before that Committee, with the view and for the purpose expressed by him, declining to tell what he knew, informing that Committee that he *did* know more, but that the relations between the parties, the apology which had passed, the interests of the families involved, public interests, all demanded that there should be no further investigation; and when he sends a respectful request, after Henry Ward Beecher had made against him the infamous, and now pronounced by him the untrue, imputation of blackmail, desiring an opportunity to appear again before the Committee, this honorable management refused the request, because their report had been mostly if not entirely prepared! Where were the several witnesses, Mrs. Bradshaw, Mrs. Morse, and others, in regard to whom the Committee were informed, and who, they knew, possessed information which if presented before them would illustrate the true condition of the matter which was submitted to them for adjudication? Why was their evidence suppressed? Why no attempt to get them? Why no revelation from all these parties who had public connection with this scandal, and who have appeared upon this stand and made their statements? This is not the course of thorough and fair investigation. I must be permitted to say that it is not the conduct of honorable gentlemen in a responsible position, assuming to do impartially and faithfully a great public duty. That Committee answered the purposes of their organization; they fulfilled the object for which they had been selected, but they did not answer the demands of justice or of honor, and it is not surprising that the report which they made under such circumstances should have received the scorn and denunciation of the world.

Another feature. I have said that the first statement of Mrs. Tilton, as is proven by Tracy and Moulton and others, was favorable and complimentary to her husband. How happened it that she changed that statement? and when was it that the remarkable change occurred, so that this lady first goes before the same gentlemen forming this Committee and honors and exalts the character of her husband, and then, within six days, appears again before the same gentlemen with her denunciations and condemnations? What were the influences operating upon this lady? Ah! she had been then attracted by some means, or some impulse, from her home. She was under the influence of the Ovingtons and the friends and the habitués of the Ovingtons and their house. She was brought under influences which were favorable to Mr. Beecher. Why, gentlemen, conceive it—a wife on Tuesday offering a voluntary tribute to the character of her husband, and within five days leaving her home, without any new cause, without any fresh outbreak of family difficulty—in five days deserting her home under influences confessedly inimical to her husband, and again appearing before that Examining Committee and reversing entirely her previous testimony. How is it explainable? What sanction attaches to the declarations of this woman, thus contradictory? and what influence extorted this denunciation of her husband? Are you in doubt? Tracing the conduct, the interference of Mrs. Ovington, her fresh and tender commiseration for Mrs. Tilton, carrying her upon rides, pressing upon her the hospitalities of her house, offering her a permanent asylum from her husband and her home; Tracy, Beecher, and all in open and admitted communication at the house of Mr. Ovington—all these collected influences bearing upon this woman, frail and delicate as she is represented to be, and adoring her pastor as we know she did—are you in doubt? And do you blame Theodore Tilton under these circumstances for standing up, solitary and alone, in self-defense? Must he be openly accused before a partial and packed tribunal of the friends of Mr. Beecher, men of personal position, of excellence of reputation and character, whose determination, unless it was infected by apparent impropriety and favoritism, would produce an immense influence upon the public mind, his household disrupted, his wife a fugitive from his bed and his home, public dishonor resting upon him from that simple circumstance, a brute in the estimation of the community, from whose violence and abuse it was necessary for his wife to flee, represented as he was by Bessie Turner in his conduct and action in his family relations—was this man to sit quiet and silent, with no voice raised in his behalf? Feeling the injustice of his position and the falsity of the accusations against him, was he to be silent for fear it should be said that he sought his own vindication at the hazard of family honor and pride? Why, what had become of family honor and pride? Where did Mrs. Tilton stand in the estimation of the world? What graver rebuke in the judgment of the public could have been uttered against the lady than the fact, as we know, that, without any new cause of offense, she had suddenly left home and children and was colleaguing and

consorting with the open and accusing enemy of her husband? Now, I am asking you what Mr. Tilton should do under those circumstances. I don't know what you might do, gentlemen. I don't know how much of long suffering and forgiveness you as husbands and fathers might exercise upon an occasion of that character. If it had been possible for Mr. Tilton to reclaim his wife, to restore his broken household, to reunite a dissevered family and to induce that wife of his to return again to his forgiving and adoring arms, he would have done it; but he knew, as every man on this jury knows, that Elizabeth R. Tilton had left his home and his children forever. The cause of Mr. Beecher could not triumph unless that weak and feeble woman stood beside him upholding it in its vileness and wrong. When Mrs. Tilton had made that first exculpatory statement, evincing her wifely trust, evincing the truth of her nature, Henry Ward Beecher knew that his case even before his chosen Committee could not triumph. That representation must be changed; the wife must accuse the husband. She must do something to remove the effect and the impressions of her past declarations and her past associations with Theodore Tilton. She must appear as the friend of Mr. Beecher and the accuser of her husband, or Henry Ward Beecher would fall. Hence the intervention of the Ovingtons; hence the letter to the Committee; hence the notice to Mrs. Tilton; hence the sudden and the secret flight of Mrs. Tilton from her home. Whatever you may say or think, gentlemen, sure I am that in the judgment of weak and fallible man Mr. Tilton was entirely justified in his declaration that the justice denied him before that Committee should be sought before a tribunal where justice is supposed to be impartial; where the forms of law enable every citizen to produce by witness, by appeals to the intelligence and the justice of the law, protection, vindication, security to right. No hazard, no consequence has come or will come from this suit and this investigation that had not fallen upon Theodore Tilton, his wife, his children, and his home before even this investigation was undertaken. Their fate was settled. There was no redemption. When Henry Ward Beecher pressed that Committee of Investigation to a report condemning Theodore Tilton, aye, and reflecting most dishonorably and ignominiously upon the wife of Theodore Tilton, when everything was sacrificed to the preservation and the safety of Henry Ward Beecher, there was no redemption for Mr. Tilton and his family, and you can give none. You can, it is true, vindicate the character, the conduct of Theodore Tilton, but all will not redeem him. Once from obscurity and poverty, through the energies of his genius and industry and character, he has struggled up to a noble position, and he has been struck inexorably down; and there is no other retrieve, he can march up the glittering ascent in no other way than by a long course of toil and struggle, aided by the same faculties which prompted him at first. He will do it. My friend may talk about dissecting and burying him, about the strained and battered hulk rotting upon the shores of life, but he never will dissect the intellectual or moral character of Theodore Tilton. His knowledge of intellectual anatomy will be greatly enlarged if he ever succeeds in doing it. [Applause.] And he is not the sexton who is to bury a man like Theodore Tilton. He will yet emerge from those shadows and obscurations. It is the spirit and the essence of great qualities to overcome unmerited shame and heaped obstacles; and, although he may never again have a happy home to cheer him, or a loving wife upon whom he can rest in his sorrows and tribulations, yet, believe me, Theodore Tilton, by the energy of his character and his genius, will redeem himself in the eyes of the world, and prove himself the noble and honored man to whom Henry Ward Beecher rendered his repeated tributes. [Applause.]

THE LAW BEARING ON THE CASE.

Now it would be desirable, I think, may it please your Honor, that before addressing ourselves more especially to the evidence in this case bearing directly and briefly upon the plaintiff's claim of action, to learn, if we can, what are the principles of law in regard to the evidence appropriate to such an examination as this, and, more especially, to ascertain if the proposition of my learned friend, Mr. Evarts, is to be supported by the instruction of your Honor to the jury. I understand him to say, Sir, that in a case of this character it is impossible for a court or a jury to convict—and I use that term with the idea of a criminal offense—upon the mere confession of the accused party. We have, if the proof is to be credited, the confession of both of them—I have already said to your Honor that I claim no force for the confession on the part of Mrs. Tilton, except so far as it has been ratified, authenticated, acknowledged by the action of Mr. Beecher when communicated to him; but for the confession of Mr. Beecher I claim its full capacity, without any other proof, without any evidence of connecting circumstances — its full capacity, to justify a verdict in a case of this character; and I ask your Honor's attention, in the first place, to the case of Harris agt. Harris, 2 Haggard, page 410, and I draw attention merely to the syllabus of the case as stating the principle adjudicated in his decision:

When a wife is charged with adultery, her conduct and declarations on a confession of guilt by the alleged *particeps criminis* being communicated to her are admissible evidence on behalf of the defendant.

Well, your Honor has already ruled that; but I thought it, perhaps, desirable to furnish an authority to show that in the Consistory Courts of England a confession of an alleged paramour communicated to the other, and admitted by that other, either by conduct or declarations,

was competent evidence upon which even a decree of divorce could be pronounced.

I also call your Honor's attention to the case of Mortimer agt. Mortimer, in the same volume, 2 Haggard, page 310. It is sometimes difficult, Sir, to find these references, because the Ecclesiastical and Consistory Reports are in different volumes and partially in the same volume. His Honor, Sir William Scott, in speaking upon the subject of confessions says:

Now, I need not observe that confession generally ranks high, or I should say highest in the scale of evidence. What is taken *pro confesso* is taken as indubitable truth. The plea of guilt by the party accused shuts out all further inquiry. *Habemus confitentem reum* is demonstration unless direct motives can be assigned to it. This confession, however, does not admit, either in its own immediate circumstances or in any conduct of the party, the possibility of any such motives. It is wrung from her by the strong emotions of her own mind *in articulo mortis*, at a moment when her declaration, made even against others, much more against herself, would be received upon the footing of sworn testimony. It is made to the party injured for the exoneration of a loaded conscience. It is confirmed, at her own desire, by the most solemn act of her religion. It is repeated, some time afterward, to another person interested in knowing it, and with a reference to circumstances within the knowledge of that person which had occurred on the very day to which the confession carried back the criminal act.

I read this for the purpose of fairly presenting to your Honor the solemnity which attended the confession in this case.

Two objections, however, are taken; first, that confessions alone will not support a charge of adultery, though they would support charges of the highest nature, such as treason, murder, &c.; and it is certainly true that such is the letter of the canon which guides the proceedings of this court, and such is the interpretation which it has received. The more rational doctrine is that confession, proved to the satisfaction of the court to be perfectly free from all suspicion of a collusive purpose, might be sufficient to found a prayer for mere separation *a mensa et thoro*, though not *pro dirimendo matrimonii vinculo*, so as to enable a party to fly to other connections. The distinction is the more rational here; for it certainly would be a pretty harsh injunction of law to compel a man, whether he would or no, to live with a wife who had acknowledged her infidelity to his bed. And so the ancient canon law appears to have considered it, by recognizing a difference of rule in the two different cases of absolute divorce, and of mere separation. Such, likewise, is the distinction taken in the more ancient canon in this country. But the canon now established, and as enforced by interpretations too literal and too numerous to be shaken at this time of day by any considerations of hardship (however justly urged) certainly has overlooked the distinction, and applied the rule indiscriminately to both cases; though Oughton (an authority of no mean consideration, in matters of practice, in this court) very reluctantly, if at all, submits to the consideration; and appears to hold out, that if the court, after all circumspection used, is satisfied of the sincerity of the confession, it ought to rest upon it as proof. In the present case the sincerity can be no matter of question. No motive of a desire *advolare ad alteras nuptias* can be suspected. She resists a separation at the very time; and what is she now attempting but to re-establish her rights in this very marriage? However, it is not necessary to pursue the matter further upon this objection; for the party, in this case, does not rest his demand upon a confession alone.

Now, your Honor will perceive that under the rules of the canon law established for the government of the courts of England in matters of this character, confession alone, according at least to the early canons and their construction, would not justify an absolute divorce unless accompanied by circumstances of more or less degree of inculpation. But even in England, in the practice of the court it appears, I think, by the intimation of this opinion, it is the more modern rule to disregard that canon, and where it appears that the confession is without any collusion between the parties, free from all suspicion of fraud or contrivance, for the court to rely upon confession alone, as I will show your Honor more fully.

In the case of Burgess agt. Burgess, in 2d Haggard's Consistory Reports, 529, the same Judge, Sir William Scott, after commenting upon the evidence, says:

In considering the legal effect of this evidence I must proceed on the established doctrine of this Court, as it has been laid down in various cases; that it is not necessary to prove the fact of adultery at any certain time or place, *modo et forma, loco et tempore*. It will be sufficient, if the Court can infer that conclusion, as it has often done between persons living in the same house, though not seen in the same bed, or in any equivocal situation.

I may, perhaps, properly remark here that Mr. Evarts has endeavored to apply to this case the rule regulating the force and power of circumstantial evidence as demonstrated and applied in criminal cases. I submit to your Honor that it is an error. He insists that where circumstances of suspicion, containing a possible implication of guilt, do not necessarily lead to that result, if they may be answered upon the hypothesis of innocence, why, then, they are of no effect. Such is not the rule applied, as your Honor will perceive, I think, in the divorce court:

It will be sufficient if the Court can infer that conclusion, as it has often done between persons living in the same house, though not seen in the same bed or in any equivocal situation. To prevent, however, the possibility of being misled by equivocal appearances, the Court will always travel to this conclusion with every necessary caution; while, on the other hand, it will be careful not to suffer the object of the law to be eluded by any combining of parties to keep without the reach of direct and positive proof. If, then, proof of a specific act is not necessary, it is equally unnecessary that a confession, if confession there be, should apply to a particular time and place. The confession, if general, will apply to all times and places at which it might appear probable in proof that the fact might have taken place. Another principle is equally clear, that confession alone cannot be received—so says the canon (Canon 105)—for without this restriction there would be no check upon the collusion and imposition that might be practiced upon the Court. Here, however, there is no such danger. The suit commenced in the first instance

for a restitution of conjugal rights, and the confessions are strongly opposed to such a clause. They appear confessions rung from a heart against its inclination, and though I will not say that they are not within the general rule, they do not fall within the particular scope of it. Under this observation I shall proceed to consider the evidence as to adultery.

Now, your Honor will perceive that the rule of the canon excluding confessions is sufficient as it was determined, to justify a decree as founded upon the suspicion of a possible connivance, collusion, as between husband and wife, and that where the reason of the rule does not apply the Court with some hesitation intimate that the rule itself would not give the degree of credibility and force which the Court would extend to a confession; and you will see, I think, Sir, how the tendency of the courts has progressed in that direction.

I refer also to the case of Billings agt. Billings, in 11 Pickering, 401. The syllabus of the case is:

A divorce *a vinculo* for the cause of adultery was decreed where the only evidence of the crime was the confession of the guilty party, there being no reason to suspect collusion.

Martin, J., before whom the trial took place, said he had advised with the other judges on the question whether the libellee's confessions of adultery were alone sufficient to authorize the decree of divorce, and then proceeds to say:

That the reason, for relinquishing other evidence is in general to prevent collusion; that the circumstances here proved by other evidence than the confessions showed that there could be no collusion; and that all the Court were of the opinion that the proof of the adultery was sufficient.

I refer your Honor also and my friends to the case of Lovedon agt. Lovedon, 2d Haggard, page 1. But, Sir, I have not the particular paragraph marked to which I wish to draw your Honor's attention, and I must, therefore, omit it.

I read, Sir, from the case of Bramwell agt. Bramwell, in 3d Haggard, page 618, a short paragraph, for the purpose of showing that where an attachment exists—properly called, I suppose, a criminal attachment, where it exists between parties who have no right to indulge it—where an attachment exists, and there are clear and frequent opportunities for its gratification, that the Court will, from those circumstances alone, infer that the desired appetite has been indulged.

It is then in evidence that not merely was there a criminal attachment, but also that this attachment was not rejected. That Jeffry admitted his familiarity—received his correspondence—that opportunities were constant; and there is nothing to show on her part resistance nor repudiation, nor that she at all discountenanced his passion. To doubt from such circumstances that the consummation followed would be to presume that effect was not consequent on the natural cause, and that this was a case of extraordinary exception and singular innocence [approaching very near Mr. Evarts's idea of a miracle]; but the safer rule is to come to a decision in unison with the rest of the evidence, and I can entertain no reasonable doubt that adultery had been committed.

I refer now, Sir, to the case of Burgess agt. Burgess, in 2d Haggard, page 534:

With reference to the confessions, they have been described as if it was common for persons circumstanced as Mrs. Burgess was to run from one extreme to another; that after strongly denying guilt at one time, yet afterward, feeling conscious of some little improprieties, they, in an agony of repentance, would confess more than was true. This is a hypothesis to which the Court cannot accede, as being contrary to its own experience [not personal experience] which has generally found persons prone to extenuate their faults, and willing, always, to take a lesser rather than a greater share of guilt than might be due to them. Again, it has been said that the confessions were made under promises of forgiveness, and in the hope of inducing Mr. Burgess, by her repentance, to receive her again; but of this there is no proof whatever, for, though the husband continued to live with her till the 7th of January, it was not till that time that he had proof of her actual guilt, when he had her confession and that of Mr. Lane; and a man cannot act on mere suspicion as he would on full proof, &c.

Judge Neilson [to Mr. Beach]—We will hear you further after the intermission.

Mr. Beach—Very well, Sir; I will endeavor to get these authorities in a little better shape by that time.

The Court here took a recess until 2 p. m.

THE AFTERNOON SESSION.

The Court met at 2, pursuant to adjournment.

Mr. Beach—I have but one other authority, Sir.

Judge Neilson—The counsel are not in. There is a case in Barbour upon the question of admissions in a divorce case. Have you got that?

Mr. Beach—No, I have not, Sir.

Judge Neilson—It was cited before me in a case here with some effect, some time ago. [To the Clerk.] Send an officer over to Judge Troy with a request that he furnish that case; a divorce case which he had before me.

[After waiting several minutes Mr. Porter arrived.]

Judge Neilson—I am very glad to see you Judge Porter. There have been very anxious inquiries about you.

Mr. Porter—Judge Fullerton and Mr. Evarts are coming.

Judge Neilson—Proceed, Sir.

Mr. Beach—I shall present to your Honor but one other authority designed to counteract the idea of Mr. Evarts that the circumstances must be incapable of any other construction than of guilt; unsusceptible of any other hypothesis to justify conviction upon them. It is contained in the case of Day agt. Day, in the 3d of Green, New-Jersey Equity Reports. Quoting from the case of Williams agt. Williams, in the 1st of Haggard, Consistory Reports.

In Williams agt. Williams, Lord Stowell said, "It is a fundamental rule of evidence on this subject that it is not necessary to prove the direct fact of adultery, because if

it were otherwise, there is not one case in a hundred where that case would be attainable."

Judge Neilson—That appears in Greenleaf?

Mr. Beach—Yes, Sir.

Judge Neilson—The only objection I see to that is that it says "not one case in a hundred." It looks rather speculative.

Mr. Beach—[Reading.]

It is very rarely indeed that the parties are surprised in the direct fact of adultery. In every case almost the fact is inferred from circumstances that lead to it by fair inference, as a necessary conclusion, and unless this were so held, no protection whatever could be given to marital rights.

The only general rule to be laid down is that the circumstances must be such as to lead the guarded discretion of a reasonable and just man to the conclusion; for it is not to lead a rash, intemperate judgment, moving upon appearances, that are equally capable of two interpretations; neither is it to be a matter of artificial reasoning, judging upon such things differently from what would strike the careful and cautious consideration of a discreet man.

Now, these are the rules, Sir, which are established with reference to action for divorce, directly affecting the matrimonial relation and disturbing the policy of the government in the protection of the family and the home. But what application, Sir, have they to a case of this character? This is a civil, private action between strangers in the law, to recover for an alleged wrong against this defendant; and what is there in the nature of the action, in its possible relation to or effect upon the family relation, that can at all change the rules of evidence ordinarily applicable to actions between parties?

I have had occasion to say, Sir, in the course of interlocutory discussions, that the interests of Mrs. Tilton are not in a legal sense in any degree involved in this action. She is not a party to it. Her status is not changed. Whatever judgment may be rendered in this case her rights and her interests are not at all implicated by it. She is an independent party, and whenever she shall have occasion, or whenever any occasion shall arise, where her rights or interests are involved, the determination of this action will have no effect as an estoppel, or any other sense, upon the litigation which may ensue. Very great effort has been made, Sir, by the counsel, Mr. Evarts, to attach to this trial and action the significance of an assault upon the matrimonial relation of these parties, and upon the public policy which has been so frequently alluded to. But I submit that it is the duty of your Honor to instruct this jury, as I think you have repeatedly in the course of this trial, that that view of the case is unsound and erroneous, and this jury, if they shall be diverted by the force of the appeal which has been so repeatedly and urgently made to them, founded upon that idea, would depart from those principles of evidence and those rules of policy which should govern their deliberations and verdict.

THE REAL ISSUE DEFINED.

And now, gentlemen, what is the issue in this case? From intimations that have from time to time proceeded from our adversaries we might suppose there was a great variety of propositions. Mr. Tracy tells us that Mrs. Tilton is the true party defendant here. Gentlemen all tell us that this is an assault by Theodore Tilton upon his wife. Sometimes they have told us that this action is mercenary, that Theodore Tilton is seeking enrichment from the gold of Henry Ward Beecher; and sometimes they tell us it is the mere reckless indulgence of vindictive sentiments toward Henry Ward Beecher. Then they tell us that Theodore Tilton is sunk into an abyss of infamy, as represented by Mr. Tracy, and is endeavoring to pull this angel, Mr. Beecher, down, that he may reinstate himself upon his ruin. And all these various motives are assigned to this action by the counsel upon the other side; and after all it is a simple action by a husband, alleging himself to have been wronged in his dearest relations, against the suspected wrong doer, to secure an adjudication of his rights and to punish the offender against the law of virtue. The idea that we are seeking money has been disposed of long ago. With what volubility and force my friend Mr. Evarts opened upon that topic you remember; and yet, as I said before, his Honor knows, and my friends upon the defense know, that we have again and again waived any claim to damages in this case, and I repeat again that Theodore Tilton disdains the idea of touching the gold of Henry Ward Beecher. Again and again has that sentiment been uttered by him, and it is proven from the testimony that the only object of this action was to obtain that fair trial, that decent and impartial hearing which was refused him before the chosen tribunal of Henry Ward Beecher. We ask no judgment for money, except merely nominally. We ask no judgment against our wife, and no judgment you can give will affect her. We are pursuing Henry Ward Beecher. We are pursuing him because he is a wrongdoer, and has been faithless to his pledges and the confidence we have reposed in him. We pursue him because he, in the recklessness of his power and his expectation to crush all adversaries in this contest—he has exposed Tilton and his relations to public disgrace and infamy. This action never was brought, more than all it was never brought to trial, until the ruin Henry Ward Beecher wrought had fallen upon Tilton and his household. There was no further disgrace—the ultimate degradation had been reached; and in this condition of extremity, with no hope of extrication, with no relief except a pursuit of Henry Ward Beecher, we have followed, although we knew that the condition of our wife and family would become a subject of public speculation.

The charge is seduction; and what is the answer? Conspiracy, blackmail, perfect innocence on the part of

Henry Ward Beecher, and a combination entered into between the apparently respectable people, people occupying positions in society which would seem to protect them from such a suspicion; a conspiracy without the least shadow of foundation (for that is the extent of the defense), to extort money from Mr. Beecher, to build up the broken fortunes and fame of Theodore Tilton upon his prostration and ruin, and all for the benefit of this one man, Theodore Tilton. Now, gentlemen, upon your consciences as jurors, and honor as men, you are to examine this idea of a conspiracy, and see upon what it is founded, and how it may be supported or resisted by the probabilities or proof in the case; and in your examination the first step you take in this direction you confront the figure of Elizabeth R. Tilton, Elizabeth R. Tilton as she is represented to be, as she is sworn to be by both the parties to this action, and most emphatically and feelingly by Henry Ward Beecher himself, and you are to come to the conclusion that Elizabeth R. Tilton in December or July, 1870, loving Henry Ward Beecher as she confessed that she did, as Beecher swears he believes she did; Elizabeth R. Tilton, proving her devotion to Beecher by her present position, adhering to him when the final struggle between husband and lover came, and with scandalous impudence appearing in a court of justice upon this trial to give her countenance to her seducer—Elizabeth R. Tilton is the first and principal figure in this conspiracy; and with these feelings and these devotions you are asked to believe that she has certified to a falsehood, confessed to a lie, against all the impulses of her nature and against all the emotions of her heart, and you are to adopt this incredible theory that a wife and a mother—I do not care how Elizabeth R. Tilton may be regarded, whether as a saint, pure as an angel, white as the snow, though fallen like the snow, or whether you regard her in a dishonorable character and relation, yet the idea that she, a wife and a mother, at the mere bidding of her husband, should conspire with him to confess to a lie against the most prominent man in the community, and he a pastor, her pastor, is one of those unnatural and incredible propositions that are at once rejected by common intelligence. Why, in the name of all that belongs to womanhood, to motherhood, to parentage, in the name of all that is decent in our conceptions of each other, and of the female character, how is it possible that this woman, under these or any circumstances, would combine to allege her own shame, to confess to her own infamy, to the dishonor and blight of her children, for any of the purposes assigned to this alleged conspiracy? Upon that alone, if there were no other consideration connected with that question—upon that alone, the impropriety, the incredibility that Mrs. Tilton would make herself a consenting party to such a conspiracy, for the objects alleged, is so at war with all the instincts of our nature, and with all the probabilities of human action, that no just and intelligent man can accept it as a possible theory.

THE CHARGE OF CONSPIRACY.

Well, you may think Theodore Tilton base, debauched, and degraded, if you please; but he was a husband, he was a father, and I think I may assume that the demonstrations of his character made in this court-room repel the idea that he was essentially corrupted, unprincipled, that he was base enough, however low in his degradation of circumstance or of character—that he was base enough to descend to the infamy of conceiving and carrying on such a conspiracy against his own honor, and family peace, family hope, family future, and asserting the infamy of his wife, as the means of replenishing his fallen fortunes or restoring his lost position. Because, remember, gentlemen, that at the time when this conspiracy is alleged to have originated and culminated, when the first decisive step was taken by these supposed conspirators, in what condition was Theodore Tilton? Tracy says the conspiracy originated on the 26th of December. Certainly it did before the 30th of December, or before the 29th of December. Why, Mr. Tilton then was honored as a citizen. He had then not been displaced by Mr. Bowen. He was editor of *The Union*, special contributor to *The Independent*, with his salary of $10,000 or $15,000 a year, in prosperous circumstances, no fall, no degradation, not till after the period when they say this conspiracy originated and must have originated, if it ever existed. Well, what was there to tempt this gentleman under those circumstances? Money? He wanted none. He was living in comparative luxury upon the resources of his intellectual labor. Fame? He wanted none. He was famous, still famous, holding the elevated positions which he had acquired by his own merit and desert, standing as a lecturer, as an orator, as a literateur above—as my friends admit—above the ordinary rank even of the aspiring minds of that day. What was there then to tempt him on the 26th or the 29th of December, to get this false written charge from his wife? Least of all, what was there to tempt him and her in the month of July previous, six months before her written accusation—what was there to tempt these people then, she to make and he to receive this confession, and, as the necessity arose, to private and confidential friends, each of them making communication of the fact that that confession had been given, and that the adultery had been committed? Why, how perfectly senseless it is, gentlemen, how perfectly inconsistent with all our known rules and motives to human action. But, then, Mr. Moulton is a party to this conspiracy. Nay, Mr. Tracy contends that he is the organizer, the executive and administrative power that carried on this conspiracy.

And what interest had Moulton in it? What motive had he to conspire? For three years, four years nearly,

subsequent to December, 1870, this man labored for the suppression of this scandal. There is no denying it; it appears in the reports; it is proven by the evidence of Mr. Beecher and all the proof in the case. Well, in December, 1870, when this conspiracy is charged to have originated, what motive had Moulton then to enter into such a league against the friends who were afterward sustained with fidelity and honor? Ah! Mr. Moulton had not then been charged as a blackmailer; not then—even according to the testimony of Mr. Beecher—not then had Mr. Moulton faltered in his professions of friendship and services toward Henry Ward Beecher. There was no friend, as Henry Ward Beecher again and again testified, so true, and faithful, and self-sacrificing as Moulton; and yet if you sustain this idea of a conspiracy, you must find that in December, 1870, Moulton deliberately entered into this conspiracy of wrong and crime as against Beecher.

And, gentlemen, what motive had Mrs. Moulton? Her husband then had fallen into no disrepute. No accusation had been made against him. There was nothing to tempt wifely honor and wifely truth through wifely affection. She was not called upon to sustain the assailed virtue or honor of her husband. What motive was there for these people thus to abandon all the principles of their education, all the obligations of their position, all the instincts of their educated and cultivated nature, all the influence which, as respectable citizens of society, surround them, and enter into an utterly baseless and false conspiracy against a man who stood high and lofty in the estimation of the community, and proud of his commanding influence? Why, it is one of those preposterous conceptions into which the necessity of desperate guilt is sometimes driven. And what says the law upon this question of motive?

Presumptions, and strong ones, are continually founded upon knowledge of the human character, and of the motives, passions and feelings by which the mind is usually influenced. Experience and observation show that the conduct of mankind is governed by general laws, which operate under similar circumstances, with about as much regularity and uniformity as the mechanical laws of nature themselves. The effect of particular motives upon human conduct is the subject of every man's observation and experience to greater or less extent; and in proportion to his attention, means of observation and acuteness, every one becomes a judge of the human character, and can conjecture on the one hand, what would be the effect and influence of motives upon any individual under particular circumstances, and on the other hand is able to presume and infer the motive by which an agent was actuated from the particular course of conduct which he adopted, &c.

Where a heinous crime has been committed, as for instance murder by means of poison, and where it is obvious that theft was not the object of the guilty party, it is essential to inquire whether the accused was influenced by any motive to commit such an offense. The absence of all motive, whether of avarice or revenge, affords us strong presumption of innocence, where the fact is in other respects doubtful, because experience of human nature shows that men do not commit mischief wantonly and gratuitously without any prospect of advantage, &c.

Now, find for me a motive in all the conditions surrounding this transaction adequate to lead even the most depraved and desperate man into an enterprise so bold and audacious as this conspiracy would have been. Sometimes in the history of human nature there have occurred circumstances of equal self-degredation and depravity as such a condition of things and course of action upon the part of Mrs. Tilton and her adjunct in this conspiracy would have exhibited, if it were true; but it is only where a long course of debauchery and sin have led to the utter and complete degradation of the party, it is only where the natural instincts and impulses of virtue and chastity have been erased by the vilest debauchery and the longest indulgence that ever such an example occurs, and not in the ranks of respectability and culture. And consider then, gentlemen, that all these witnesses, Mrs. Bradshaw, Mr. Woodruff, every witness who has testified to circumstances and conditions of knowledge and concealment, must have been implicated in this conspiracy. And this conspiracy does not end there. Suppose it had existed, that Mr. Beecher had been squeezed to the utmost power of these conspirators, and at last he had stood up in defiance and resisted. You are then to suppose that Mr. Tilton, the arch-conspirator, brings his action, forces a trial, and that he, and all his co-conspirators have appeared in a court of justice—and for what? What is the object to be attained? What benefit is to come from it? How is Moulton to be advantaged?—how Mrs. Moulton to be benefited? And is it possible that all these parties, without any interest, without any adequate object to be reached, have not only entered upon this conspiracy, but have forced it into a public trial where they must necessarily be guilty of deliberate and corrupt perjury?

And this, gentlemen, is the violent conclusion, overturning all our ideas of nature and right, all instincts of purity and manhood, regardless of those motives which usually operate upon human action; to this conclusion you are to come in the face of these circumstances. And you find these conspirators, for nearly four years, struggling with every effort to suppress all allusion and agitation of the means, the instruments, the appliances by which they enforce the object of their conspiracy, and you have Mr. Moulton, the principal actor in the pursuit of this conspiracy; you have him telling its object, Mr. Beecher, not to be afraid: "Why, you can stand if everything which is said against you is true." Think of it. Moulton, prominent conspirator, Beecher the object and victim, as our friends say; this charge of adultery, or of impure proposals, being agitated at every moment; when there was any necessity to benefit Mr. Tilton, Mr. Moulton going to the party who is to be blackmailed according to this

theory, and saying to him, "Don't be afraid, Mr. Beecher; you can't be hurt. Plymouth Church will stand by you and uphold you if all the facts connected with this matter are disclosed. True, I am a conspirator; I am a conspirator to blackmail you; I am a conspirator to ruin you for the elevation of Theodore Tilton; but don't be alarmed; nothing can hurt you. You are armed with the confidence and devotion of Plymouth Church, and even if you should go and confess the very facts which are alleged against you by these conspirators, it could not hurt you."

How perfectly nonsensical this all is, gentlemen! And for whom—for whom was this to be done? Why, for Theodore Tilton, and nobody else. Moulton and Mrs. Moulton, Mrs. Bradshaw, all peril their souls by a false oath, commit a crime by forming a conspiracy for the sole object of helping and aiding Theodore Tilton! And Mrs. Moulton, who, my friends say, pronounced Tilton treacherous, faithless, a villain, she enters into the conspiracy and sacrifices herself for the same object. It is possible that there may be minds so prejudiced and corrupted by that prejudice that they can believe momentarily in the idea that a conspiracy of this nature was formed, and that the present condition of things is the result of it. But I can hardly conceive, under the evidence in this case, that there can be any such intellectual blindness.

THE DIRECT CHARGE OF BLACKMAIL.

Why, one fact, gentlemen, is disclosed by the evidence of Mr. Beecher himself—if these men were blackmailing Mr. Beecher, when Tilton was in such distressed circumstances; when Moulton represented to him the existence of the mortgage upon Tilton's house and the idea that his friends should raise it, Mr. Beecher at once cheerfully and readily offered to contribute. The contribution never was sought. If there was any mercenary object on the part of Tilton or Moulton, or anybody else, why was it, when there was an opportunity tendered for realizing the object of the conspiracy—why did they not avail themselves at once of it? But, again, Mr. Beecher avers that he became suspicious of some form or movement of blackmail by an appeal to his generosity and kindly impulses after the $2,000 was paid. Now, if there was any idea of blackmail about it, it then occurred to Mr. Beecher as he swears, and yet, after that, he contributed the $5,000 which he afterward gave, and, after these suspicions, he continued Moulton, the active, practical blackmailer, in his confidence and trust, and lavished upon him, after that period, all the richness of his friendship and gratitude.

What has struck my mind as the most decisive circumstance among the many which repudiate utterly this idea of blackmail is the fact that Mr. Beecher testifies that, in his belief, at the time Theodore Tilton made the accusation against him he did on the 30th of December, that he was honest in his belief that they were true. It was with some difficulty that Mr. Beecher was brought to this avowal. But, when he was pressed by the searching questions of my colleague, and brought strictly to the issue, whether in that interview on the 30th of December he believed Theodore Tilton to be dishonest or honest, whether he believed that Theodore Tilton then trusted in the truth of the accusation he made against him, Beecher, he was forced to admit that he believed him sincere. Well, if that is so, if that is so, why it is utterly impossible that there could have been any conspiracy originating on the 26th, or acting on the 30th. Now, if Tilton believed in the accusation he made on the 30th against Beecher, how can you, or Beecher, or anybody else impute to Tilton any bad faith, any conspiracy, any design to extort as against Mr. Beecher? The two things are utterly irreconcilable. They are the two parts of a contradiction which cannot be united. And, when Mr. Beecher made that admission he made an admission which stamped this idea of conspiracy and blackmail with absurdity. I am reminded that not only did Mr. Beecher make this offer to contribute to the discharge of the mortgage upon Mr. Tilton's house, but when it was not accepted he reproached Mr. Moulton for not having availed himself of his proffer. On the 2d of May, 1874, Theodore Tilton wrote these manly words to Henry Ward Beecher.

THE GOLDEN AGE, May 2, 1874.

HENRY WARD BEECHER—SIR: I have just this morning learned, to my surprise and sorrow, that Mr. F. B. Carpenter, whose good-will toward both you and me is unquestionable, has consulted you concerning the use of your money, influence, and good offices for the enlargement of the capital of *The Golden Age*. Mr. Carpenter mentions to me also your saying to him that under certain conditions involving certain disavowals by me, a sum of money would, or could be raised, to send me with my family to Europe for a term of years.

Of course you need no assurance that such an application or suggestion is wholly unauthorized by me, and is inexpressibly repugnant to my feelings. The occasion compels me to state explicitly, that so long as life and self-respect continue to exist together in my breast, I shall be debarred from receiving, either directly or indirectly, any pecuniary or other favor at your hands. The reason for this feeling on my part you know so well that I spare you the statement of it. Truly yours,

THEODORE TILTON.

And the man thus writing, thus rejecting not only pecuniary aid, but any favor from the hands of Mr. Beecher, is still insisted upon before you by counsel, and before the world, by every influence and species of enginery which can be used to affect public sentiment, as a deliberate conspirator, blackmailer, and perjurer? In May, 1874, this was written. If he sought for money, if he wanted encouragement and aid from the strong arm of Henry Ward Beecher then, when *The Golden Age* was struggling under adversity and misfortune, as my friends say; if he was oppressed by the public sentiment of the world; if Theodore Tilton possessed that degraded and infinitely mean spirit attributed to him, I ask

you, Sir, in all confidence and honor, why did he write a letter like this? How can you account for it? Conspirators do not, very often, where there is a proffer of the very object at which they are aiming, when it is within their grasp, and needs only acceptance to be secured—conspirators are not very often inclined to resign the spoil. "The reason for this feeling on my part you know so well that I spare you the statement of it." What answer did Henry Ward Beecher make to that? When Mr. Tilton disclaimed the friendly efforts of Mr. Carpenter in his behalf, efforts upon another occasion and in another direction in the City of New-York, which have given my learned friends an occasion and topic for charging further blackmail—when Mr. Tilton thus disclaimed the efforts of his friends, and rejected aid from Henry Ward Beecher, he implying that there were circumstances in his conduct, and in his treatment, which would make it a degradation for Theodore Tilton to receive any favor from his hands—why, if he was innocent and unconscious of offense, was he silent? It is sworn to by Mr. Moulton in detailing a conversation

That he, Mr. Beecher, said he hoped Theodore would be successful in the enterprise (that was *The Golden Age*), and he said he would like to aid if he could in establishing the paper, and I told Theodore of that, and Theodore said to me he could not receive any aid from Mr. Beecher in establishing the paper; and so I told Mr. Beecher—I said to Mr. Beecher that was what Mr. Tilton said.

But, it is said that Mr. Tilton has received the benefit of $5,000—indeed $7,000 from Mr. Beecher. Well, gentlemen, if anything is sure in this case, if we can rely upon human evidence at all, unless we are to assume that Moulton and Tilton are thoroughly corrupt and base and that nothing can be trusted that they aver, it is certain that Mr. Tilton knew nothing of the source from which this money came beyond Mr. Moulton. Moulton swears to it; Tilton swears to it; and you find confirmation in the testimony of Woodruff and of Tracy—when Moulton was indignant that anything should be said in regard to this money, this $5,000, from whence it came or how applied. Moulton knew that Tilton would never accept it had he known of its source. He contributed it to Mr. Tilton as a loan, or in whatever form was understood between them. Mr. Tilton swears to an indebtedness of six or seven thousand dollars, as he supposed. But these gentlemen were intimate friends. Now, there is in the minds of some the sentiment, and it has been expressed by my learned friends, that Mr. Moulton was availing himself of this fund furnished by Mr. Beecher to gain for himself a reputation of friendly generosity in his dealing with Mr. Tilton. Well, that I care nothing about. It is not important for me to defend Mr. Moulton in that respect. You will believe it or not. It is enough for me that, by the oath of these two gentlemen, it is certainly true that Mr. Tilton had no idea that he was receiving benefaction, or alms, or loans from Mr. Beecher, or that he was placing himself in any position of obligation or gratitude as toward him.

Imagine, gentlemen, a conspiracy between men as noted and as strong, if you please, as Theodore Tilton and Francis D. Moulton—a conspiracy to blackmail Henry Ward Beecher. Imagine that first movement of aggression against Henry Ward Beecher in the pursuit of that conspiracy, and believe, if you can for a moment, that Henry Ward Beecher was innocent. How would that atrocious accusation against him have been met? Knowing Henry Ward Beecher as you do, tracing him in all his history, viewing him upon those great occasions when he stood up, their master and lord, when he cowed an angry mob; when he threw all the power of his name and his influence into the troubles of Kansas, and blessed the Sharpe rifles which he sent there in support of freedom—read his character through all its manifestations—what would Henry Ward Beecher, if innocent, have done when the charge of even foul approaches by him as a pastor upon his pure and innocent parishioner was made? Would he have cowed and trembled like a guilty culprit? Would he have begged for forgiveness and charity? Would he have resorted to continual and repeated devices to suppress the accusation? Would he have yielded to the extortion of a conspiracy? Oh, no! He would have turned upon his assailant and accuser with a proud disdain, and trampled the accusation in the dust. The fierce scorn of his brave and noble nature would have scorched the intriguer and liar who dared to beard him in the loftiness of his innocence and position. Do you doubt it? Is it such men as Henry Ward Beecher, surrounded and sustained as they are, against whom the united power of a community cannot stand, whose resolute and proud courageous position awes the public mind, and restrains or prompts to violence at its will—is that the man to cower in weakness and slavering idiocy and whimpering disgrace before an accusation like this? No! You don't believe it. It is contrary to our notions of the man, it is contrary to our belief in the real dignity and bravery of his nature. And it is perfectly amazing, if Mr. Beecher was innocent, if these accusations were made—it is perfectly amazing that this man should go on fondling and fostering the blackmailers and conspirators, and day after day uttering the heartiest and noblest tributes to their character and conduct.

And is it not perceptible—do not our friends see that when they charge a conspiracy of this nature for the purpose of blackmail that they confess that there was a foundation upon which the extortion could rest? But there is a new theory started. When Mr. Beecher by his testimony put an end to the idea of blackmail—I do not stop to read it, gentlemen—you remember how he silenced that idea entirely by his evidence; that it was Shearman and Tracy who were struggling to hold him up

to the idea of a conspiracy which never entered the mind of Henry Ward Beecher until these astute counsel suggested it, and then the intrepid honesty of the man could not be kept in the false position. He was constantly falling back from the theory. He would not accept it. His own conscience told him it was untrue, but Tracy and Shearman would again hold up his convictions and his judgment to the idea of blackmail, and so he vibrated day after day—when in their presence and under their influence, acceding to their propositions of blackmail, and as soon as left to his own honest and truthful impulses rejecting it as absurd. And I wish he had never done anything worse under their advice. But there is a new theory started. Not for money —" you have refused money, Mr. Tilton, when you could have realized it. Why, Harman told you how you could make out of the 'True Story' $50,000, and offered you $5,000 for the copyright, but, you blackmailer, you wouldn't take that money. [Applause.] Mr. Beecher offered you money, but you would not receive it. But you had fallen from your high position; as Mr. Beecher says, you had fallen from 'the grandest editorial chair' in America. You had reached for your age the most brilliant position ever attained by a young aspiring literary man," as our friends say, " and from that you had fallen." Mr. Tracy represents you as lying flat and dishonored at the depth of an abyss, and looking up and seeing Beecher in his grandness and glory, honored and prosperous, and you were enemies. "You wanted to destroy Beecher, that you might elevate yourself. You had the hope, dishonored and disgraced as we represent you—you had the hope that if you could destroy Beecher you could assume your old, honorable position through that destruction." Why, gentlemen, is there any sense in that proposition? Was there any rivalry as between Mr. Beecher and Mr. Tilton? Why, my friend has tried to get it up through the missionary discussion, and the Cleveland letter. But you perceive that the paths of Mr. Tilton and Mr. Beecher were as independent and separate as can be conceived. If Tilton destroyed Beecher he gained nothing for himself. There was no career of honor or ambition opened by that view to Mr. Tilton. It was true, as Mr. Beecher had again and again told him, that he could not elevate himself upon his ruin, and the idea so eloquently suggested, especially in the opening of this case, that Mr. Tilton was to redeem his misfortunes by the destruction of Mr. Beecher, through this conspiracy, and through the aid of Moulton and Mrs. Moulton and Mrs. Bradshaw, is one of the absurdest propositions this case has given birth to, and it has been fecund of many. Mr. Beecher does not monopolize all the glory and honor of this world. He does not occupy all the avenues to renown and to fame. There are many paths up that steep and troublous mount " Where Fame's proud temple shines afar." Mr. Beecher does not occupy them all. There are many footsore and weary toilers glorious in their ambition and efforts who do not conflict or contend with Mr. Beecher. The way is open for Mr. Tilton, and Beecher is no obstruction, so far as his position or his honor and fame are concerned. Why, you might just as well accuse Mr. Tilton of desiring to destroy my friend Mr. Evarts, for fear Mr. Evarts would interfere with the career of Theodore Tilton, or Charles O'Conor, or any of the literary men who occupy honorable and prominent positions before the community.

Now, then, gentlemen, in the further discussion of this case, am I not warranted in assuming that there is not the least pretense of a conspiracy or combination? May I not say, upon the proof of Mr. Beecher himself, the avowals he makes as to the motives, as to the belief of Mr. Tilton, as to the motives which operated upon his conduct and action—may I not be permitted to assume that the idea of a conspiracy in this case is exploded by Mr. Beecher himself? Then the issue of seduction is left. Ah, gentlemen, that is not all. Mr. Beecher has made an issue for us in this action by which I propose to test his honesty and innocence. He avows that in the whole history of his intercourse with Elizabeth R. Tilton there was not a single act or word unbecoming a gentleman and a pastor; he swears to you that there is not a taint upon his garments, or a stain upon his conscience. While attributing to that lady an improper devotion to himself, he yet maintains his own excellent purity, and swears that he was unconscious of her devotion until the time when it was revealed to him on the 30th of December, 1870. That is the issue. If Henry Ward Beecher is not to be believed, if he is a false witness (under any mental reservations, upon any ideas of obligation under which he may have acted and about which we will talk by and by) if he has faltered, in his testimony, as to truth, then this case is clear, as you will agree. If there is not a truthful, reliable denial upon this record by Henry Ward Beecher, of this charge of adultery, then he is a guilty man, and if he has sworn untruly to you in regard to the extent or character of his association with Elizabeth R. Tilton, then according to the maxim which my friend has so often quoted, the truth of which I do not dispute in its application to this case, he is not to be believed by this jury.

And, hard as that conclusion may be, repulsive as it may be to all our sentiments and sympathies, yet, gentlemen, there are reputations depending, in this case, upon your conclusions, just as dear to their possessors as Henry Ward Beecher's is to him. There are just as many hearts to suffer by your erroneous or unjust judgment upon the question of veracity and credibility on the part of this plaintiff as upon the part of the defense. Mr. Moulton and Mr. Tilton have each an equal right with Henry Ward Beecher to demand impartial consideration; and that lady, Mrs. Moulton, so foully and basely, and *untruly*, assailed, as I will convince you—a lady exalted

by the eulogy of Henry Ward Beecher himself, a lady whom Henry Ward Beecher, even when he is testifying in a cause whose balance holds his mortal if not his immortal interests, dare not asperse or assail [applause], that lady may appeal to you, as men as well as jurors, to give her a fair hearing before you sully her fair fame by the assertion that she is not worthy of belief.

MRS. TILTON'S CONFESSION.

Now, what was the confession of Mrs. Tilton? I don't mean the confession made in July, for that is proved beyond dispute—that is, so far as the testimony of Mr. Tilton is concerned as to its character, it is beyond dispute.

Mr. Evarts—He proved what was stated to Mr. Beecher; but it is not proved that she said it to him.

Mr. Beach—Is it not?

Mr. Evarts—It is not proved that she said it to him.

Mr. Beach—Yes; it is proved that she said it to him.

Mr. Evarts—How is it proved? It could not be proved. It is proved that that is what he said to Mr. Beecher; that is all that is proved.

Mr. Beach—Is it all?

Mr. Evarts—That is all.

Mr. Beach—Is that all?

Mr. Evarts—Yes.

Mr. Beach—Well, let us see. Mr. Tilton says to Mr. Beecher: "My wife, in July, made a confession to me of this character." Mr. Beecher, if Mr. Tilton is to be believed—and I am reasoning upon that theory—Mr. Beecher admits, by his conduct and his action, that the charge is true.

Mr. Evarts—That is your argument about Mr. Beecher's confession.

Mr. Morris—I submit that these interruptions are not proper.

Mr. Beach—Oh, there is no objection to them.

Mr. Fullerton [in an undertone]—No; the more the better.

Mr. Beach—The question between my learned friend and myself is whether there is any proof in this case that Mrs. Tilton made that confession. Why, I have read to the Court an authority wherein it is ruled that a confession made by one paramour, which is reported to the other and by conduct or declaration acquiesced in, is proof upon which a decree can pass; and yet the counsel tell me that that is no evidence of a confession; that it does not prove where it is repeated to the party interested and that party recognizes the truth contained in the confession; that that does not prove that the confession was made! How did Mr. Tilton get it? Where did it come from? How could Mr. Tilton have made any representation to Mr. Beecher in regard to the confession if he had not received it from Mrs. Tilton? And when Mr. Beecher recognizes it as a statement made by Mrs. Tilton and acknowledges the truth of it, does my learned friend want any better evidence of the fact that Mrs. Tilton did make it than that? In a case in 66 Barbour, which I suppose is the one referred to by your Honor, it is said that

The foundation of the rule which forbids granting a decree of divorce on the unsupported confession of a party, is the fear of collusion and imposition on the Court. When, however, the reason of the rule fails, the rule itself ceases. Hence, when the confessions are made under circumstances which entirely preclude suspicion of collusion or imposition, the confessions will be received and a decree granted thereon without further evidence.

Mr. Evarts—That is, Mr. Beecher's confession is good against him, but Mr. Tilton's confessions——

Mr. Beach—Well, I will suspend my argument and allow the gentleman to finish his, if he chooses.

[Mr. Beach here paused and held a very brief whispered conversation with Mr. Evarts.]

Mr. Beach—I therefore assume, gentlemen, that so far as the actual confession of July, 1870, is concerned, there is no question in regard to its having been made, if our evidence is credible. Mr. Beecher at least assumes that there was a confession or a statement to a certain extent; Mr. Beecher admits that the charge by Mrs. Tilton was of improper advances, and he goes right to Mrs. Tilton, according to his own evidence, and asks her how she could by possibility make a false charge of that character. It is perfectly certain, therefore, that the paper executed on the 29th of December contained some imputation, a charge of some character, against Mr. Beecher. Mr. Tilton swears, and the evidence of Mr. Moulton supports him, that it was a charge of sexual intimacy. All their intercourse with Mr. Beecher, according to their narrative of it—all their intercourse with Mr. Beecher was founded upon the theory that the charge was adultery. True, Mr. Beecher denies this; and we are now driven to the question of determining as between the evidence on the part of the plaintiff, consisting of Mr. Tilton, Mr. Moulton, Mrs. Moulton, and Mrs. Bradshaw, of circumstances to which I shall allude, and of the letters of Mr. Beecher—between this and the sole denial of Henry Ward Beecher himself. And the question is, gentlemen, whether that sole denial, unsupported by a single syllable of other proof, shall overcome the testimony, positive and direct, of three witnesses and the accumulated force of circumstances against which the reputation of a saint could not stand, and the accumulated force of the confessions contained in Mr. Beecher's own letters.

That is the point; that is the issue. Not whether Theodore Tilton was enamored of Victoria C. Woodhull; not whether he committed the base outrage imputed to him, at Winsted; not whether he was a cold, cruel, heartless husband; not whether he had sacrificed his name, his character and his fortune to the profession of free love doctrines and to vile associations. The question is whether Henry Ward Beecher, proven guilty of adultery by the testimony of these witnesses and these circum-

stances and these letters, shall be permitted to come upon the stand in a court of justice and by his own oath, unsupported, overturn this weight of evidence.

The confession in July I shall therefore assume to be established. I have said to you that our adversaries would not permit us to prove the precise contents of the paper which was given by Mrs. Tilton on the 29th of December to her husband to facilitate his interview with Mr. Beecher in the accomplishment of her desire to break up the arrangement between Tilton and Bowen, and to induce her husband to withdraw that demand for the resignation of Mr. Beecher. But its contents substantially were stated to Mr. Beecher, and in the form in which the evidence was given we get at the sworn assertion of both Moulton and Tilton of the contents of that instrument. But it is not important, gentlemen; it is not important. I consider that paper as a very secondary matter. What was the object? To induce Mr. Tilton to see Mr. Beecher and withdraw the demand for his resignation, and to induce Mr. Moulton also to see Mr. Beecher. Now, it is not necessary to argue that in that paper Mrs. Tilton made a direct and positive charge against Mr. Beecher. She had confessed to her husband in July, and restrained him by a sacred obligatory promise. He, with his conception of her character and her relations with Mr. Beecher, had forgiven her offense; yet he had entered into a conspiracy and an attack against Mr. Beecher, to drive him from the pulpit; and when that becomes known, on the 29th of December, to Mrs. Tilton, she is anguished and heart-broken. She appeals to her husband, upon the strength of his pledge when the revelation was made in the July previous, to induce him to have this interview. Now, what necessity was there in writing a letter for the purpose of satisfying the pride and the manliness of Mr. Tilton, who said, "I will have no interview with Mr. Beecher unless it can be introduced in a form which will save my self-respect.' What necessity was there in any note which Mrs. Tilton might, under these circumstances, send to Mr. Beecher advising him of the fact that she had made a confession to her husband, which, as is stated, was not communicated to him before; what necessity was there to make any charge of adultery in that letter? She appealed to the consciousness of Mr. Beecher. I don't know whether there was in that note any direct specification of the extent of the criminality between these two persons. You were not permitted to know it from direct testimony. I infer from the other evidence in the case that there was. And that is the motive with which we introduced these other documents and this other evidence; because if that paper had made a direct charge against Mr. Beecher that he had seduced Mrs. Tilton, if you can suppose that it was made in any such form as that and accepted and acquiesced in by Mr. Beecher as true, why, we would not want to travel very much farther in the investigation of this case. But on that night she writes this:

December 30, 1870.

Wearied with importunity and weakened by sickness, I gave a letter inculpating my friend Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it, almost forced, when I was in a weakened state of mind. I regret it, and recall all its statements.

Now, that is pretty clear evidence that there were statements in that letter inculpating Henry Ward Beecher, imputing to him offense, crime in the eye of morality, because she says it in that very paper which Mr. Beecher obtains on the night of the 30th. In that paper she asserts, and he accepts the assertion, that in that destroyed paper she did inculpate Mr. Beecher, and she withdrew the statements to that effect, that that letter contained. The letter that I have read to you is signed E. R. Tilton. There is this postscript:

I desire to say explicitly Mr. Beecher has never offered any improper solicitation, but has always treated me in a manner becoming a Christian and a gentleman.

Now, it is falsely argued, your Honor, in construing this instrument, that that postscript necessarily implies that the original paper to which it refers was simply a charge of improper solicitations. That is not the legal rendition of this instrument; that is not its proper construction. The body of the paper says: "I gave a paper inculpating Mr. Beecher. I withdraw the statements in that paper." Then in the postscript is added a certificate that Mr. Beecher never addressed to her any improper solicitations, or any conduct unbecoming a gentleman. Now, it is idle to say, Sir, that that maintains the idea that the paper destroyed, the previous paper, was one charging merely impure advances. But, on the same night, at midnight, she writes:

MY DEAR HUSBAND: I desire to leave with you before going to sleep a statement that Mr. Henry Ward Beecher has been to me this evening, asked me if I would defend him against any accusation in a *council of ministers;* and I replied solemnly that I would in case the accuser was any other than my husband.

Mr. Beecher asking this lady if she would defend him against any accusation in a council of ministers!

He (H. W. B.) dictated a letter, which I copied as my own, to be used as against any other accuser except my husband. This letter was designed to vindicate Mr. Beecher against all other persons save only yourself. I was ready to give him this letter, because he said with pain that my letter in your hands, addressed to him, dated December 29, had struck him dead, and ended his usefulness. You and I are both pledged to do our best to avoid publicity. God grant a speedy end to all further anxieties. Affectionately, ELIZABETH.

Now the first question is, did Mr. Beecher dictate the first instrument I have read? Is it true? Mrs. Tilton asserts it on the very night when it was written. But it is said that she was under the dominion of her husband. Under the dominion of her husband, and giving to Henry Ward Beecher a certificate in defiance of the will of her husband! If she was under the control of Theodore Til-

ton she was acting as a conspiratress, making false accusations; and the arguments of my learned friends are suicidal. If she was a conspiratress, subject to the control and dictation of her husband, how came she to give this letter of recantation, as it is called, to Mr. Beecher? and how are the two ideas consistent? If the one be true, the other is false. But was she subject to her husband? It may be, gentlemen, that she loved him with a qualified affection. It may be that she had consideration for her own respectability and the honor and character of her household; but where has been the occasion or emergency, when the interests of her husband and of Henry Ward Beecher have come in direct collision, when has been the occasion when that woman has adhered to her loyalty to her husband, in opposition to the wishes and the demands of Henry Ward Beecher? Name the instance in your own recollection, if you can. Tell me when or where this lady has subjected herself to any domination by her husband. Where she has ever sacrificed her will to the wish of her husband? I believe—I believe that Mrs. Tilton had affection for Mr. Tilton; but I believe that the supreme devotion of her soul was dedicated to Henry Ward Beecher. There could not have been between two such beings as Theodore Tilton and his wife an intercourse of years, a love originating in the purity and simplicity of childhood, cherished among all the struggles of this man for fame and position, a union at last upon the pinnacle of that fame—all these things could not have been without leaving sweet traces upon the heart and the memory. This woman *had* beautiful recollections of that old intercourse. Oh, those sweet memories of childhood and of purity, which come over us in later days, how they renovate and cheer the heart! And however much we have strayed, however wildly we have been deluded by the temptations and the sorceries of the world and of life, yet they come upon us at times with a freshening and humanizing influence which seems to restore all our childishness and virtue. And there are times even now, under the deluding and darkening influences which surround that woman—even now, the memory of those days and those affections, connected with ideas and memories of parentage and children, do soften, I doubt not, the feelings of that erring wife and mother. But, to tell me, when she stands in the attitude she now occupies, and when we know that when the crisis came—the crisis of the contest as between her husband and Henry Ward Beecher—nay, when the crisis of her own fate came—she abandoned her husband and adhered to the man she adored—to tell me that woman was under the control and subject to the will of the husband whom she deserted, is a falsity in principle, and repugnant to all our ideas and notions of human motives and human character. These instruments were *not* extorted, except by that just and proper appeal to the truthfulness and the affection of the woman's nature, and to her judgment as to the occasion upon which they were to be used, and the motives of their production, which were entirely proper and innocent. Was it oppressive upon the part of Mr. Tilton to ask this woman for a written statement, if he asked it, to be presented to Mr. Beecher, advising Mr. Beecher that he had received a confession and statement of his guilt from his wife? And when Mr. Beecher, abusing the confidence of Tilton, and appropriating the occasion to exert his power over this woman as soon as he gets in her presence, she lying white and pale, as he says, with folded hands, an effigy of death—when he takes that occasion to exert his will and his power, and get from her a contradiction of the document she had willingly given to her husband but the day before, is it to be said that her husband, when learning that fact, asking her to give a statement of the circumstances under which it was done, is guilty of force and tyranny?

[Mr. Fullerton here whispered to Mr. Beach.]

Mr. Beach—It is suggested by my friend, Mr. Fullerton, that the first sentence of this reiteration to her husband implies most distinctly that it was written in the absence of her husband, and before he had returned from Mr. Moulton's.

"I desire to leave with you, before going to sleep, a statement that Mr. Henry Ward Beecher," &c., "called."

But, gentlemen, I am dealing with this question rather generally, with a large consideration of it, looking at the broadest relations between these three people, endeavoring to estimate as wisely and clearly as I can whether there is a probability that this woman, in regard to these documents, was controlled by Tilton, or moved by the will of Mr. Beecher; and I insist that you must look not only to the particular circumstances surrounding that occasion, but trace the manifestations of this woman's nature and heart through the intervening years, and see now where she stands, and judge from that what was her condition and position in December, 1870. And remember, gentlemen, remember those letters read to you, indicating the state of feeling entertained by this lady toward Mr. Beecher, the idea of support and rest. Fancy this man standing in this close relation to this lady, saying to her that the statement she had made to her husband was his death, and a ruin to his life-hope and work; telling her of a council of ministers in 1870, before any such thing, so far as appears, was dreamed of; deluding her with the sophistry that she was to be his defender before a council of ministers. "Ah, I have come to you again and again, when sorrow and depression and discomfort weighed upon me, and you have been to me a rest and a cheer. Your soft hands and gentle voice would comfort me. Now you have struck me down to death and ruin. Will you defend me?" Is this statement to her husband all the imagination of Tilton? How could Tilton have thought of an argument of this kind addressed by Mr. Beecher to Mrs. Tilton? Did he invent

that letter? Was he apprised by any means of any of the details of the interview between Beecher and Mrs. Tilton, except by the declaration and confession of Mrs. Tilton? How did he know that Beecher had addressed these arguments to her? How did he know that the letter that Beecher got was dictated by him, as Mrs. Tilton declares? How did he know that Beecher in the prostration and humiliation of that occasion—broken, disheartened, crushed as he was when he left the door of Moulton—how did Tilton know that Beecher had said to his wife: "Your letter or statement has ruined me; my life-work is ended." Yet, gentlemen, you are to believe this. You are to believe that that reassertion, so damaging to Beecher, so destructive in its implications upon him and his offense; you are asked to believe that that was written by this lady at the dictation and compulsion of her husband, rather than being the spontaneous outbreak of her regret that the personal influence of Beecher should have led her to the indiscretion of her former note.

The Court then adjourned until Wednesday morning at 11 o'clock.

105TH DAY'S PROCEEDINGS.

CONTINUATION OF MR. BEACH'S ARGUMENT.

THE DOCUMENTARY EVIDENCE UNDER CONSIDERATION—MR. BEECHER DICTATED THE "LETTER OF RETRACTION" AS WELL AS THE "LETTER OF CONTRITION"—SIMILAR PHRASES IN BOTH DOCUMENTS—"PAROXYSMAL MOMENTS" AN EXPRESSION TRACED TO MR. BEECHER IN EARLY WORKS—MR. BEACH TO CONCLUDE ON FRIDAY AND THE JUDGE TO CHARGE THE JURY EARLY NEXT WEEK.

WEDNESDAY, June 16, 1875.

Mr. Beach, in his argument to-day, started out, as he said, with the assumption that the "Letter of Retraction" was obtained from Mrs. Tilton through Mr. Beecher's influence. The phrases in the letter, he thought, betrayed their origin as coming from Mr. Beecher. The word "inculpating" occurring in the letter was declared not to be "a woman's word." A similar phrase to that in which it occurs appears in the "Letter of Contrition," and counsel hinted that the similarity of expression suggested the possibility of Mr. Beecher's having dictated the retraction. The counsel further argued that Mrs. Tilton, on the very evening after giving the retraction, made a voluntary statement to her husband, in order to protect him from its consequences, and this statement explained the circumstances under which the retraction had been obtained. The fact of Mr. Beecher's going alone, without a witness, to see Mrs. Tilton on that occasion was commented on by the speaker, as were also the alleged inconsistencies in Mr. Beecher's conduct with reference to this matter.

Mrs. Tilton's letter to her husband, telling him that she hoped he would not be "misled by a good woman as I have been by a good man" drew forth the inquiry, "How misled?" which Mr. Beach proceeded to answer according to the theory of the plaintiff's case. The "Griffith Gaunt" letter was read and expounded in this connection, the influence of the romance of Charles Reade on the feelings and character of Mrs. Tilton was defined, and the power of conscience shown. Alleged contradictions between the terms of the letter and the testimony of Mr. Beecher were also pointed out.

The destruction of Mrs. Tilton's original statement and its assumed importance were then discussed, the speaker claiming that the charge was not of importance, and that its destruction was not remarkable under the circumstances. The confession and retraction, he urged, were to be kept together, yet the confession was destroyed and the retraction preserved. This, Mr. Beach thought, showed Moulton not to have been so unfriendly and faithless to Mr. Beecher as had been insisted on by the opposing counsel.

Mr. Beecher's action in regard to the West charges was again alluded to, and the bearing of the defendant's conduct in this matter as affecting the question of his guilt or innocence commented on. Mr. Beecher's silence and his alleged efforts to stifle investigation were the actions of a guilty man with the motives of a fugitive criminal.

The offer on the part of the plaintiff's counsel to allow Mrs. Tilton to take the stand as a witness was next discussed, and legal authorities were quoted tending to show that her testimony was admissible if both parties consented to its production. The speaker said he was in favor of the fullest investigation, and in consonance with that idea he would have been glad to have seen both Mrs. Tilton and Mrs. Beecher as witnesses. He thought it absurd, however, for the defendant's counsel to ask the counsel for Mr. Tilton to call the ladies.

The "Letter of Contrition" or "Apology," "in trust with F. D. Moulton," was then analyzed, and its expressions commented on, with the view of showing that it must have been written by Mr. Beecher. The speaker was unable to see the want of good diction in its expressions which had been alluded to by Mr. Porter. He quoted from Mr. Beecher's "Lecture-room Talks" to show that he had there declared that when the feelings of persons are aroused

and excited, their expressions are apt to overleap the bounds of grammatical and rhetorical rules. The speaker also read from Mr. Beecher's testimony, in which, as he claimed, Mr. Beecher had admitted the authorship of the letter. Confession of crime, too, was not such an anomaly in human experience, he thought, as Mr. Evarts would have the jury believe. Mr. Beecher's declared intention "to step down and out" if by so doing he could benefit Mr. Tilton and his family, was also made the subject of extended comment unfavorable to Mr. Beecher. The "Ragged Edge" letter was then read and its extreme expressions noted. The word "remorse" came in for a good share of the orator's reflections, he contending that its legitimate meaning was a sorrow for crime committed. David's treatment of Uriah, as mentioned in the Scriptures, was declared to be in many respects similar to Mr. Beecher's conduct in the present case, and the 32d Psalm—as showing the effect of remorse upon the human conscience—was said to have been written with the same feelings of agony with which Mr. Beecher wrote the "pitiful words of remorse" contained in the letter under consideration. Mr. Beecher's conduct differed from David's, according to the speaker, in the fact that David confessed his sin before men, and Mr. Beecher did not.

The argument was concluded for the day with the reading of selections from Byron's "Giaour" and Hawthorne's "Scarlet Letter," and comments on the same by the speaker. The scenes read were described to be typical of the agonized condition of a guilty and despairing soul which knows its own baseness, but which must keep it hidden from mortal sight. This was declared to be the condition of Mr. Beecher.

THE PROCEEDINGS—VERBATIM

MRS. TILTON'S RETRACTION.

The Court met at 11 pursuant to adjournment.

Mr. Beach—MAY IT PLEASE YOUR HONOR: I assume, gentlemen, that the retraction we are considering was obtained from Mrs. Tilton through the influence of Mr. Beecher, and was dictated by him. She asserts it in the document which she executed the same evening, and she reiterates that declaration, as you will remember, in the letter she subsequently addressed to Dr. Storrs, at the solicitation, as it declares, of Mr. Carpenter. There are some peculiarities about the document itself which would seem pretty clearly to indicate its origin.

Wearied with importunity, and weakened by sickness, I gave a letter inculpating my friend Henry Ward Beecher.

That word "inculpating" is not a woman's word. It is rather an unusual phrase. It is more commonly used among professional men, although by no means inappropriate or unused by cultivated men under all circumstances; but it does not belong to the phraseology of the household, and to the ordinary style of expression of womanhood; and when we find in the "Letter of Contrition," as it is called, of Mr. Beecher a somewhat similar phrase used, it rather suggests the probability that Mr. Beecher had something to do in framing this retraction. Mr. Beecher in that "Letter of Contrition" uses this expression:

But others must live and suffer. I will die before any one but myself shall be inculpated.

Mrs. Tilton writes:

I gave a letter inculpating my friend Henry Ward Beecher.

Well, that is rather a singular coincidence. I said to you a while ago that we identify persons as much by their style of rhetoric, their ordinary form of expression, as we do by their handwriting, and Mr. Beecher has some peculiarities of language, as I think I have shown you; and when we find in one document the use of a word uncommon on female lips and in another document attributed to Mr. Beecher the use of the same phrase, it rather supports, I think, the declaration of Mrs. Tilton that Henry Ward Beecher dictated that document. In the reassertion of her original declaration Mrs. Tilton says:

He, H. W. Beecher, dictated a letter which I copied as my own, to be used against any other accuser except my husband.

In the Storrs letter she says:

Late the same evening Mr. B. came to me, lying very sick at the time, and filled me with distress, saying I had ruined him, and wanting to know if I meant to appear against him. This I certainly did not mean to do, and the thought was agonizing to me. I then signed a paper which he wrote to clear him in case of trial.

Now, Mr. Beecher testifies that Mrs. Tilton wrote this paper with her own hands. She did, undoubtedly; but Mr. Beecher, she says, was the author of it, and she declares that it was written by Mr. Beecher and then copied by her. This suggestion has been made to me by a gentleman of intelligence, and I present it to you as one worthy of considerable reflection in connection with the production of these papers. It is in proof by Mr. Beecher himself, that when he returned from Mr. Tilton's to Moulton's he communicated to nobody that he had obtained this retraction. That is certain. How was it that on that same night, on Mr. Tilton's return to his house, he learned that Mrs. Tilton had given that retraction? Moulton did not know it. Beecher had not communicated it to either Moulton or Tilton; and yet we find on that same night this woman, as is said by the other side, under the domination and control of her husband, making a reassertion of the original accusation. Now, the force of this consideration is not to be avoided. We must assume as certain that Mr. Beecher gave no in-

formation of the paper, and there was no other source through which Mr. Tilton could learn of its existence except Mr. Beecher or Mrs. Tilton. None of the inmates of the house were present at the interview between them, for you remember how the apartment was deserted by Mrs. Mitchel, and left in the occupancy of Mrs. Tilton and Beecher alone. Is it not perfectly obvious, gentlemen, that when Mr. Tilton on that night returned to his house, the wife communicated to him the fact that at the visit of Mr. Beecher, Mr. Beecher had extracted from her the retraction? Is it not perfectly clear that Mrs. Tilton acted upon her own voluntary impulse? In giving to her husband, making this communication of what transpired at her interview with Mr. Beecher, she made a voluntary statement to her husband to protect him from the consequences of that retraction, and as explanatory of the circumstances under which she had made it.

Well, it seems to me somewhat singular that Mr. Beecher should have gone to the house of Mr. Tilton under the circumstances, without insisting that some third person should accompany him. Take his picture of the interview between him and Tilton; accept his theory that he was perfectly innocent—that there had been no act upon his part consciously which produced any disturbance in the household of Mr. Tilton, or which, according to his impression, tended in any degree to alienate the affections of Mrs. Tilton from her husband. Well, what would have been your conduct, either of you gentlemen, under such circumstances? Accused of a vile and degrading offense, over the signature of a lady upon whom his artifices were said to have been exerted, he, brought face to face with the husband holding the confession of the wife, and he, the man who is represented to be frank and noble and brave, and armed at the same time with conscious innocence—would Henry Ward Beecher, judging by your own observation and experience under these circumstances, have gone privately and alone to the bed-chamber of this sick lady, and held with her a private interview, and gained from her a private writing exonerating him, and held it secret from the very parties with whom an hour before he had been in conversation upon the very subject? What would have been the impulse of a man of like character, and conscious of his entire purity? Why, he would have said to this husband: "This is a most grievous and lamentable mistake. This lady is suffering under some hallucination. I have never been guilty of this wrong. It is shocking and terrible. Go with me, Sir, to the presence of your wife; let us have an interview; let us probe and examine the motives to this declaration; let us see what are the influences, if there be any, unworthy and improper, what is the misconception under which this woman labors, inducing her to make this false accusation." Why, this would have been the language and the conduct of a great and a noble and an honorable man, as Mr. Beecher is represented to be, if he had been an innocent man.

And after he had thus sought a private interview, and gained this retraction, a full exoneration of the charge made against him, if he was consciously innocent, if the deep load of mortification, astonishment, and apprehension which the accusation but an hour before had thrown upon him had been lifted, why how gladly and cheerfully would he have gone into the presence of Theodore Tilton and presented to him that retraction. "Here, Sir, is the declaration of your wife. You have charged me with an infamous offense. I believed that you were honest in making the charge, and that you trusted the evidence furnished to you by your wife, and with your permission I have seen her, I have appealed to her justice, her integrity, her regard for my position and character. And this is the result—a full and a complete vindication; and I ask you, Sir, to believe that I am innocent, and to retract the charge you have made." Now, is there any doubt, gentlemen, judging of an ordinary man, and according to our ordinary conceptions of character and action, is there any doubt, if Mr. Beecher had been the character he is represented to be, and had pursued the innocent and honorable conduct he claims to have followed—is there any doubt that that would have been the prompt and the ready response which Mr. Beecher would that night have made to Theodore Tilton? I have referred you to the testimony of Mr. Moulton and Mr. Tilton, without reading it, so far as to the character of this confession. There was some misunderstanding between Mr. Evarts and myself in regard to the force of that evidence—he contending that there was no proof that the confession which was read by Mr. Tilton to Mr. Beecher on that night was accompanied by any declaration or representation as to the character of the offense it charged. In the interview between Mr. Moulton and Mr. Beecher, Mr. Moulton testified to this (Mr. Moulton was not present, you know, at the interview between Tilton and Beecher):

Mr. Beecher told me that Mr. Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession, or a copy of a confession, by Elizabeth, of sexual intercourse between them.

There will be but little doubt now, I think, as to what the character of the confession was.

And he told me that Theodore had told him of the reasons for sending to him the letter through Mr. Bowen.

Independent, therefore, of all other evidence, except as derived from the intrinsic character of the writing itself, and the testimony of Mr. Moulton, it would seem quite clear that the paper which was presented to Mr. Beecher through the mouth of Mr. Tilton contained the direct charge of an offense which she had confessed in the July previous to her husband.

OTHER ALLEGED CONFESSIONS BY THE WIFE.

I have submitted to you several of the letters of Mrs. Tilton. There is a single expression in a letter bearing date July 4, 1871, addressed to her husband, in which this expression occurs :

Oh, my dear husband, may you not need the further discipline by being misled by a good woman as I have been by a good man.

Ah! Mrs. Tilton making this declaration against Mr. Beecher, who stands before you with the proud assertion that he never did an act or uttered a word to or toward Mrs. Tilton unbecoming a Christian gentleman and pastor! And yet, in July of 1871, six months after the charge made against Beecher, this woman, in the penitence and sorrow of her spirit, writing to her husband that she had been misled by a good man. How misled? What had been the error of her life in connection with Mr. Beecher? Are not the evidences pregnant through all this case as to its character, not only of error on her part, but of temptation on the part of Mr. Beecher? Have you any doubt as to the influence he exerted over her, and as the consequence of that influence? The Griffith Gaunt letter has been partially commented upon. That was written June 20, 1871.

Mr. Evarts—29th.

Mr. Beach—29th, is it? Yes, June 29, 1871.

MY DEAR THEODORE: To-day, through the ministry of Catherine Gaunt, a character of fiction, my eyes have been opened for the first time in my experience, so that I see clearly my sin.

And this woman is represented as suffering, and tortured, under the infamous character and the brutality of her husband. Faulty, no doubt, he was; changeable, moody, capricious, if you please; whimsical he may have been; but no woman writes a sentence like this without a consciousness that in her own life there has been a grievous fault, confession of which and reparation for which is due to her husband, whatever his character or treatment may have been. My learned friend has alluded to the character of that romance, Griffith Gaunt, a powerful work. Through the imagery of fiction, and through the word-painting of a great author, the danger and the sin of perverted affection, improperly bestowed upon a priest of God, are depicted with a power that touches the heart of the ordinary reader, whether or no he makes a personal application to him or herself, or not. This woman read it; and her conscience was disturbed; until then under that spiritual delusion by which her senses and her judgment were trammeled. Where by the force of her character and her imagination, she had invested her relation to Mr. Beecher with an impassable purity, in seeing even in a limited degree in this portraiture in Griffith Gaunt, the horrid offense and consequences of such a departure from fidelity and honor, this woman was led to make the expression, to declare the confession, that at last she had come to a realization of her misconception of herself and of Mr. Beecher. Now, it was not necessary, for the purpose of awakening any such reflections, arousing the conscience to the true conception of moral offense, that the particular crime or sin of which she had been guilty was portrayed in this work brought under her knowledge. Ah! gentlemen, this conscience of ours acts very singularly sometimes, hardened, covered, screened as it may be, by the delusions of a mistaken casuistry, or by false principles of morality or virtue, yet it is sure to speak out at some time; and you have seen, nay, gentlemen, you who are Christians in practice and act, as well as profession, you know by what slight and inconsiderable circumstances the consciousness of the sinner is awakened to the enormity of his offense. The prattle of a child, a single sentence casually read, the merest circumstance will sometimes stir the convictions of the conscience and produce that change of heart and character, and that reformation, which constitutes conversion. You know this to be so. It is the common history of our kind, and it is the means by which that still, small voice, an echo of God's spirit, speaks its lessons to the soul of man.

It was when I knew that I was loved to suffer it to grow into a passion.

Ah! Mr. Beecher says he extended to this lady only parental affection or respect; that by no art, no seduction, by no manifestation of undue affection did he ever seek to control the heart of this woman; and yet she declares,

It was when I knew that I was loved, to suffer it to grow into a passion. A virtuous woman should check instantly an absorbing love; but it appeared to me in such a false light that the love I felt and received [received!] could harm no one, not even you, I have believed unfalteringly until 4 o'clock this afternoon, when the heavenly vision dawned upon me. I see now as never before the wrong I have done you, and I hasten immediately to ask your pardon, with a penitence so sincere that henceforth you may trust me implicitly.

Now, see how it confirms the narrative of Mr. Tilton; that Mrs. Tilton, while making a confession of her sin with Henry Ward Beecher, yet in the very act of confession maintained her purity, telling him that Beecher was a grand man, a godly man; that he understood better the principles of morality and virtue, and that he taught her that there was no sin or impurity in the act; it was but a natural expression of the love which they innocently bore to each other; the expression upon her part that her offense existed not in the act itself, but in the concealment of the act, in that life of duplicity and deception which she was living as toward her husband. She thought there was no sin in this trinity, imitation and reflection of the God-head. She indulged the strange notion that these three persons could be united by an identity of interest and feeling and communion, exalted to that spiritual eminence above earthly passion and carnal pollution, and indulge all their identical, common,

and spontaneous desires without any infringement of the law of God or the law of morality. But the painting of a Reade—Charles Reade—opened her mind and her conscience, and she comes, in this letter of June, '71, to declare, that a heavenly vision has dawned upon her; that the sentiments and convictions implanted in her mind had come to appear to her in their just and common repugnance; and she confesses to her husband again, not only her sin, but the delusion from which she had but just recovered in regard to it.

—and hasten immediately to ask your pardon, with a penitence so sincere, that henceforth, if reason remains, you may trust me implicitly. O! my dear Theo., though your opinions are not restful or congenial to my soul, yet my own integrity and purity are a sacred and holy thing to me.

I will preserve them in the future. I have sacrificed them in the past, misled by a good man, falsely taught by his deceptive and solemn casuistry and teachings; but at last I am awakened. I confess my sin. In penitence and sorrow I make the confession, and with the true devotion of a woman's heart hereafter I will be true to you.

Bless God with me for Catherine Gaunt, and for all the sure leadings of an all-wise and loving Providence. Yes, now I feel quite prepared to renew my marriage vow with you—to keep it as the Savior requireth, who looketh at the eye and the heart.

Renew the marriage vow! And keep it as the Savior requireth—in the heart, with integrity and purity; not alone by outward devotion, but by a consecration of spirit and body to the husband to whom that vow was originally given!

I recur again for a single moment, gentlemen, to this letter to Dr. Storrs. We are not now examining alone the question of adultery, sexual intercourse. We are also inquiring whether Henry Ward Beecher in his relation of his connection with this woman was a truthful man. He denied all impropriety. He not only denied impure solicitation but he purged himself of the shadow of taint. He was the pious and exalted pastor, never wavering from his duty—never under any temptation indulging the slightest sensuality—never striving to win the love of this woman. He says she was pure; that she had conceived, to be sure, an extravagant and improper affection for him, as he thought at first; but on the stand he didn't believe even that. He repulses the latter theory. He says he was artfully and insidiously led into the false conviction that Mrs. Tilton had bestowed her affections upon him. For three or four years, he admits that he labored under that mistaken opinion; but, after all, it was a delusion, and the affections of this woman, according to his professions, never wandered from the person of her husband What does she say about it? This woman, exalted in her Christian character by Henry Ward Beecher here—he, perfectly familiar with all her qualities of mind and heart; he, seeing the contradictions into which he betrayed her; he, knowing the weakness of her resolution in his presence; he, yet, declares that she is a lady in whose conscience and in whose trust this jury may confide. I present her as a witness against him upon that important issue which he has made, of his entire purity and freedom from offense:

In July, 1870, prompted by my duty, I informed my husband that Henry Ward Beecher, my friend and pastor, had solicited me to be a wife to him, together with all that this implies.

Who is to be believed then? Mrs. Tilton, making this declaration against her pastor and the man she confessedly adored, or is it Mr. Beecher, testifying under all the circumstances, under all the operation, under all the temptation which surrounds him upon this trial?

Six months afterward my husband felt impelled by the circumstances of a conspiracy against him in which Mrs. Beecher had taken part, to have an interview with Mr. Beecher. In order that Mr. B. (Beecher) might know exactly what I had said to my husband I wrote a brief statement, I have forgotten in what form, which my husband showed to Mr. Beecher.

Then follows:

Late the same evening Mr. Beecher came, &c., as I have read to you.

In this instance as in most others, when disturbed by one great interest or feeling, the harmony of my mind is entirely disturbed, and I found, on reflection, that this paper was so drawn as to place me most unjustly against my husband, and on the side of Mr. Beecher. So, in order to repair so cruel a wrong to my long suffering husband, I wrote an explanation of the first paper, and my signature. Mr. Moulton procured from Mr. Beecher the statement which I gave to him in my agitation and excitement, and now holds it. This ends my connection with the case. ELIZABETH R. TILTON.

P. S.—This statement is made at the request of Mr. Carpenter, that it may be shown confidentially to Dr Storrs and other friends with whom my husband and I are consulting.

MRS. TILTON'S DENIAL TO MR. MOULTON.

The denial of Mrs. Tilton has been commented upon. In December, 1872, just after the Storrs letter—

MR. MOULTON—*My Dear Friend:* For my husband's sake and my children's I hereby testify, with all my woman's soul, that I am innocent of the crime of impure conduct alleged against me. I have been to my husband a true wife, and in his love I wish to live and die. My early affection for him still burns with its maiden flame, all the more for what he has borne for my sake, both public and private wrongs.

While making this declaration, still admitting the wrongs her husband had suffered.

His plan to keep back scandals long ago threatened against me, I never approved, and the result shows it unavailing. But few would have risked so much as he has sacrificed for others ever since the conspiracy began against him two years ago. Having had the power to strike others, he has forborne to use it and allowed himself to be injured instead. No wound is so great to me as the imputation that he is among my accusers. I bless him every day for his faith in me which swerved not, and for standing my champion against all accusers.

What was the faith of Theodore Tilton? For two years then he had been as against Beecher making these accusations openly—so far as made openly, a charge of impure solicitation, but whenever the voice of intimate friendship and trust appealed to him, and put him upon his truth and honor, always saying that that was not a full revelation; that he could not tell the whole truth. What a testimony this is to the suffering patience, to the heroic advocacy by Theodore Tilton of his wife! And how it opens a light which breaks upon the whole narrative this man gives of his course and conduct in regard to his wife and Mr. Beecher—in its hidden and implied sentiment, in its suggestion, meeting at every point the theory presented by the evidence of Mr. Tilton. And, oh, how emphatically and lovingly it rejects the imputation that he was conspiring against his friend and former pastor, and, through a shameless and brutal conspiracy, endeavoring to destroy the man he honored still and respected!

MR. BEECHER'S WRITTEN DENIAL.

Well, there was another denial from Mr. Beecher at the same time.

I solemnly deny the scandalous charges made against me and Mrs. Elizabeth R. Tilton. Especially and emphatically I deny that there has been any criminal intercourse or any color of a reason for such a charge. My acquaintance with Mrs. Tilton has inspired me with the highest esteem for her modesty, propriety, and womanly graces. I authorize her, or her husband and children, to make use of this declaration, and I desire to state in addition that Mr. Tilton, during the whole of this shameful scandal, has uniformly spoken in the highest terms of his wife, and has shown to me the highest proofs of friendship.

Written December 29, 1872. And this is the man now scandalized and abused; Mr. Beecher in one breath admitting that when he first made the charge against him he made it honestly and sincerely, and in the next charging him as a conspirator, perjurer, and blackmailer!

ORIGIN OF THE DENIALS.

Now, what originated these?

I told Mr. Beecher the reason why I had published it [that is, the letter to a "Complaining Friend," of which he says that it was got up in conjunction with Mrs. Tilton for the purpose of meeting the charges which were then afloat, but that on its publication it excited what he says were ugly comments in the papers, and afflicted Mrs. Tilton]—I told him, Mr. Beecher, the reason why I had published it, thinking it would conduce to peace, but that Mrs. Tilton had been so greatly disturbed by the comments which that card elicited that she asked me whether it would not be possible to deny the whole story out and out, and she suggested, and this I communicated to Mr. Beecher, that the true policy ought to have been in the beginning to have denied the story; that we were all foolish for not having denied it, and that, though time had elapsed, it was not yet too late to deny it, and she wanted to write a denial on her own account, and wanted Mr. Beecher to coöperate in that denial. I told her that anything that she wanted done she might do on her own responsibility. And I think on the 28th of December——

Mr. Evarts—You related all this to Mr. Beecher as what you had told her?

The Witness—Yes, Sir. On the 28th or 29th of December she wrote a card which I produced to Mr. Beecher, and, in producing it, I said to him that it was her request that he should write a similar card of denial. This interview was at Moulton's house, I think, &c.

And that was the origin of these cards—a denial, produced as a matter of policy, for the purpose of stifling the agitation of this scandal which unexpectedly had been aroused through the publication of the letter to the "Complaining Friend." And you perceive, gentlemen, these denials were only ten days after the statement or letter which Mrs. Tilton had written to Dr. Storrs for the purpose of appealing to the judgment and advice of that gentleman under the miserable circumstances in which this family was situated.

THE DESTRUCTION OF MRS. TILTON'S CONFESSION.

Vociferous complaint has been made that this paper, the original statement of Mrs. Tilton, was destroyed. The gentlemen tell us that if that paper was present, to speak for itself, why, it would throw an immense flood of light upon this controversy. How more light than we have now? If it had not made the charge of adultery it would throw neither light nor darkness upon this case, because I have endeavored to maintain to you that it was not an occasion which necessarily required a specification of the precise offense, being merely a letter, in a sense, of introduction. But, if it was here and contained the charge of adultery how much better would we be off? The same charge would be made; of subjection to the husband, and intimidation and control upon his part. The Investigating Committee, and my friends upon the other side, would make the same imputations upon this lady as they have made. No declarations of hers would reflect any greater light upon this case and its issue than the numerous declarations and the accumulated evidence which is presented. But was it unreasonable that that paper should be destroyed by Mrs. Tilton? You remember next day, or a day or two after, she wrote to Moulton beseeching that that and the subsequent instrument which she gave should be destroyed. And is it wonderful that a woman making a charge against herself, under the circumstances which accompanied this charge, should be desirous to suppress it? And if it only made the charge that Henry Ward Beecher had addressed to her improper solicitations which she had rejected and repulsed, what was the occasion of her great anxiety for its return and destruction? That was honorable to her—she, a frail woman, confessing her love to Henry Ward Beecher, when he, in his imperious and majestic power, endeavored through his solicitations to lead her to baseness and impurity, she

rejected them, and, firm in her womanly dignity, withstood the allurements of the tempter. Why should she want such a paper destroyed, and why should she destroy it with her own hands? But, if it contained what it is alleged to have contained, what Beecher according to the testimony of Moulton declared it contained, you can well conceive that it would be an agony to this woman that that paper should be perpetuated hereafter under circumstances which she could not anticipate; perhaps when she was resting quietly in her grave it would be revived and reproduced to the dishonor of her memory and to the shame of her children. What harm did it do to Mr. Beecher? Admit that Moulton promised to keep them together. He did keep them until immediately after the "Tripartite Covenant"—that covenant to which these letters of Theodore Tilton were attached under the certificate of Bowen and Beecher and Tilton, for the very purpose of perpetuating the charges which had been made by Bowen against Beecher. But when that instrument—designed to be private and secret, never intended for publication or circulation—was entered into under the peculiar and solemn circumstances which accompanied its execution; when it seemed to be a pacification of all the difficulties between these men except this single trouble between Beecher and Tilton, which stood unaffected by it—when there was an apparent declaration of confidence and friendship between all these men, and the clouds of disgrace and infamy seemed to be scattering, was not the situation changed? Might not Mr. Moulton, with great propriety, surrender this confession to the importunities of Mrs. Tilton? Ought he not to have considered her womanly anxiety and fear? Was there any need of preserving it under these new circumstances of happy conciliation and friendship? And what harm did it do to Mr. Beecher? This confession and his confession were to be kept together, as they say and as we agree. The confession of Mrs. Tilton was surrendered to her, and destroyed, and Mr. Moulton preserved the retraction. It was the retraction and confession which were to be kept together.

Mr. Evarts—The paper destroyed and the retraction.

Mr. Beach—Yes, the paper destroyed and the retraction were the papers that were to be kept together. Why did Moulton act unfairly in keeping the retraction, keeping the paper which Beecher said was the instrument which was to form his defense and protection, and producing it here for his use? Was he unfriendly and faithless to Beecher? If he intended to destroy evidence, to expose Mr. Beecher to the hazard of unprotected assault, would he not have destroyed the retraction? What means this outcry of my friends upon the other side against Moulton for surrendering this paper, which was the paper of accusation, and preserving the contradictory instrument, which was a retraction of the charge and a full vindication of Mr. Beecher, if it was to be taken in its full scope and effect. There was no dishonor in it, gentlemen. There was no want of fidelity on the part of Mr. Moulton to Mr. Beecher. There was not the slightest taint of unfairness about it. It was a duty rendered to a woman under circumstances which demanded from an honorable man its performance, and, in doing it, he was careful to preserve his integrity and faithfulness as toward Mr. Beecher. It proves, gentlemen, that the adultery which was confessed by Mrs. Tilton to her husband in July, 1870, was disclosed to Mrs. Bradshaw some 30 days after, in August, 1870, as appears from the charges of Mr. West. The third specification of the charges presented against Bowen and against Tilton for an assault upon the character of Mr. Beecher is in these words:

3d. At an interview with Mrs. Andrew Bradshaw in Thompson's dining-rooms, in Clinton-st., on or about the 3d of August, 1870, Theodore Tilton stated that he had discovered that a criminal intimacy existed between his wife and Mr. Beecher. Afterward, in November, 1872, referring to the above conversation, Mr. Tilton said to Mrs. Bradshaw that he retracted none of the accusations which he had formerly made against Mr. Beecher.

This was a charge presented to the proper officials of Mr. Beecher's church. Mr. West—in 1871, I think—directed to Mr. Beecher a letter, in which he apprised Mr. Beecher that scandalous charges had been made against him by Tilton and Bowen, and he, as a Christian communicant and a deacon of that church, deemed it his duty to present charges against those persons. This subject convulsed Plymouth Church. There was no peace, there has been no peace, in Plymouth Church from that hour to this.

MR. BEECHER'S ALLEGED EFFORTS AT SUPPRESSION.

And it is the excuse which Mr. Beecher gives for ultimately, in June or July, 1874, bringing the whole matter before an investigating committee. But then from the very moment that Mr. West presented these charges until June, 1874, Mr. Beecher persistently and laboriously resisted their investigation. Theodore Tilton stood upon the record as having made against him the charge of adultery, and to a worthy and pious communicant of his own church. Sincere and honest Christians in that church saw the necessity of vindication. Bowen then a communicant, Bowen now a communicant; Theodore Tilton ostensibly connected with the church; and yet these two men thus arraigned by a responsible member of the church, and upon an explicit charge of this character, are sheltered by Henry Ward Beecher, and every movement toward investigation is suppressed by his great power. And he innocent; he under no relations of especial friendship or obligations toward Mr. Bowen or toward Mr. Tilton; he knowing that these scandalous charges were rife in the community, and were soiling his Christian character and reducing his pastoral influence; he unconscious of offense—nay, proud and

grand in his asserted innocence; he gathering about him the power and influence of a devoted congregation, with the exception of a few who could not submit to these scandalous imputations; he seeing all the pernicious consequences flowing and to flow from uncontradicted imputations of this character, and sensible of his own innocence, never prosecuting the inquiry, but stamping it under his feet. Well, it requires a great stretch of human credulity, it demands from us a reversal of the principles and instincts of our common nature and of all the motives of human action to believe that this man, under the circumstances, could have rested quietly under these dishonoring charges. There was something beneath this accusation; there was some influence, some torturing apprehension, some secret conviction of guilt, which bade this man be still and suffer; which led him to bear all the darkness and the shadow which was gathering around his great and fair name. Can you account for it otherwise? Can you give to the law and to the great world a reason why Henry Ward Beecher was not only silent then, but scheming and contriving and laboring to stifle investigation? You must account for it. We are to judge this man according to our knowledge of men and our knowledge of his own character, his own position; and when we find him acting the part of a guilty contriver and schemer against the investigation of a disgraceful charge against himself, shrinking and slinking from the light of proof and of truth, we must impute to him the ordinary motives which apply to the fugitive criminal.

Well, this was told, too, as I have said, to Oliver Johnson, and when he was on the stand no question was put to him, though a witness for the defendant upon the subject. And the same Summer it was communicated to Mrs. Morse, as the evidence shows. In 1870 it was communicated to Mr. Joseph H. Richards, the brother of this woman—a direct, unqualified charge made to her brother, a Christian man and gentleman, of a confession made by his sister of adultery with Henry Ward Beecher; and yet we are told that that man when he appeared before the Investigating Committee refused to speak upon the subject. Theodore Tilton proves the communication to Mr. Richards, and when he is on the stand our friends upon the other side have no inclination to ask him the question whether in the year 1870 that charge against his sister was made to him. We could not ask it; our mouths were closed. But, if Tilton be this conspirator and liar and base calumniator of his wife and his pastor, when that reliable gentleman was on the stand, governed as he was by every motive that could animate a brother's heart to speak in vindication of his sister and to contradict the slanderer of her name, why didn't they ask him? And, if he could bear favorable testimony, why was his mouth shut before the Investigating Committee? No antagonist to appear against him, before a favorable tribunal—the chosen friends of Mr. Beecher—why should he hesitate, if he could, to give a brother's testimony in favor of a sister's slandered fame? Why, gentlemen, are all these considerations to be overlooked? Are the unblushing confidence and bold assertion and flippant oratory of my learned adversaries to overcome all these evidences? This gathering of circumstances—aye, these circumstances which the Providence of God ever scatters around the path of the guilty—are these evidences and circumstances to be all disregarded? And is this man, in his borrowed robes of purity and innocence, from his great position—this potentate of the pulpit—is he to overturn our judgments and all the rules by which they are to be guided under the law? [Applause.]

If this confession was harmless, if it imputed no guilt, it is a little remarkable that Mrs. Tilton, as I have said, should be so anxious to destroy it; and it is a little singular—a little singular that these persons implicated should not at once have been ready with a prompt denial of the accusation.

HOW MRS. TILTON MIGHT HAVE BEEN MADE A WITNESS.

If your Honor please, an allusion has been made to the offer submitted to our friends on the other side and to your Honor, by which we consented that Mrs. Tilton should appear as a witness on behalf of the defense, if they chose to call her—withdrawing all objections upon our part. It is contended by Mr. Evarts, as follows:

Now, gentlemen, there have been two persons whom the law excludes as witnesses, and yet who, from their relations to this party plaintiff as wife, and this party defendant as wife, would, no doubt, in matters of detail, in matters of substance, perhaps, be possessed of knowledge that would disclose truth; but the law inexorably has excluded them both. Mr. Beecher must lose all the confirmation of his wife's intimate and private knowledge, as the practical and careful preserver of all dates and facts and knowledge, in memory, of all difficulties attendant upon her husband, to which she could be a witness; and Mrs. Tilton, equally excluded in the law, is under even a greater disability, if the absolute exclusion had been overridden by statute, as in respect of the husband, it is supposed to have been done—that is, the exclusion of all matters that passed by confidence between husband and wife. And yet my learned friends, entirely aware of both these rules of law, first the absolute exclusion of the wife, Mrs. Tilton, and second, her exclusion from testifying as to what passed privately between herself and her husband in any of the long intercourse of their life, have chosen to put themselves upon a forensic demonstration, after our case was closed, that if we wished to call Mrs. Tilton to make our case stronger against them they would not object. * * * * * Well, gentlemen, if they thought that Mrs. Tilton's evidence would be agreeable to them, the way for a lawyer to do an honest, straightforward thing in that behalf was to call her themselves, and put upon us, not an exhibitory responsibility, but an actual responsibility, of saying that we objected; and she was the plaintiff's wife, and he knows all about her, and she, if you will believe him, has been the source, and, on the evidence, has frequently been made the means of making, to be sure not a charge of adultery, but a charge of improper solicitations.

Now, we are very well aware, your Honor, that a statute removing the disability of witnesses, an enabling statute in all its provisions, making the wife and husband competent to testify for and against each other, excludes the operation of the statute in specified cases, including a case of this character, on action of *crim. con.* There is no absolute declaration of disability in this statute. The disability exists at common law, and not by express statutory provision, as I think my friend improperly assumes. We admit that by the common law Mrs. Tilton was an incompetent witness in this case, either for or against her husband; but I insist to your Honor that that is an incapacity which may be waived by the parties. I insist that there is no disability attaching to any witness under any circumstances which, in a civil case between parties, cannot be waived. Why, Sir, we are taught that statutory rights may be waived by a party; we are taught that constitutional privileges may be waived in a civil action, either by an express act or by a failure, in the ordinary line of the administration of justice, to object, to claim the privilege, to assert the right. And what is there in the condition of these parties, in the attitude of this question of capacity —what is there to prevent this lady from being a witness if both the parties consent that she shall be? The question of evidence is not under the control of the Court, except under the objection and insistance of parties. We may present a concession, we may give a stipulation to the opposite party admitting facts, or they to us, without violation of any of the rules of evidence, formed, it is true, for the ascertainment of truth, but the ascertainment of truth with reference to the particular parties to whom, against whom, and for whom the investigation is produced. And if the husband and Mr. Beecher should agree that the wives of both might be produced upon this stand there is no power in the Court or in the law to exclude them. Why, it is ruled, Sir, that although it is the policy of the law to exclude confidential communications as between husband and wife, yet they may be introduced by the consent of the parties to be affected. In the conduct of a private action involving private rights, and private rights alone, public policy does not interfere to control the manner of its conduct. Every party has a right to assert or to waive his claim and his privilege, and whenever and however he pleases, and the law cannot command his course.

Now, Sir, in the case of The People agt. Sanders, in 3 Hun. 16, which was the case of a common law *certiorari* to review a conviction against a defendant as being a disorderly person, it appeared that upon the trial of the relator upon that charge his wife was examined as a witness against him, and that was made one of the grounds upon which he attempted, through this process, to reverse the conviction.

Judge Neilson—The objection not having been taken below.

Mr. Beach—The objection not having been taken below. And the Court held that it furnished no reason for the reversal of the conviction. Now, Sir, if the arguments of the learned gentlemen are sound, if the disability rests exclusively upon the idea of public policy, upon a declaration or rule, whether by statute or at common law, so positive and explicit that it cannot be disregarded by the will of the parties, it is perfectly apparent that this decision must have been otherwise. If the law says absolutely and inexorably, as the counsel says it does, that the wife shall not be a witness for or against her husband, why, then, if she is introduced and it is a violation of public policy, which is the wrong, of course the Court, upholding public policy, protecting public interest and guarding it from the concessions and privileges of parties, would declare against any judgment founded upon such a violation. But, says the gentleman, this was a "forensic exhibition." If your Honor please, it was at the close of the case of the defendant that the offer to consent to the introduction of Mrs. Tilton was made. We were not certain whether or not she would be offered before we made the proposition. Indeed, I may say truthfully, that we expected—*expected*, after all the declamation which had been made as to the hardship of her exclusion, and when they ventured to claim that she was the real party in interest in this case, why we supposed, we expected that they would offer her in vindication of her own rights, in defense of her own interest and name. If she was substantially a party, if her rights were to be at all affected by this judgment, there was great plausibility and appearance of right and justice in the claim that she should be a witness. We waited patiently, until they concluded their case, and then made the proposition, which they rejected, to receive her as a witness if they chose to present her. Ah! but says the gentleman, "if you had acted in an honest and an honorable way you would have produced her yourselves." Well, that, your Honor, is altogether too unreasonable and absurd for comment. With this lady standing in the relation she did, consorting with those with whom she did, evincing her tendencies and her feelings as she did, it is certainly somewhat unreasonable to ask that Mr. Tilton should have introduced her as a witness, and thus put himself in a position where he could not, by cross-examination or contradiction, test the truth and the sincerity of her testimony, governed, as we suppose it would be, by the same influences and the same sentiments which have withdrawn her from our protection and association.

Again, the gentleman says it is a great hardship that Mrs. Beecher should be excluded. Well, why did n't they offer her? The question never was presented to us. My own judgment, Sir, would have been, if the question had been presented, to allow that lady to take the stand. I am in favor, Sir, in this case, of a full investigation: I

have no professional zeal in this case which leads me to cover up the truth; I have no desire for a result in this case which would govern any decision which I might make in regard to the propriety of evidence offered. It is perfectly plain that, so far as the materialities of this case are concerned, the evidence of Mrs. Beecher could be of no essential moment, yet I would have been very glad to have heard what she, under a cross-examination, might have said in regard to various of the aspects of this investigation.

Why was not Mrs. Tilton called? You must consider that question. They were free to call her. With our consent the law permitted it. She is a glorious spirit, in the estimation of Mr. Henry Ward Beecher. Pure and white, as these two men believe and swear, we think—that is, my client thinks—that she sinned without fault. Mr. Beecher believes that she never had a temptation to sin, much less a fall beneath it. She knows the truth. If she be innocent, if her written and oral declarations are lies, if Mr. Henry Ward Beecher never did address to her base and improper solicitations, aye, if he did not defile her body, that woman thus exalted upon that stand, with a voice that would have penetrated the conscience of the world, could have declared his and her innocence. [Applause.]

Judge Neilson—Gentlemen, this won't do.

Mr. Beach—Gentlemen, there is no escape from this argument. The subtle sophistry and the legal errors of my learned friend cannot diminish its moral force, and I repeat again with emphasis, in the hope that it will be impressed upon the judgment and conscience of each of these jurymen; why was not Elizabeth R. Tilton permitted to tell you all that her conscience would permit her to say?

Now, let me read to you, gentlemen, what the teaching of the law is upon that subject:

The conduct of a party in omitting to produce that evidence in elucidation of the subject matter in dispute which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasion for presumptions against him, since it raises a strong suspicion that such evidence, if adduced, would operate to his prejudice.

Where a party, being apprised of the evidence to be adduced against him, has the means of explanation or refutation in his power, if the charge or claim against him be unfounded, and does not explain or refute that evidence, the strongest presumption arises that the charge is true or the claim well founded. It would be contrary to all experience of human nature and conduct to come to any other conclusion.

Now, consider the condition of things. Tilton swearing that his wife confessed adultery to him with Mr. Henry Ward Beecher; swearing that on the 30th of December he communicated to Mr. Henry Ward Beecher the fact of that confession charging adultery; Mr. Beecher denying it and limiting it to improper solicitations, and Mrs. Tilton made a competent witness on behalf of Mr. Henry Ward Beecher to contradict the fact either that she made any such confession, or that there was any criminality between herself and Mr. Beecher, and they failing to present her, you would not call upon us to do it. We were accusing; we were asserting; we had given proof of our accusation and assertion. It rested upon them to contradict. They strove to do it by their client. They failed to do it by a witness whose testimony would have exerted a profound, if not a conclusive, influence upon that issue. Ah, gentlemen, can you not see the reason, when you find upon this evidence the proof that the fact of this confession had been communicated to various parties, to Richards, to Bradshaw, to Mrs. Emma Moulton, and to others, to Florence Tilton—I don't know whether that is in evidence—but when you see from the proof that the fact of that confession had been thus communicated to various respectable and responsible persons, do you not see the reason why Elizabeth R. Tilton was not produced as a witness, and why, in the presence of the solemnity of this occasion and with the sanction of an appeal to her Maker, she dared not stand as a witness and deny what she had so often solemnly asserted? I assume, gentlemen, that under this rather brief and hasty consideration of the confession of Mrs. Tilton you will believe that it was one of adultery, and a confession of adultery communicated to Mr. Beecher, and deriving its force and significance from the recognition and verity which he gave it.

MR. BEECHER'S CONFESSIONS.

Next, we are to consider the confession of Mr. Beecher. [To Mr. Morris.] Have you got that here, Mr. Morris?

Mr. Morris—Not here.

Mr. Beach—Not here!

Mr. Morris—No; it is printed.

Mr. Beach—I know it is printed. Never mind, Sir, it is of no consequence. We assert, then, by a variety of oral and written declarations, by a course of conduct inexplicable except upon that assumption, Mr. Beecher has over and over again admitted the fact of his improper connection with Mrs. Tilton. We do not rest it alone upon oral testimony. We confirm it by the ordinary evidences of a written confession and declaration, and these two sources of evidence mutually support each other. Neither of them is to be considered independently and separately. They are coöperating means of proof. They are different sources of light conjoining to one focus and one point. If you choose to call them in one department they are circumstances surrounding positive and direct proof and sustaining it, upholding them. We must consider them not only in their respective but in their collective character, and, as I have again and again said, we must consider them as coming from a man with the peculiarities of Mr. Henry Ward Beecher. We must try him by himself, by

his acknowledged qualities, by his temperament, his disposition, his impulses, his inwardness. Now, Tilton and Moulton and Mrs. Moulton swear that Mr. Beecher committed adultery. Woodruff and Moulton and Tilton swear that adultery was the charge made to Tracy, who assumed to represent Mr. Beecher. I do not stop now to read the evidence. If either of these witnesses, Tilton or Moulton or Mrs. Moulton, is to be credited in this case, if their collective evidence fortifying each other, and every part of it, is to be received as true by this jury, Mr. Beecher is a guilty and forsworn man. And it is necessary, in the first place, passing over the oral evidence, to examine this "Letter of Apology," or "Contrition," as it is called.

It is suggested, if your Honor please, that I should be in the midst of considering this instrument if I were to continue my argument now.

Judge Neilson—Very well. [To the jurors.] The jury will return at 2 o'clock.

The Court here took a recess until 2 p. m.

THE LETTER OF CONTRITION.

The Court met at 2 p. m. pursuant to adjournment.

Mr. Beech—In commenting upon this "Letter of Apology," or "Contrition," whatever designation may be given to it, Mr. Evarts remarked that it was originally called a "Letter of Apology," and that in the Bacon Letter and elsewhere, Mr. Tilton had spoken of it as a "Letter of Apology." In my judgment no significance is due to the particular appellation attached to this paper; whether it is called a "Letter of Apology" or a "Letter of Contrition," its value and effect are to be determined by its contents. It might very properly be called either. Mr. Shearman, when this instrument was produced, ventured to intimate that it had been prepared with different ink, rather conveying the imputation that it had been an entirely fabricated document, and written under circumstances, from the fact of the difference in ink and the style of punctuation, which would suggest the idea of fraudulent fabrication. That has not been continued by the arguments of either of my learned friends. It could not be, because it is very apparent that those differences in the ink were caused by the exhaustion of the pen or by circumstances which very often occur in the course of writing. It is pretty plain that Mr. Moulton did not have either a very good pen or very fluent ink, rather thick and dark; but there is no pretense of any such characteristic now about this document.

The important question arising upon the evidence regarding this paper is, whether it is the production of Mr. Beecher, whether it really expressed his sentiments at the time it was drawn by Mr. Moulton. And you remember the general circumstances as narrated by both Mr. Beecher and Mr. Moulton under which it was written. By the statement of both, Mr. Beecher profoundly moved from some cause or other, not important just now to consider, his whole being was disturbed and agitated. He was expressing himself in the most emotional manner, he was grieving and sorrowing over something, and his heart was unreservedly poured out in the extremest language of regret, if not of penitence. He represents that Mr. Moulton was making a memorandum of the conversation, or of his utterances, for the purpose of submitting, communicated in some form, to Mr. Tilton, as expressive of the feelings and sentiments of Mr. Beecher toward Tilton, and in regard to the subject of some character which was disturbing these parties. Mr. Moulton swears to you that he drafted this writing from the expressions made by Mr. Beecher at the time, inditing his language, writing it under his dictation. Well, there is no serious disparity between the two witnesses in this respect. Whether this was written in the strict sense of dictation, that is, word by word, as it fell immediately from the lips of Mr. Beecher, or whether it was an accurate representation of his language as it was caught by Mr. Moulton at the time, is not of any very great importance. The question is, is it the language of Mr. Beecher?

It is said that this paper is not good English; that a great master of language, a perfect linguist like Mr. Beecher, would not have produced a document of that character. Well, this paper has excited very extensive comments here, not only, but elsewhere. In imitation of my learned friend, Mr. Porter, I may say that when that instrument, or its copy, was read to one of the most cultivated and distinguished of the editors of the City of New-York, he broke out with the exclamation, "That's Beecher, that's Beecher all over. Shakespeare might as well deny the authorship of the soliloquy of Hamlet as Beecher to deny that paper." Well, now we have different conceptions, all of us, of the power and grace of language. Mr. Porter thinks it an awkward, un-English document, neither lofty in sentiment nor powerful in expression. Well, personally I differ with him, and I think I have the opinion of the educated world with me upon that subject. I want your opinion if I can get it.

I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God.

Well, there is not much Moultonism in that. [Laughter.] This man, who is represented as an egregious sinner, this heathen, as they say, not only in profession but in practice, if he was originating a document of this character, it is not very probable that he would open it with such an expression of intense sorrow and humility.

I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been.

Well, that Mr. Beecher admits. He adopts that expression, and he says that he undoubtedly expressed his

sorrow, and undoubtedly in some form expressed a desire for the forgiveness of Mr. Tilton. So the substance of this instrument so far is Mr. Beecher's.

I can ask nothing except that he will remember all the other hearts that would ache.

Well, that is not denied by Mr. Beecher.

I will not plead for myself. I even wish that I were dead.

Well, if I am not mistaken, Mr. Beecher also admitted that he might have used that expression—a wish for death.

But others must live and suffer. I will die before any one but myself shall be inculpated.

Inculpated!

All my thoughts are running toward my friends, toward the poor child lying there and praying with her folded hands. She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have. I humbly pray to God that He may put it in the heart of her husband to forgive me.

I have trusted this to Moulton in confidence.

Now, imagine Henry Ward Beecher, oppressed with a sense of guilt, accused and conscious of an offense against his nature and character, and expressing all the emotions which would be awakened in a nature like his when contemplating the baseness of his offense and the consequences which had followed upon the heel of discovery and publicity. Can you conceive, is there a man in this assembly who can conceive a more appropriate and expressive declaration to be addressed to the man he had wronged than that "Letter of Contrition," more natural in its sentiment, more forcible in every word, in every phrase and sentence, than that paper? No man need be ashamed of it. And if Moulton is the literary sham and pretender he is represented to be by Mr. Porter, is it conceivable that he could originally draft a document of that character? Giving him his true qualities as a cultivated gentleman, as Mr. Beecher swears he was, a man of literary taste, yet he was an active man of business, not accustomed to literary writing or literary address. He was not, at least, a prayerful man. He was a little profane in his expressions, according to the evidence. He was a bold, active, aggressive worker in the affairs and struggles of life. Would he have written such a document as that in his best estate? Would it not have been more concise, business-like, practical, not dealing in that exalted sentiment and that force of religious expression and thought which breathes from every paragraph of that document?

Well, if, too, Moulton be a conspirator; if that letter never was submitted to the inspection of Mr. Beecher or read by him; if in careless confidence he attached to it the certificate of his name, under the declaration that it was delivered in trust to Moulton, and there being plenty of room between the writing of the body of the instrument and Mr. Beecher's name; if Moulton be so depraved and arrant a scoundrel, so faithless and malignant toward Mr. Beecher, why didn't he put into the letter something more equivocal and distinct and explicit? Why didn't he so fashion it as to meet these imputed purposes and to gratify this imputed spirit of rascality and meanness? And so you see, looking at the circumstances surrounding the paper, judging from its conception, from its style of thought, its mode of expression, from the probabilities arising from the character of the two parties, you perceive that that was obviously the thought, sentiment, and expression of Henry Ward Beecher. It is said it is badly punctuated. Well, whose fault was that? Not Mr. Beecher's. Mr. Beecher didn't know it. Nobody pretends that. If badly punctuated, if there is a comma where there should be a period, why, it is the fault of Moulton. It didn't result from the dictation of Mr. Beecher. Mr. Beecher didn't tell Mr. Moulton, put a comma here or put a period there. In the overflow of his swollen heart and feelings he was bursting out with these expressions of sorrow, these declarations of kindness and purpose; he didn't stop to give any directions to Moulton except by this outpouring of his feelings, and in the haste of transferring the language of Mr. Beecher to writing it is not singular at all that Mr. Moulton should even have forgotten, if he knew, the rules of punctuation.

"Oh, well," says Mr. Porter, "there is a change, an alteration in it." The word "can't," I believe, was written where it should be "can." A "t" is improperly attached to the word. Well, that is not the fault of Mr. Beecher. It is an error of the writer. Mr. Beecher says that he is a difficult man to report. Well, Mr. Moulton probably, therefore, was pretty busily engaged in reducing this instrument to writing, and in the hurry, in the possible agitation of the moment, in this outburst of feeling upon the part of Mr. Beecher, these errors are by no means singular; they don't detract at all from the force of the declaration of Mr. Moulton that it was written from the dictation of Mr. Beecher. Well, Mr. Porter says again: "It is the first time in the history of epistolatory correspondence that a gentleman has directed a letter to himself." He thinks it a striking singularity, improbability, that Mr. Moulton, writing at the dictation of Mr. Beecher, should have headed this letter with an address, "To my dear friend Moulton." Well, it did not strike my learned friend that that was an argument that could be retorted upon him with considerable force. If this was not the letter of Mr. Beecher addressed to Mr. Moulton, if it was the letter of Mr. Moulton to himself, or a memorandum, would Moulton have been guilty of the folly of addressing it to himself? Indulge the suspicions of my learned friend, and the accusations against Mr. Moulton that this in any sense or for any purpose is a fabricated document, the authorship of which did not belong to Mr. Beecher, would Mr. Moulton have headed it with an address to himself? But, regarding it

as he represents it to be, as a production of his own, intended to influence the heart and the tendencies of Theodore Tilton, addressed through Moulton, to be submitted to Tilton, the opening of the letter is appropriate and proper, and accords with that situation of things:

In trust with F. D. Moulton—I have trusted this to Moulton in confidence.

Why, what have you given to Moulton in confidence, Mr. Beecher? His memorandum, made at his own suggestion, for his own purpose, not your words, not your production, nothing you are responsible for! If it be true, as you say, that you told Moulton that he could make a memorandum for himself, and use it for himself, why does Mr. Beecher assume to say: "This paper, with its writing, with its sentiment and thoughts, I trust to you, Moulton, in confidence!" and can he now disclaim the proprietorship of the instrument? Can he say, "It is not my paper, I disown it," after making this solemn declaration that he intrusted it as belonging to himself, as something which he gave of his own right and by his own property title to Moulton in confidence? And for what? To keep? For whom? For Mr. Beecher?

And the stupid proposition is made that Mr. Beecher confides to Mr. Moulton a hasty and unauthoritative memorandum Moulton himself makes, which belongs to him, and which he has the power and the right to use as he chooses. Mr. Beecher assumes to commit it to Mr. Moulton in confidence as his, Beecher's, paper to be preserved for him (his title not being disputed to it). I do not perceive that this paper is at all ungrammatical in its expressions, in the construction of its sentences. It is suggested by my associate that that accusation was brought against it; but I have read it to you. I don't know how I can repel that idea any more forcibly than by simply reading the document. There is no inaccuracy of expression; there is no violation of any rule of grammar with which I am acquainted and which I can perceive.

I am handed an extract from the "Lecture Room Talks" of Mr. Beecher, in which he speaks of certain conditions of the mind and the emotions which lead to extravagant and hasty (sometimes unconsidered) expressions. He quotes from the Bible the language of an ancient patriarch:

Is it right for us to go to God with that spirit which Jacob exhibited when he wrestled with the angel and said, "I will not let thee go except thou bless me?" That is not the language of every day. It was the crisis of the patriarch's life, and he was kindled to an ecstacy of feeling. When the mind is roused up it chooses its own language. There are crises in every man's life, of disaster and of ecstatic desire, in which the soul mounts up and employs language that could not ordinarily be employed. And when the feeling justifies it, there is nothing that the soul may not use. When the soul is in battle it seizes anything for a shaft and lets it fly. And when a man is in anguish and agony, and is impleading God, he does not stand on grammar or words. But, when a man in the ordinary key of feeling brings down this language of paroxysmal moments [that word occurring again!] this language of paroxysmal moments and employs it, it is wrong, of course.

OTHER MARKS OF IDENTITY ABOUT THE LETTER.

That was just the condition of mind in which Mr. Beecher was at the time, so graphically described by him in this quotation. And there is an extravagance and an intensity of language and expression in this document which mark it not only as his own, conforming to his style and expression, but as appropriate to the particular condition in which he happened at the time to be. There are certain other indications in this paper which appear to identify it:

All my thoughts are running toward my friends, toward the poor child lying there and praying with her folded hands.

In the statement of Mr. Beecher describing the scene he uses language, I think, still more expressive and pathetic:

Mrs Tilton lay upon her bed, white as marble, with closed eyes, as in a trance, and with her hands on her bosom, palm to palm, like one in prayer.

Is there any doubt the same lips uttered those sentences? The identity of idea, the characteristics of expression, showing the same conception of the condition and appearance of Mrs. Tilton at the time he visited her. [To Mr. Morris.] Can you not furnish me with page 893 of the second volume of the testimony?

Mr. Evarts [handing the book to Mr. Beach]—Here it is.

Mr. Beach—Thank you, Sir; I am very much obliged. I propose to refer you to a declaration of Mr. Beecher in his statement made before the Committee, given in evidence, which recognizes this letter of apology. Speaking of the interview between Moulton and himself, he says:

To a mutual friend I poured out my soul like water. I did not measure words. I took upon myself immeasurable blame. I wished him to convey to Tilton, in language overcharged with feeling, my profound regrets and apologies. The apology was accepted. Reconciliation was made. Kind and social relations were for a time continued.

Now, that, I submit, is a substantial adoption of this instrument, of the existence of which Mr. Beecher certainly was informed, and he regards it as the apology which he made through Mr. Moulton to Mr. Tilton. Then, again, in this letter of June 1, 1873, which is addressed to Mr. Moulton, alluding to the "Tripartite Agreement," he says:

The agreement was made after my letter through you was written.

He had had it a year. Well, that is this letter of Jan. 1, confessedly. There is no other. Mr. Beecher asserts that it is his letter through Mr. Moulton to Mr. Tilton, and at that date, 1873, Mr. Beecher did not pretend to dispute the authorship of this letter. He recognized it as his own, asserted it as his own, rested upon it as the ex-

pression of his own feeling toward Mr. Tilton, and which, in the aspect in which he was here regarding it, should have been and was satisfactory to Mr. Tilton. Again, in the evidence of Mrs. Moulton:

After he (Moulton) had left the room I said: "Mr. Beecher, do you know what Mr. Tilton has promised in *The Eagle* of to-night?" He said: "No. I do not." I said: "He has promised to give to the public a statement of the facts in this case in 10 days. If he publishes that statement it will ruin you." He said: "I think not." "But," I said, "he will publish your letter of contrition." He said: "I have never made any confession in writing." I said: "That letter given to Moulton in confidence." "Well," he said, "if that letter is published it is a breach of confidence on the part of Frank, if he publishes that letter."

Still regarded and accepted by Mr. Beecher as his own letter. In the testimony of Mr. Tilton he represents Mr. Beecher to have said to him, when the project of publishing cards was suggested;

But, said he: "It will be idle, for me to deny this story, leaving you at liberty at any time to publish my letter through Moulton."

And I can refer you to other passages in the evidence, and other occasions upon which this letter has been adopted by Mr. Beecher as his own.

Mr. Evarts ridicules the idea of confession. He says criminals never confess. It is against nature to make a confession. He recognizes none of the influences and the operations of the human conscience. He disregards the experience of the world. In answer to his argument, it might be sufficient to say that this was not a voluntary confession, a first and primary disclosure of his own guilt by Mr. Beecher. He was confronted with evidence against which he could not stand. What was his policy? Why, confession; appeal to charity and forgiveness. It was not a manful denial of innocence, but it was the effort of a consciously guilty man, in the presence of accusation, to pacify the accuser and avoid the charge. But, gentlemen, how often is it, how often is it in our observance of human nature, as connected with confessed criminals, that they are driven by the harrowing anxiety and agony of their own hearts to pour out a confession of guilt? Who shall control the operations of conscience? Who shall comprehend all the mysteries of Divine Providence? Who shall tell how His spirit works upon the guilty heart, bringing to it conviction of sin, and driving it by the piercing tortures of remorse and sorrow to open confession? Mr. Webster, in the speech referred to by my learned friends, in a quotation from it in the trial of Knapp for the murder of Capt. Joseph White, graphically speaks of the operation and power of conscience, describing the movements, the writhings, the distortions of the criminal under the power and force of his own convictions and the dread of discovery. Of course it is addressed, applicable as in this case, to the example of a man charged with murder. After speaking of the direction of every eye and every thought upon the occasion of a murder to the detection of the offender, he says:

Meantime the guilty soul cannot keep its own secret. It is false to itself, or, rather, it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed upon by a torment which it dare not acknowledge to God or to man. A vulture is devouring it, and it can ask no sympathy or assistance either from heaven or earth. The secret which the murderer possesses soon comes to possess him, and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, breaks down his courage. It conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed; it will be confessed. There is no refuge from confession but suicide, and suicide is confession.

Well, how does the doctrine of my learned friend Evarts stand against this portraiture of nature by the great orator of America, and founded upon his vast knowledge of human nature? We have some prominent teachings from a higher source than Webster in regard to the tendencies and operations of the human conscience. St. Paul recommends confession. "Confess your faults," is his injunction, and did he misapprehend human nature? Did he think, with Mr. Evarts, that it is contrary not only to human nature, but to human experience, for men to confess their faults or crimes? And in that parable of the prodigal son, intended to express the duty of repentance and reform, the contrite and wandering son is made to say: "I will arise and go to my father, and say, 'Father, I have sinned before heaven and in thy sight.'" It is the teaching of Scripture; it is the teaching of nature; it is the teaching of human experience. But, gentlemen, I recall your thoughts again to the idea that Mr. Beecher was not making a sudden and a new confession of his fault. He was doing it not only in the presence of accusation, but in the presence of conclusive evidence. It was the natural result, sequence, of the transactions of Dec. 30. It was the obvious thing the man was bound to do for his own protection, for the salvation of the family he would have otherwise destroyed. Look at the condition of things. See what was the obvious policy which an honorable and a wise man would adopt under such circumstances. Mrs. Tilton declaring to her husband, "We are both pledged to the avoidance of publicity." Mr. Beecher, bowed and suffering beneath the discovery of his offense, tendering to the wronged husband his contrition and his remorse, and his prayer for forgiveness; confessing, without reserve, the whole extent of his sin,

yet appealing to his charity, cunningly suggesting that there are other hearts that must suffer, that it is the sick and the afflicted and the wronged wife, lying with her folded hands, white as marble, as if in a trance, that she, too, must suffer. These three spirits, all concurring in the idea of silence, what should the offender do but make just such a declaration of his sin, of his contrition—just such an appeal as this, not only to the interests, but to the Christianity, to the magnanimity of the man he had hurt?

MR. BEECHER'S GRATITUDE FOR MR. MOULTON'S SERVICES.

And this is done, gentlemen, this is done under the promise made by the most intimate friend of the parties, that that would secure the forgiveness and the kindness of Theodore Tilton. That is the plea addressed by Moulton to Beecher at the time this instrument was dictated, addressed to an angry husband, when, as Mr. Beecher says in his statement, he supposed and believed from the tempestuous anger of Mr. Tilton that the accusation was to be pressed, and he was to be chased to a public exposure. Now, it concurs with all these circumstances, it harmonizes with the condition of things and the condition of the parties at the time. See how this construction is confirmed by other productions of Mr. Beecher—in the letter of Feb. 7, 1871—the two letters, one to Moulton, and the other to Mrs. Tilton of that date:

MY DEAR MR. MOULTON: I am glad to send you a book which you will relish, or which a man on a sick bed *ought* to relish. I wish I had more like it, and that I could send you one every day, not as a repayment of your great kindness to me, for that can never be repaid—not even by love, which I give you freely.

Many, many friends has God raised up to me, but to no one of them has he ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit. You have also proved yourself Theodore's friend and Elizabeth's. Does God look down from heaven on three unhappy creatures that more need a friend than these?

Is it not an intimation of God's intent of mercy to all, that each one of these has in you a tried and proved friend? But only in you are we three united. Would to God, who orders all hearts, that by your kind mediation, Theodore, Elizabeth, and I could be made friends again. Theodore will have the hardest task in such a case; but has he not proved himself capable of the noblest things?

I wonder if Elizabeth knows how generously he has carried himself toward me? Of course, I can never speak with her again, except with his permission, and I do not know that, even then, it would be best. My earnest longing is to see her in the full sympathy of her nature at rest in him, and to see him once more trusting her, and loving her with even a better than the old love. I am always sad in such thoughts. Is there any way out of this night? May not a day-star arise?

Truly yours always, with trust and love,

HENRY WARD BEECHER.

Then the letter to Mrs. Tilton.

When I saw you last I did not expect ever to see you again or to be alive many days. God was kinder to me than were my own thoughts. The friend whom God sent to me (Mr. Moulton) has proved, above all friends that ever I had, able and willing to help me in this terrible emergency of my life.

Mr. Beecher had been guilty of no offense according to his own consciousness and oath. What was there to harm Mr. Beecher? Why did he fear church investigation? What was there in all the surroundings of this transaction, its possibilities, that could trouble Mr. Beecher, if he was so purely innocent as he represents himself to be? True, according to his idea, he had unconsciously won the affection of Mrs. Tilton, but nothing had come from it. There had been nothing but the most ordinary and friendly intimacy, according to Mr. Beecher. There had been no vulgar relations between them. There had not been anything beyond those ordinary civilities of friendship and pastoral regard which Mr. Beecher was accustomed to tender to members of his church. What created this most terrible emergency in the life of Mr. Beecher, and why does he write to Mrs. Tilton, the alleged victim of his lust, that Moulton had been to him his best and ablest and most willing friend to help him in this most terrible emergency of his life? Now, gentlemen, please consider this voluntary and free expression of Mr. Beecher, and contrast it with the self-representation he gives. "His hand it was that tied up the storm that was ready to burst upon our heads." This is written to Mrs. Tilton, not to Mr. Tilton. "It is a storm," says he to that woman, "arising in this most terrible emergency of my life; it is a storm Moulton has tied up, which was ready to burst on your head and mine." That is the sense of this letter. That is its expression in substance. Why does Mr. Beecher, on the 7th of February, 1871, immediately after these interviews of December, 1870, and the apology of January 1, 1870—pray answer me, gentlemen, in all the solemnity and with all the candor of your judgments, what was it at that date which induced Henry Ward Beecher to write that confession of his peril and that gratitude to the friend who had protected him and his confederate from the storm ready to burst on them? Who was it that tied it up? Who was it that intervened? Who was it that suppressed all these tendencies to evil? It was Francis D. Moulton, and he tells you what the storm was, what the emergency was, which extracted from this great soul this expression at once of fear and gratitude.

I am not less disposed to trust him since finding that he has your welfare most deeply and tenderly at heart. You have no friend, Theodore excepted, who has it in his power to serve you so vitally, and who will do it with so much delicacy and honor. I beseech of you, if my wishes have yet any influence, let my deliberate judgment in this matter weigh with you, &c. * * * In him we have a common ground. You and I may meet in him. The past is ended. But is there no future—no wiser, higher, holier future? May not this friend stand as a priest in the new sanctuary of reconciliation to mediate, to bless you, Theodore, and my most unhappy self? Do not let my earnestness fail of its end; you believe in my judg-

ment; I have put myself wholly and gladly in Moulton's hands, and there I must meet you. This is sent with Theodore's consent, but he has not read it. *Will you return it to me by his hands?* I am very earnest in this wish, for all our sakes, as such a letter ought not be subject to even a chance of miscarriage.

Well, why not? Why did Beecher say that a letter like this, addressed to Mrs. Tilton ought to be returned to him and not be subject to a chance of miscarriage? If there was no hidden meaning, if there was no implied confession, if it expressed no improper, no unjust sentiment, why should Mr. Beecher in this single instance be desirous of suppressing his own declaration? Everything about this letter, gentlemen, speaks the condition of the man and is eloquent in declarations of the character of his offense.

THE "RAGGED EDGE LETTER."

We come down to February of 1872. I will not trouble you with the reading, just now, of this entire letter; but there are expressions in it which reveal the true condition of things:

My vacation was profitable. I came back hoping that the bitterness of death was passed. But T.'s troubles brought back the cloud with even severer suffering. But chronic evils require chronic remedies. If my destruction would place him (Theodore) all right, that shall not stand in the way. I am willing to step down and out. No one can offer more than that; that I do offer. Sacrifice me without hesitation, if you can clearly see your way to his safety and happiness thereby. I don't think that anything would be gained by it. I should be destroyed, but he would not be saved. E. (Elizabeth) and the children would have their future clouded. In one point of view I could desire the sacrifice on my part.

I have constantly to call your attention to the character of this man, and his position in connection with declarations of this character, and of similar import. Why did Mr. Beecher, in 1872, declare that he was willing to be sacrificed for the benefit of Theodore Tilton?—that he was willing to step down and out from his high position, and his pulpit, if Moulton could see that that was to produce safety to Mr. Tilton and his family? Assuming Mr. Beecher to be the man that he declares himself to be, conscious of no offense, never addressing an impure thought or proposition to the wife of his friend, yet dwelling in this bitterness of death, with the horror of great darkness brooding over him, willing to step down from his glorious attitude as the leading preacher of the day, conscious of all his great powers and his ennobling influences, feeling past achievements and their glory and benefit, and conscious that the future was full of the same career of glory and of benefaction to his fellow-men—that man offering to step down from his pulpit, abandon his great mission, offer himself as a ready and a willing sacrifice if Theodore Tilton can be helped, Elizabeth can be saved, and her children protected from a dishonoring and a withering blight! I cannot, gentlemen, elaborate a topic of this character. I cannot make it more emphatic, more appealing to all the sympathies and the sentiments of our being than the mere expression itself, connected with your recollection of the character of this defendant and the circumstances by which he was surrounded. I shall come to speak, by and by, of the idea which he presents of interference in the family relation of advice, and of an unconscious winning of the affections of Mrs. Tilton. Suppose it all to be true, what was there in it that caused this great preacher to tender himself as a sacrifice for the woman who had, unsought, bestowed her affections upon him, to satisfy the wrongs of advice to a separation which was never followed, and to repair the injuries produced by advice to Bowen, which came after the injury had been produced. And this is the only apology in the case which is presented for this solemn offer of sacrifice by Mr. Beecher. He proceeds:

Nothing can possibly be so bad as the horror of great darkness, in which I spend much of my time. I look upon death as sweeter-faced than any friend I have in the world. Life would be pleasant if I could see that rebuilt which is shattered. But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness cannot be endured much longer.

Remorse! Despair! The horror of great darkness; the bitterness of death!—in this condition this man was dwelling and suffering. And yet he says there was no adequate cause for it—"I have done nothing. It was true when I looked up to Mrs. Moulton and said to her, 'Mrs. Moulton, I am a good man.'" Is it conceivable, gentlemen? Are we to adopt any such theory in regard to the conduct of Mr. Beecher, and these declarations coming from a great minister, from a master of our language, from a teacher in all the ways of human nature, of 30 years' experience in the discipline and control of the human mind, and the culture of the human heart; this man dwelling in darkness of spirit, on the ragged edge of despair and remorse, and yet sinless? Why, did you ever consider the force of that expression?

But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on an appearance of serenity and happiness cannot be endured much longer.

Never was there a more emphatic or appealing description of human sorrow and human spirit suffering! It was an excess of feeling, a prostration of soul, an acknowledgment of bitter anguish and emotion, never uttered by a human heart in words of more appealing and significant power. And yet they mean nothing! Uttered in the progress of this transaction, expressive of his condition, descriptive of the relations of these parties to it, characteristic of what it was, we are yet to be told, when we come to an examination of it, that it is senseless and unmeaning. Mr. Webster defines remorse to be "the keen pain or anguish excited by a sense of guilt; compunction of conscience for a crime committed"—quite different in its signification from regret. We are sorry

for and regret a wrong committed against another that has not the qualities and the consequences of crime in its moral character and its intensity. But when we speak of *remorse*, we speak of it as sorrow for crime. Philosophers, poets, orators, preachers, all use it in that sense. Such is the legitimate meaning. And it is used by a skillful scholar, by an acknowledged master in the use of terms.

I think I have had at least, gentlemen, a half a dozen letters from prominent persons from all sections of the land desiring me to draw attention to a similarity, a parallel supposed to exist between the case of David, in his treatment of Uriah and his wife, and the expression of his penitence, the manner in which his confession was made, and the poetic and expressive song of David over this his offense, in his Psalms. And just here, gentlemen, allow me to say that I am endeavoring to shorten and abridge my argument. It has been most enormously expanded, and very unexpectedly to me, and I feel painfully that I am trespassing very considerably upon the time of the Court, and against the ideas which I entertained as to the character of the argument which should be submitted to you on the part of the plaintiff. I hoped and believed that in the course of a couple, or, possibly, three days, I might have presented to you that argument. But I have this apology, that the able and learned addresses of my adversaries presented so many topics for consideration, which it was concluded I could not, without disrespect for them, and, possibly, injury to my cause, omit to consider, that I have been led into a line and extent of discussion that is afflicting to me, and I am very certain it is oppressive to you. But I am urged by my associates, and my client, not by an abridgment of my scheme of argument, to lessen what may and does appear to them its force. And, although I am determined not to follow out to the extent of their wishes the course of thought which had occurred to me originally, yet you must pardon me for troubling you with a little of detail upon topics which we suppose to be important. Because, gentlemen, so much time was spent by me in the attempt to answer the addresses of my learned friends, that I have reserved but little time to myself for the presentation of suggestions which appeared to me to be pertinent in the first instance.

EXAMPLES DRAWN FROM THE BIBLE.

Therefore I read David, or Samuel [laughter], and it is done to gratify Christian ministers and Christian men. They think—the Christian mind of this country thinks—that someting should be said in this case, and that what should be said should be exemplified by some proof derived from the writings and teachings of Mr. Beecher. The Christian world, I believe, think that something should be said to disabuse all minds of the idea that this man, however grand and great in his intellectual attributes, is not a useful or a distinguished public teacher of morals and religion, and I am determined to say it. However unwillingly, and however disagreeable it may be to my own personal feeling, yet it is due to the character of this case that this man, who appears upon the witness-stand in single and open defiance of the oaths of three respectable witnesses, and in opposition to his own declarations and confessions, and to all the circumstances which surround this transaction—that this man should be taught that no pride of place, that no conspicuousness of character, that no grand or great intellectual or physical qualities can enable him to overturn the rules of law and evidence, and to consign to infamy several of our most respectable citizens. Now, Samuel says:

And it came to pass, after the year was expired, at the time when kings go forth to battle, that David sent Joab, and his servants with him, and all Israel; and they destroyed the children of Ammon, and besieged Rabbath. But David tarried still at Jerusalem.

And it came to pass, in an eveningtide, that David arose from off his bed, and walked upon the roof of the King's house; and from the roof he saw a woman washing herself; and the woman was very beautiful to look upon.

And David sent and inquired after the woman. And one said, Is not this Bath-sheba, the daughter of Eliam, the wife of Uriah the Hittite?

And David sent messengers, and took her; and she came in unto him, and he lay with her; for she was purified from her uncleanness; and she returned unto her house.

Then Joab was out against the Ammonites, and Uriah, the husband of Bath-sheba was in the army.

And it came to pass in the morning, that David wrote a letter to Joab, and sent it by the hand of Uriah.

And he wrote in the letter, saying, let ye Uriah in the forefront of the hottest battle, and retire ye from him, that he may be smitten, and die.

And it came to pass, when Joab observed the city, that he assigned Uriah unto a place where he knew that valiant men were.

And the men of the city went out, and fought with Joab: and there fell some of the people of the servants of David; and Uriah the Hittite died also.

Then Joab sent and told David all the things concerning the war;

And charged the messenger, saying, When thou hast made an end of telling the matters of the war unto the king,

And if so be that the King's wrath arise, and he say unto thee, Wherefore approached ye so nigh unto the city when ye did fight? knew ye not that they would shoot from the wall?

Who smote Abimelech the son of Jerubbesheth? did not a woman cast a piece of a millstone upon him from the wall, that he died in Thebeg? why went ye nigh the wall? then say thou, Thy servant Uriah the Hittite is dead also.

So the messenger went, and came and shewed David all that Joab had sent him for.

And the messenger said unto David, Surely the men prevailed against us, and came out unto us into the field, and we were upon them even unto the entering of the gate.

And the shooters shot from off the wall upon thy serv-

ants; and some of the King's servants be dead, and thy servant Uriah the Hittite is dead also.

Then David said unto the messenger, Thus shalt thou say unto Joab, Let not this thing displease thee, for the sword devoureth one as well as another: make thy battle more strong against the city, and overthrow it; and encourage thou him.

And when the wife of Uriah heard that Uriah her husband was dead, she mourned for her husband.

And when the mourning was past, David sent and fetched her to his house, and she became his wife, and bare him a son. But the thing that David had done displeased the Lord.

Now, in the XXXIId Psalm, David speaks of the effect of remorse, not any more poetically or expressively, I think, than Mr. Beecher does:

Blessed is the man unto whom the Lord imputeth not iniquity, and in whose spirit there is no guile.

When I kept silence, my bones waxed old through my roaring all the day long.

For day and night thy hand was heavy upon me; my moisture is turned into the drought of Summer.

And in the LIst Psalm, David expresses his remorse and contrition in a prayer addressed to God. In the heading to the psalm, it is said that it is addressed "to the chief Musician, A Psalm of David, when Nathan the prophet came unto him, after he had gone in to Bathsheba." Nathan the prophet reproached him with his sin, and imprecated Divine vengeance upon it:

Have mercy upon me, O God, according to Thy loving kindness: according unto the multitude of Thy tender mercies blot out my transgressions.

Wash me thoroughly from mine iniquity, and cleanse me from my sin.

For I acknowledge my transgression, and my sin *is* ever before me.

Against Thee, Thee only, have I sinned, and done this evil in Thy sight, that Thou mightest be justified when Thou speakest, and be clear when Thou judgest.

Behold, I was shapen in iniquity, and in sin did my mother conceive me.

Behold, Thou desirest truth in the inward parts, and in the hidden part Thou shalt make me to know wisdom.

Purge me with hyssop, and I shall be clean; wash me, and I shall be whiter than snow.

Make me to hear joy and gladness, that the bones which Thou hast broken may rejoice.

Hide Thy face from my sins, and blot out all mine iniquities.

Create in me a clean heart, O God, and renew a right spirit within me.

Cast me not away from Thy presence, and take not Thy holy spirit from me.

Restore unto me the joy of Thy salvation, and uphold me with Thy free spirit.

Then will I teach transgressors Thy ways, and sinners shall be converted unto Thee.

Mr. Beecher was familiar with that. He knew the history of David and Uriah and Bathsheba; he had often read with admiration this Psalm of David, so beautifully expressive of a godly repentance—of that contrition of soul which recognizes its own impurity and stretches out its hands to God for forgiveness, mercy, and love. Again and again he had preached from that psalm, and enforced the duties taught by it, and pressed upon humanity the example of David. It was in the same spirit, I believe, gentlemen, it was with the same sense of contrite and repentant guilt that Mr. Beecher wrote those words of pitiful agony and remorse that I have read to you. He did not use them unmeaningly. He was speaking in that condition of feeling which disregards expression, yet uttering, in the intensest language, the emotions, burning and boiling and scorching, in the awakened nature of a guilty man; and he cries out in the bitterness of death, looking through the "horror of a great darkness" to the pacified and forgiving countenance of God, and confessing to Him not only his sufferings, but his despair and remorse—which ever accompany the outspoken heart of the convicted and contrite sinner. Oh! have you not seen a heart like that, writhing in the first conviction of sin, struggle with its consciousness, its despair, and remorse; and have you not seen it when the forgiveness of God has beamed upon it, with smiles lighting up the inexpressible joy of a redeemed and forgiven soul? Yes, Sir, you have; and so have we all. This experience Mr. Beecher passed through, and it explains the despair and remorse he felt when the greatness of his offense was first made apparent to him, and when its pitiful and long train of consequences was opened to his sensibility. But by-and-by you will see him, with the load lifted from his heart, rising up in the joy and gladness of a forgiven man, and appearing here, and appearing there, and appearing yonder, Sunday after Sunday, the blithest and gladdest man in all creation. But there is this difference between David and Mr. Beecher. It was not enough that David was penitent toward his Redeemer. It was not enough that he confessed his sin to his Father and Judge; he confessed it before men; and I think that is one of the conditions of an honest and an effective confession and repentance; for the guilty and convicted sinner, who dares not confess his sin before men, has not risen to that exaltation of being which entitles him to the forgiveness of his Maker. There is the fault. That is what this pure Christian spirit, Mrs. Moulton, pressed upon him—"I believe you have repented, Mr. Beecher; I believe you have reformed; but your duty to God and to humanity is to confess to your church. Hide not your sin! Live not in this duplicity and deceit! Confess, and you shall be forgiven; and even in the eye of men you shall be redeemed from the filthiness of your offense."

VIVID PICTURES OF REMORSE.

A brief quotation from Byron's poem of "The Giaour" will convey to you, gentlemen, I think, a more vivid idea of that feeling of remorse which Mr. Beecher expresses, than almost anything else in the English language:

The mind that broods o'er guilty woes
Is like the scorpion girt by fire,
In circle narrowing as it glows,
The flames around their captive close
Till mly searched by thousand throes
And maddening in her ire,
One sad and sole relief she knows,
The sting she nourished for her foes,
Whose venom never yet was vain,
Gives but one pang and cures all pain
And darts into her desperate brain.
So do the dark in soul expire
Or live like scorpion girt by fire;
So writhes the mind remorse hath riven,
Unfit for earth, undoomed for heaven;
Darkness above, despair beneath;
Around it, flame; within it, death!

This was the condition of Henry Ward Beecher. It is not overpainted—a little more poetic in its rhythm and expression, and yet no more intense or descriptive than the language of Henry Ward Beecher himself.

Very many of you probably, and all of my learned friends, have read Hawthorne's "Scarlet Letter," which describes a seduction by a minister of a member of his congregation and the judgment passed upon her in the early Puritanic days by the elders and deacons of the church; and the beautiful language of Mr. Hawthorne, describing the feeling of that conscientious and godly minister—in all outward appearance—yes, conscientious and godly, *although* he had sinned, for he had repented—seems to me exceedingly appropriate to the condition of Mr. Beecher:

While thus suffering under bodily disease and gnawed and tortured by some black trouble of the soul, and given over to the machinations of his deadliest enemy, the Rev. Mr. Dimmesdale had achieved a brilliant popularity in his sacred office. He won it, indeed, in great part by his sorrows. His intellectual gifts, his moral perceptions, his power of experiencing and communicating emotion were kept in a state of preternatural activity by the prick and anguish of his daily life. His fame, though still on its upward slope, already overshadowed the soberer reputations of his fellow clergymen, eminent as several of them were. There were scholars among them who had spent more years in acquiring abstruse lore connected with the Divine profession than Mr. Dimmesdale had lived, and who might, therefore, be more profoundly versed in such solid and valuable attainments than their youthful brother. There were men of a sturdier texture of mind than his, and endowed with a far greater share of shrewd, hard, iron, or granite understanding; which, duly mingled with a fair proportion of doctrinal ingredient, constituted a highly respectable, efficacious, unamiable variety of the clerical species. There were others again, true saintly fathers, whose faculties had been elaborated by weary toil among their books and by patient thought, and etherialized, moreover, by spiritual communications with the better world into which their purity of life had almost introduced these holy personages with their garments of mortality still clinging to them. All that they lacked was the gift that descended upon the chosen disciples at Pentecost in tongues of flame; symbols, it would seem, not the power of speech in foreign and unknown languages, but that of addressing the whole human brotherhood in the heart's native language.

And he goes on depicting, I think, very clearly and accurately, the intellectual character and the eminent professional position of Mr. Beecher. But there was an interview between this man, so gifted and so sad, and Hestor Prynne, his victim:

After a while the minister fixed his eyes on Hester Prynne's.

"Hester," said he, "hast thou found peace?"

She smiled drearily, looking down upon her bosom, which contained the scarlet letter "A," signifying "Adulteress," which, by the sentence of the church, she was always to keep exposed prominently upon her bosom.

She smiled drearily, looking down upon her bosom. "Hast thou?" she asked.

"None—nothing but despair!" he answered. "What else could I look for, being what I am, and leading such a life as mine? Were I an atheist, a man devoid of conscience, a wretch with coarse and brutal instincts, I might have found peace long ere now. Nay, I never should have lost it! But as matters stand with my soul, whatever of good capacity there originally was in me, all of God's gifts that were the choicest, have become the ministers of spiritual torment. Hester, I am most miserable."

"The people reverence thee," said Hester, "and surely thou workest good among them. Doth this bring thee no comfort?"

"More misery, Hester! only the more misery," answered the clergyman, with a bitter smile. "As concerns the good which I may appear to do, I have no faith in it. It must needs be a delusion. What can a ruined soul like mine effect toward the redemption of other souls?—a polluted soul toward their purification? And as for the people's reverence, would that it were turned to scorn and hatred! Canst thou deem it, Hester, a consolation that I must stand up in my pulpit and meet so many eyes turned upward to my face as if the light of heaven were beaming from it?—must see my flock, hungry, hungry for the truth, and listening to my words as if a tongue of Pentecost were speaking!—and then look inward and discern the black reality of what they idolize? I have laughed in bitterness and agony of heart at the contrast between what I seem and what I am! And Satan laughs at it!"

"You wrong yourself in this," said Hester, gently. "You have deeply and sorely repented. Your sin is left behind you in the days long passed. Your present life is not less holy, in very truth, than it seems in people's eyes. Is there no reality in the penitence thus sealed and witnessed by good works? And wherefore should it not bring you peace?"

"No, Hester, no," replied the clergyman, "there is no substance in it. It is cold and dead and can do nothing for me! Of penance I have had enough! of penitence there has been none! else I should long ago have thrown off these garments of mock holiness and have shown myself to mankind as they will see me at the Judgment Seat. Happy are you, Hester, that wear the scarlet letter *openly* on your bosom. Mine burns in secret! Thou little knowest what a relief it is, after the torment of a seven years' cheat, to look into an eye that recognizes me for what I am!"

Aye, and Henry Ward Beecher saw it when he looked into the eye of Emma Moulton.

"Had I one friend—or were it my worst enemy—to

whom, when sickened with the praises of all other men, I could daily betake myself and be known as the vilest of all sinners, methinks my soul might keep its life thereby. Even thus much of truth would save me! But now it is all falsehood! all emptiness! all death!"

And that is just the difference between the repentance of Henry Ward Beecher and that of David; penitent and repentant toward God, but timid and defiant and lying toward men. That is not the penitence that saves. It may cheat and delude the heart upon which it operates; it may soothe it into temporary peace; but it is not that sort of tranquillity which springs from a deep and soul-felt contrition, from an outspoken and irrepressible sense of anguish, born of guilt, and created by a truthful repentance toward God. This, then, is the remorse Henry Ward Beecher felt, and it does seem as if, with the prophetic eye of genius, Hawthorne had described the actual experience of Henry Ward Beecher. Ah, yes, friends may say to him, "The people reverence thee, hast thou not repented? Art not thou reclaiming wandering souls?" And his answer, in the language of his letter, is: "Ah, I have repented; I am great; I stand before the world, magnificent in my great qualities, and my great achievements, but after all it is all emptiness and bitterness and death; the bitterness of death is on me; the horror of great darkness envelops my soul; my whole being is tortured upon the ragged edge of remorse and despair." And we, when this great man, so gifted and so glorious in all the outer attributes of manhood, is forced to break out into this cry of a penitent and convicted soul—we are to attribute to it no significance! We are to believe it founded on no self-consciousness, but the mere emotional and hysterical outbreak of an uneven and badly balanced nature! And a jury and a court and the world are to hold the great man and great minister who utters such words of contrition and remorse, and addresses such prayers for mercy to his God and to the man he has offended, as still innocent, guiltless!

The hour of 4 o'clock having arrived, the court adjourned until Thursday at 11 o'clock.

106TH DAY'S PROCEEDINGS.

CONTINUATION OF MR. BEACH'S ARGUMENT.

MR. BEACH'S SPEECH ALREADY LONGER THAN THAT OF MR. EVARTS—MR. BEECHER'S DUTY TO HAVE CONFESSED HIS SIN AND ASKED FORGIVENESS OF PLYMOUTH CHURCH AND THE CHRISTIAN WORLD —BURNS AND SCOTT CITED IN THE CASE.

THURSDAY, June 17, 1875.

It was hardly anticipated, though it had been stated, that Mr. Beach would finish his argument to-day. At the close of the proceedings for the day Judge Neilson said that after a consultation had by him with two of the jurymen, he thought it "desirable not to sit to-morrow." He was not feeling well, and the jurymen needed the relaxation. Mr. Evarts thought that the jurymen's convenience in the matter should be consulted, and Mr. Beach declared, in reply to an observation of the Court, that he did not wonder that one of the jurymen was sick. Judge Neilson's remark that the juryman did not ascribe the cause of his sickness to Mr. Beach provoked a general smile. The Court was finally adjourned until Monday.

The letter of Mr. Beecher to Mr. Moulton in regard to the opposition of Dr. Storrs, which stated the latter's desire to arouse enmity between Mr. Tilton and Mr. Beecher, was first taken up and its expressions were analyzed. The speaker alleged that Mr. Beecher, by this letter, was attempting to exercise an influence to restrain Mr. Tilton from any effort at self-vindication, as such effort would involve Mr. Beecher's exposure. Mr. Beecher's motives and apprehensions were declared to be those of a guilty man seeking to avoid detection.

Mr. Beecher's alleged inconsistency in commending Mr. Tilton in his own paper, while believing him infamous in character, was next commented on. The speaker denounced Mr. Beecher as one who had for three years practiced imposition and fraud. Mr. Beecher's silence during the progress of the scandal was also touched upon.

The speaker then brought up the point raised by Mr. Porter to the effect that, as regards alleged confession, Mr. Beecher did not therein confess to any specific offense. The evidence of Mr. Moulton, Mrs. Moulton and Mr. Tilton was declared to show that the charge was one of criminal intimacy, and that the confession was of that offense. The charge, he claimed, was so perfectly understood that it was not necessary to name it specifically. Mr. Beach took occasion to speak of the defendant as one "whose priestly robes were smeared with blasphemous lust."

The jury were urged not to be deluded by the idea that this man was too great or too noble to sin. The mistaken advice given by Mr. Beecher to Mrs. Tilton had been declared to be the cause of Mr. Beecher's anguish. But Mr. Beecher had not advised separation at the time. Mrs. Tilton was then away from her husband's home, and living with her mother. She desired a separation from her husband. Mr. Beecher, as he says, advised her to that course, and so did his wife, "the leading matron in Plymouth Church." Why did she not follow the advice? asked the speaker. Again, if Mr. Beecher's

story be true, what occasion was there for him to regret his advice, if it were given?

Mr. Beecher's declarations of the nature of his relations with Mrs. Tilton were said by the speaker to be inconsistent with his alleged efforts to suppress investigation into the subject. If Mr. Beecher had accepted a church investigation at the time of the making of the West charges—had he then proved what he asserted on the witness-stand in court, the speaker thought that his action would have excited a "burst of sympathy and admiration through the land." The investigation, if Mr. Beecher's story were true, could not have hurt Mr. or Mrs. Tilton. No harm could have come from it. Yet why did Mr. Beecher suppress it unless he was a guilty man?

Burns's "Epistle to a Young Man," commented on by Mr. Evarts, received a new interpretation at Mr. Beach's hands, in accordance with a suggestion received by him from a lady correspondent at Binghamton. The illicit love which "hardens a' within and petrifies the feeling" was declared to have manifested itself in this way on Mr. Beecher's character and conduct.

Mr. Beecher's letter to Moulton in which he speaks of writing for the public "a statement that will bear the light of the Judgment Day," was declared not to be, as had been asserted, a letter of defiance and evincing a determination on the part of the defendant to meet the issue boldly. Had Mr. Beecher only followed Mrs. Moulton's advice and confessed his sin, not only his own church, but the whole Christian world would have forgiven him. In this way Mr. Beecher could have given the world the example of a great mind and a great heart falling beneath temptation, but yet rising up again in its exalted faith. In this way Mr. Beecher would have honored his own nature and exalted his own name. This was the meaning of the letter from Mr. Moulton in which he tells Mr. Beecher "you can stand if all the facts were published to-morrow." In taking up the question of suicide the speaker urged, though it was difficult to believe that Mr. Beecher contemplated self-destruction, yet that purpose was avowed in several of his letters, and in his talk with Mrs. Moulton, and must be considered as established.

Mr. Beach then told the story, in his own words, of Effie Deans's sad fate, as depicted in Scott's "Heart of Mid-Lothian." Jeanie Deans asks Butler about her sister's guilt in having destroyed her babe, and he impatiently replies, "She is guiltless of all save trusting a villain." The narrative of Paulina, as told by Josephus, was also read, Mr. Beach asking the jury if they could not discern the analogy between these stories and the case they were considering. Considering the circumstances under which Mrs. Tilton was misled, "Well might Henry Ward Beecher say, 'She is guiltless, bearing the transgressions of another.'"

THE PROCEEDINGS—VERBATIM.

MR. BEECHER'S CRITICISM OF DR. STORRS.

The Court met at 11 o'clock, pursuant to adjournment.

Mr. Beach—Please oblige me, gentlemen, by recurring for a brief moment to the letter of Mr. Beecher criticising the course of Dr. Storrs in connection with the condition of things out of which it originated, and the object it obviously sought to accomplish. You will remember that at that time a council of ministers were sitting inquiring into the discipline and action of Plymouth Church, possibly among other things with reference to Mr. Tilton. That inquiry necessarily involved the very matters which are under our consideration. The West charges were before or had been before the church judicatory, and the inquiry before the Council involved the question of the regularity of the action of Plymouth Church in regard to Mr. Tilton. Under these circumstances Mr. Beecher addresses this letter to Mr. Moulton, of course intended to influence Mr. Tilton, after the Rev. Dr. Storrs had made an address upon the subject matter pending before the Council, to that body, in which, I judge from the letter of Mr. Beecher, he commented with very considerable severity upon the attitude and action of Mr. Tilton toward Mr. Beecher and Plymouth Church. Mr. Beecher is indignant, as he says, at the expression of Mr. Storrs asserting that, pretending sympathy and friendship for Mr. Tilton, he had turned against him in the most venomous manner and with insincerity, charging this clergyman with a public assault in a judicial, quasi judicial body, upon a prominent citizen, venomous in its character and insincere in its purpose. He charges that all the professions of faith and affection of Mr. Storrs for Mr. Beecher are hollow and faithless. Then, "His object is plain," says Mr. Beecher; "he is determined to force a conflict," between you and me. "That is his game. By stinging Theodore he believes that he will be driven into a course which he hopes will ruin me. If ever a man betrayed another, he has. I am in hopes that Theodore, who has borne so much, will be unwilling to be a flail in Storrs's hand to strike at a friend," and ending with the Italicized expression, referring to the speech, "*It ought to damn Storrs.*"

This letter is written under these circumstances by Mr. Beecher concerning a clerical friend of 25 years, between whom and Mr. Beecher there had existed the most inti-

mate religious association and apparent sympathy, and the most friendly expressions and acts of general regard. It was written obviously in apprehension that the subject about which Mr. Storrs was speaking and acting, involving the relation of Mr. Tilton to Plymouth Church, would bring under consideration all the complications which surrounded Mr. Beecher in his difficulties with Mr. Tilton and his family. It is perfectly evident that Mr. Beecher, through this letter, was attempting to exercise an influence which would restrain Mr. Tilton from any attempt at self-vindication, from any effort by an exposure of any truth, by the exhibition of the letters and documents which are presented to this jury, from vindicating himself in that mode before that Council. Mr. Beecher saw that it would inevitably involve his exposure, as full, as complete, as derogatory as is made through the evidence in this case. And he does not hesitate, to use his own language, in this venomous and implacable manner, to condemn this friend and fellow-pastor, charging him with insincerity and charging his speech made in the performance of his duty in a Church Council, as an ebullition that ought to damn him. What must have been the motive driving Mr. Beecher to this malediction upon an honored pastor and gentleman? He was not only a friend of 25 years, but he was eminent in his profession, a learned scholar, an eloquent orator, a pure and pious gentleman, renowned for his sound and solid wisdom, maintaining that character in this community, as the man to whom other men in their sorrow and afflictions go for advice and comfort. He was the man who a little while ago, in the City of New-York, delivered an oration at an anniversary of the New-York Historical Society so grand in its historic knowledge, so perfect, accomplished, and complete that William Cullen Bryant moved a vote of thanks, and my learned friend Mr. Evarts, with his accustomed eloquence and urbanity, seconded it. What must we think of a Christian pastor under these circumstances, all uniting to suppress even just indignation, moved and influenced by the intercourse of 25 years of respectful friendship and attachment, speaking of such a man as Dr. Storrs, indulging, to such a man as they say Moulton is, and such a man as they say Tilton is, in these vile expressions of condemnation? What influence will conduct like this have upon the standing of the clerical profession? How much will it promote Christianity, Christian example, worldly respect?—how much will it elevate the members of the clerical profession? And what must have been the necessity, I repeat, under which a course of this character was adopted by Mr. Beecher? Did he fear that it would transpire in that examination that he had advised Mr. Bowen to dismiss from his service a man whom he believed to be corrupt, and, so far as the world was concerned, notoriously profligate and debauched? Did he fear that, under the advice of his wife and Mr. Bell, when he had counseled Mrs. Tilton to a separation, did he fear that it would be revealed in the threatened investigation before that Council, that he had unconsciously attracted the love of Mrs. Tilton? As intelligent men, observers of life and the world, would such a man as Mr. Beecher utter such language concerning such a man as Dr. Storrs, from motives of that character, and under a goading apprehension of that limited extent? Is it not apparent, if this stood alone, disconnected with his other utterances, unassociated with that deep and passionate feeling of despair and remorse, could sensible men hesitate as to the application and meaning to be attached to a letter of that character? Another circumstance in connection with this inquiry as to the motives and apprehensions which influenced these declarations and outpourings of Mr. Beecher, on the night of Dec. 30, 1870, if Mr. Beecher is credible, and, as is apparent from all the evidence, Mr. Beecher learned that Mr. Tilton had forced his wife to make a false charge against Mr. Beecher—a charge dishonoring to him as a man and a friend of Theodore Tilton, disgraceful to his personal character, a violation of all his obligations to God, society, the church and this family. If he was sincere he believed that Theodore Tilton had done this with a base purpose, with a malignant design against himself. And yet, from that interview, impressed with this conviction, he comes to Theodore Tilton and for three years bears the continual and constant testimony of his admiration and respect. Not only does he accept him with professions of friendship and the most earnest commendations for his long-suffering and patience and generosity, teaching to the wife whom he had forced to a lie that her husband was the most generous of mortals, wondering if Elizabeth knew how noble and magnanimous Theodore Tilton had been; and this man, a high priest of the Lord, bound to rebuke sin, bound to disrobe hypocrisy, bound to denounce the false calumniator—in his own manliness and dignity bound to resent the false and atrocious charges which this man, through the agency of a compelled wife, had manufactured against him. And we are to believe, with our knowledge of motive, of nature, with our experience of the world, we are to believe that Mr. Beecher under those circumstances not only was quiet and submissive under dishonoring complaint, but that he took the liar and the libeler to his heart and confidence! Aye, and not only that, but over his own name published his reliance in his nobility and honesty of character; in his own paper permitted a eulogy to be written by his friend, Samuel Wilkeson, commending this man, so corrupt and infamous, to the confidence of the Christian world. How long will Christianity stand, how long will the Church be honored and respected, how long will her ministers be reverenced if this man, Henry Ward Beecher, in the greatest church of the land, can stand up bearing this false and hypocritical testimony to a liar and a slanderer? [Applause.]

Aye, and when Tilton was dismissed from *The Independent*, as Mr. Beecher says under his advice, because his touch was pollution to a Christian paper, and when his reputation was so infamous that Mr. Beecher considered it not only impolitic but disgraceful that he should be at the head of such a publication—nay, when Mr. Beecher believed that Theodore Tilton had been led astray by the fascinations and the teachings of Victoria C. Woodhull, and was a free-lover in faith, in teaching, and in practice, Henry Ward Beecher comes forward with $5,000 to establish an organ through which corruption may be propagated in the land, and to sustain the man who, he had believed, was of the character he describes. And this is the man, the grand oracle of Christianity, the pure and undefiled priest of God, the teacher on whose lips human souls must hang and trust for their ultimate redemption, confessedly standing a hypocrite before the world, a practical teacher of false morals, sustaining and propagating imposition and fraud upon the Christianity of the day! And can this be consistent with Christian character? Does it become us to exalt and praise the man who confessedly upon this record occupied that position for three years, and spoke, as he says, the truth only when the pressure of the Christian souls in his church drove him to an extremity where he must fight or fall? You may be deluded, gentlemen, by those claims of dignity and religion for this defendant. You, taught in the precepts and inspired by the feeling of your Master, may think this man is too high and reverend, too needful to the cause of your God to be judged, truly judged, fearlessly judged, and to weigh as against him under the glamour of this impression and faith lightly and carelessly these proofs of sin and guilt. But not thus, not thus will be the judgment of Him who looks into the heart; nay, not thus will be the judgment of those who, with a clear and unbiassed intelligence, and a fearless intrepidity of thought and examination, look at this man as he is, and tear from him the outer covering, and gaze in upon the sepulcher beneath.

But it is said, gentlemen, that these confessions or expressions of Mr. Beecher are but the extravagant and whimsical outbreaks of an impulsive and ardent nature and temperament, that this man is morbid in his moods, that he has a susceptible and tender conscience, and the slightest sin leads him to the most extravagant contrition and remorse. Well, you are to think of him, gentlemen, and weigh him, as he has for 25 years appeared before this community, and as we all agree in representing him, his commanding intellectual and physical qualities. You are to think of him as a great and experienced teacher, disciplining the nature and the lives of his parishioners, and teaching all the grand truths of his mission. He is not only that, but a learned scholar; not only that, he is a statesman and politician. In many of the grand epochs of our national history he has stood forward, a leader and a champion of the opinion of the nation. Not only that, he is a man of the world, mixed in all scenes and with all classes of society. He is a humorist, a wit, a very Yorick of the dinner-table. There is no phase of nature, there is no variety of character, there is no manifestation of passion with which Henry Ward Beecher is not entirely familiar. And yet we are told that this man, fulfilling so admirably Shakespeare's description of a man, "How noble in reason, how infinite in faculty, in form and moving, how express and admirable, in action like an angel, in apprehension like a god."

THE LACK OF DENIALS BY MR. BEECHER.

That this man, so brave, so accomplished and experienced, could not utter the simple truth when he was accused of a shameful and disgraceful sin; nay, that he could not properly estimate his relations to others; that he could not accurately judge of his moral responsibilities; that when men charged him with being a solicitor of his parishioner to adultery and sin, he was so overcome with the idea that he had given bad advice to Bowen and to Mrs. Tilton, and had most unconsciously and innocently won her love, that he could not deny that he was guilty of the baseness charged against him.

From the night of December 30 until the hour when Mr. Beecher appeared before his Investigating Committee, or organized it, there is no proof of a single denial from his lips of the accusation, except in those public denials which, by arrangement between the parties, and in connection with Mrs. Tilton, were made for popular effect, and for the purpose of restraining investigation and agitation. Why should not he have denied it? Grant that he had been faulty in all these particulars of which he speaks; and grant that they had produced dissension and disturbance in the family of Mr. Tilton; did that render it obligatory upon Henry Ward Beecher to rest calmly under a charge such as was made against him? Why, gentlemen, we can judge only by our observation of men and things, and by the instincts of our own nature. Place yourselves in the condition of Mr. Beecher. Test him by your own consciousness, and answer whether, under such conditions, you would have rested peaceful an instant without an indignant denial, and a prompt and ready exposure of the parties making the false accusation. Now I know that Mr. Beecher asserts that there was at some time, earlier than that which I indicate, a resistance of this accusation. He is contradicted by overwhelming evidence, not only oral but by necessary inferences and conclusions drawn from his own written delarations; and you are to credit that this man was of a simplicity and gentleness so exquisite that he could not defend his honor as a man and his character and integrity as a Christian. Mr. Beecher cannot so stultify himself, gentlemen. He cannot so abnegate his great qualities. He must be judged, in the language of my friend, as other men are

judged, upon the same principles of law and justice, and by the same standard of human nature, exalted, as in his case it is, by his great acquirements and large experience.

MR. BEECHER'S OFFENSE NOT UNNAMED.

But my friend Mr. Porter says: "This is an indefinite, unnamed offense. Mr. Beecher in his writings does not confess to the specified sin of adultery. True, his expressions are extravagant, his sorrow and remorse are infinite; but after all he has not named his sin." Three witnesses fix a name upon him, Tilton, and Moulton, and Mrs. Moulton; the writings, the other evidence, to which I shall allude by and by, they all declare that Henry Ward Beecher was charged with criminal intimacy, and by act and conduct admitted the charge; and was it necessary to be repeated when he wrote his "Letter of Apology" to Theodore Tilton, after the communications between them—was it necessary for Henry Ward Beecher to say, "I am an adulterer; I have seduced your wife?" When he was breathing out those pathetic expressions of anguish and suffering and contrition, was it necessary for him to say, "All this is because of my adultery?" Was it not perfectly understood; nay, does not every line of his letters utter a name? Doesn't every word and act in connection with this tragical affair speak a name? Is not his whole life for four years blazoned with names—seducer, libertine, false priest, adulterer? These are names by all these instruments of utterance graven on his forehead. All the waters of Siloam's pool cannot wash them away. None but the Angel of Mercy can wipe them out, with the hot tears of an honest repentance. He is a sacrilegious adulterer; he has sinned at the very altar. His priestly robes are besmeared with blasphemous lust, and he cannot wipe the stain away with brilliant rhetoric and glittering sophistries, nor can all the shouts of godly sycophants still the accusing voice of his God or interrupt the current of pure and undefiled justice.

Henry Ward Beecher must meet his deserved doom, or else all men, the spirit of justice, nay, the bending spirit of Heaven's justice, looking with anxiety to-day to see how well a juror's oath will be redeemed, all will cry out against the infamy of his acquittal. Harsh words to speak, gentlemen; but are they not borne out by this proof, and is this a time and an occasion when the tongue shall be silent and the truth too hard and unpleasant to be told? Are these things to be whitewashed by the gilt of eloquence and by the acting of an accomplished culprit upon the witness stand? Are we to be deluded by this idea that this man is too noble and great and pure to sin, and be afraid to handle the elements of his dishonor and to apply its proofs, as the law and justice demand?

But is it true that all this repentant sorrow of Henry Ward Beecher was on account of mistaken and injudicious advice to Mrs. Tilton to separate? You remember how Henry Ward Beecher declined personally to act in this matter with Mrs. Tilton, how he referred it to the more becoming, I admit, and proper management of his wife. What was the motive that induced him to do it is another question. And when his wife, and when Mr. Bell, both shrewd and good advisers, came to the conclusion that it was unfit for Mrs. Tilton longer to endure the shameful abuse and vulgarity and depravity of her husband, Henry Ward Beecher did not assume the responsibility of giving the advice. He writes a little note to his wife: "I rather think—I rather think it is advisable that there should be separation, with provision for the support of wife and children." That severe and upright matron had no hesitation about it. Mr. Bell had no misgiving in regard to it. "It is impossible," says that gentleman, "that Mrs. Tilton should continue in this connection; there must be a separation." But what was the actual advice given by Mr. Beecher? Of course we cannot penetrate it fully. We do not know what communication was had between Mr. Beecher and Mrs. Tilton upon this subject at this particular time. [To Mr. Morris.] Can you refer me to the evidence—723, second volume. But we know that there were means of communication between them, and that that was had whenever it was thought necessary or desirable that it should occur. We know that the judgment of Mr. Beecher was that there should be no separation. He admits that, through Mrs. Moulton, his advice to Mrs. Tilton was patience, sufferance, active persuasive love and affection. That was necessary for his theory now. [Referring to the testimony]—No, that is n't it. You remember, gentlemen—my references are confused and wrong—you remember the testimony of Mrs. Moulton, which is substantially acquiesced in by Mr. Beecher, that he sent word to Mrs. Tilton to be forbearing, and cultivate a kindlier condition of things in their household. That was in the year 1873, I think; yes. That was the judgment of Mr. Beecher; that was his conviction. He saw no necessity for separation. Did he advise it at this time, and if he did advise it, gentlemen, how is the enigma to be solved that although the wife was eager, as they say, ill-treated and desperate, fleeing to her mother's roof, weeping and wailing in agony daily under the brutality of her husband, and Mr. Beecher, her honored and adored pastor, recommending separation, how happens it it did not come? When this recommendation is said to have gone from Beecher, Mrs. Tilton was then in her mother's house, won back to the affection of her husband under the circumstances detailed by Bessie Turner. What were the entreaties and pleadings, what were the inferences that passed between those two souls, in that interview in Mrs. Morse's parlor, you can imagine; I cannot describe. Suffice it to say that that woman, whatever was her motive in leaving for a night or a day her house and home, to commune with her mother, that woman was readily won by the affection of her husband to a return to her

loyalty, and from that time until it became ne cessary for the vindication of Henry Ward Beecher before his Examining Committee—from that time to that hour she lived in constant communion with her husband; no evidence of a disturbed household, of a dissentient family; content and satisfied, so far as this evidence discloses, until the machinations of Henry Ward Beecher and his emissaries stole into that home and separated and disgraced its members. Why was it, gentlemen, if the wife desired separation, if Henry Ward Beecher advised it, if that advice was confirmed by the judicious counsel of the leading matron of the Plymouth Congregation, why did not separation follow? Through 1871, '72, '73, till July, '74, this wife remained true to her allegiance. And yet Henry Ward Beecher bemoans so agonizingly his advice toward a separation. He saw such horrible dissensions, and disasters, and suffering in the household of Theodore Tilton that his gentle heart was broken, and he was suffering upon this ragged edge of remorse the torments of the damned, in the midst of utter darkness. But again, gentlemen, suppose there had been a separation, was Henry Ward Beecher at all to blame? Was there any occasion for him to regret the advice? Theodore Tilton by him is painted to-day as he was accepted by him in December, 1870, or November, when this advice was given. There has been no change in his character. He has seen him just as he was. He was told by Bessie Turner—aye, and through his wife—he must have been told by his wife, Mrs. Beecher, what were the complaints of Mrs. Tilton against Tilton. If they justified the advice of Mrs. Beecher, if Mrs. Beecher received them directly from Mrs. Tilton in that long interview they had, from which Mr. Beecher slunk away, what reason was there for any misgiving or regret upon the part of Henry Ward Beecher? Did he believe the charge of Mrs. Tilton? Did he accept the character of Tilton as given by Bessie Turner? Yes; it was upon the strength of that information his advice was given. And what is his answer? We say to him: "If you believed Theodore Tilton to be the man he was represented to be; if his life was a continued course of brutality at home, of debauchery abroad; if the story of Bessie Turner is true, and Tilton made the base assault she asserts, upon her sleeping innocence, does Henry Ward Beecher regret that he advised a virtuous, Christian woman to desert the scoundrel and the villain he then believed Theodore Tilton to be?" Oh, this is a dilemma from which Mr. Beecher must escape; and how? "Oh, Mr. Moulton—Mr. Moulton came to me; Mr. Moulton represented to me that all these accusations against Mr. Tilton were exaggerated; that he was not a vicious and bad man; that he had not attempted the virtue of Bessie Turner; that there was no unwise, improper association between him and Victoria Woodhull:" and the suspicions, the convictions of Henry Ward Beecher were at once appeased. Bessie Turner had come from the household with the simple story of a young, outraged maiden; Mrs. Tilton, the suffering and crushed wife, had made her revelations to Mrs. Beecher; and yet Henry Ward Beecher is at once convinced—convinced by the persuasive sophistry and falsehood of Francis D. Moulton, that Bessie was a liar, that Mrs. Tilton could not be trusted; and at once his soul was overwhelmed with this vast remorse, and the horrors of that great darkness gather at once, with the bitterness of death, upon his soul.

And that is the story this great and wise and virtuous man tells to an intelligent court and community! And you are expected to affirm it by your verdict! What force do you attach, gentlemen, to the undeniable circumstance that, from the night of Dec. 30, 1870, up to the very sitting of the Investigating Committee, Mr. Beecher in company with Mr. Moulton and with Mr. Tilton have been exerting their utmost ingenuity and effort in divers schemes and contrivances to suppress this scandal I cannot read the evidence exhibiting all of them; but you will remember that in his letter of June 1, 1873, he indulges this expression:

Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless. Filled with abrupt changes and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves.

This is in June, 1873. A long time, a long time for a priest to resort to devices and duplicity to conceal a secret—a secret which threatened to destroy him, as he again and again alleges. Again, the evidence of Mr. Halliday has shown the application of this short note of Mr. Beecher's:

SUNDAY, a. m.

MY DEAR FRIEND: Halliday called last night. T.'s interview with him did not satisfy, but disturbed. It was the same with Bell, who was present. It tended directly to unsettling. Your interview last night was *very beneficial*, and gave confidence.

You remember what that interview was, gentlemen, as related by Mr. Moulton, when he made some false statements which they say are contradictions which should discredit his testimony here. It is in regard to those statements that Mr. Beecher says:

Your interview last night was *very beneficial*, and gave confidence. This must be looked after. It is vain to build if the foundations sink under every effort. I shall see you at 10:30 this morning, if you return by way of No. 49 Remsen-st.

Then again, this little note

MY DEAR FRIEND: *The Eagle* ought to have nothing to-night. It is that meddling which stirs up our folks. Neither you nor Theodore ought to be troubled by the side which you serve so faithfully in politics.

The deacons' meeting, I think, is adjourned. I saw Bell. It was a friendly movement. The only near next danger is the women—Morrill, Bradshaw, and the poor dear child. [Laughter.] If the papers will hold off a month, we can ride out the gale and make safe anchorage, and then, when once we are in deep, tranquil waters, we will

all join hands in a profound and genuine *Laus Deo*, for through such a wilderness only a Divine Providence could have led us, undevoured by open-mouthed beasts that lay in wait for our lives.

Now, this is a specimen of the continual and persistent course of conduct which Mr. Beecher, in company with his two allies, Tilton and Moulton, pursued during these long years, fighting off attack, putting away the evil day, suppressing these outbreaks and these disturbing influences; Mr. Beecher all the while clutching Plymouth Church by the throat and holding it still, through the influence of his friends. All done for what? Why, there was no danger of the love of Mrs. Tilton, unworthily bestowed upon him, being exposed. Nobody knew of that; never a whisper of that; never a suggestion of that. Oh, it was such an inexpressive love, so devoid of manifestation, so shrinking, cowering in her heart, that the innocent and sinful Henry Ward Beecher didn't find it out for four years! That is the love which afflicted him. That is the love which he pretends was breaking up the amity and harmony of Theodore Tilton's home. How ridiculous a pretense! Did he fear the revelation of his advice to Bowen? Did he fear the revelation of that unhappy advice to separate, which had had no effect upon the Tilton family circle, which the wife disregarded—aye, and in regard to which, as Mr. Tracy says in his opening, she wrote a letter denying that she had ever desired a separation—a letter that we had not, a letter not in evidence here, but a letter with which they are acquainted and which they did not choose to produce. What was the danger? Is it to be attributed—is this disgraceful and sinful action of a great minister to be excused upon the idea that he was oppressed with remorse for the causes which he has assigned? Are they adequate? Will they justify these schemes and devices to smother the truth and still inquiry? Let us see, gentlemen. Suppose an investigation had been had, and it had turned out that these specifications of Mr. West were untrue, that they were not supported by any proof, that the only offense Henry Ward Beecher had committed was to advise that this profligate should be reduced from the head of the leading Christian newspaper of the land; that he had advised the wife of Tilton to separate from him, but that this advice had been entirely unproductive of result, and that the family relations of the Tiltons were continued unbroken and no different from the time when that advice was given; how would Henry Ward Beecher have stood before his church and before the world? Defended, exculpated, clad again in a robe of righteousness! Think of the charges in public against him! Think that the woman Woodhull had published her accusation of concubinage, including adultery and fornication in its signification. That was published in May, 1871. It is in that publication that the charge of concubinage is contained, carrying a clear and definite intimation and accusation to the whole world, in its application to Henry Ward Beecher. And in these circles, among this "jury of the vicinage" spoken of by my friend Porter, these whisperings of evil on the part of this defendant; Mrs. Morse, Mrs. Bradshaw, Mr. Richards, Mr. Johnson, and others of the reliable and leading people of this city, aware of that accusation, and every time the sun performed its diurnal circle that circle of knowledge widening and widening; the Church dissatisfied and discontented; prominent members pressing investigation—in the language of Mr. West, saying to Mr. Beecher, "The Church suffers; Christianity suffers; we all suffer; we believe these charges to be false, and we call upon you to vindicate your integrity and to punish these odious assailants."

Thus was Henry Ward Beecher surrounded, encompassed, goaded! Had he then accepted a Church investigation and proved there what by his assertion he proves here, that he had never sinned against chastity or honor, but that, misled by bad advice, he had unwisely counseled Mrs. Tilton and Mr. Bowen; oh, what a burst of holy enthusiasm and rejoicing would have resounded through the land. "This man around whom our sympathies and our admiration clustered, whom we longed to believe innocent and pure, although he had slumbered and rested during long and weary months under dishonoring accusation, he at last lifted himself in his majesty and glory and shook off the vile accusers and the false taint of their accusation.

MR. BEECHER'S OBSERVANCE OF THE POLICY OF SILENCE.

Why, then, when everything urged him to an investigation; when, if his story be true, he had the consciousness of innocence and the power of demonstrating it, why was he silent? Would it have hurt Tilton? Would it have hurt Mrs. Tilton? Why, she stood in an equal degree of degradation and impurity with that which, under the clamors of the world's gossip, weighed down Henry Ward Beecher. She too would have been redeemed. The dishonored fugitive from her home would have stood to-day beneath her own roof-tree a virtuous and honored matron, purified and redeemed from the taint of sin and accusation. No reproach could have fallen upon a human being except Theodore Tilton. And would he have been harmed? Would he have suffered any more than he did suffer? Would his condition have been any worse than it was then? Nay, would it not have been modified and improved? Because, if Mr. Beecher came to the conclusion that his advice was unwise and injudicious, in so far he could have borne testimony in favor of Mr. Tilton, and he could have been saved—saved from the controversy with Henry Ward Beecher and Plymouth Church; not saved from the controversy with the world and society. That salvation

must be worked out by himself, and by himself alone. If he has wronged his true nature and his great gifts by unwise or improper association with any school or sect, propagating pernicious doctrines; if he has been indiscreet in his admiration of Victoria Woodhull or anybody else; if that false and infamous Winsted story had the least color of a foundation—against all these, with a redeemed nobility, with the exalted dignity of his true nature, he must work out his own salvation, and "with fear and trembling."

Now, what harm would have come from an investigation if these things told by Henry Ward Beecher are true? Gentlemen, I have said to you again and again that you must weigh, as fair and unconscious men, these considerations. You *must* reconcile them. No matter if Henry Ward Beecher does stand in the way, if the course of justice leads right over him, it must not vary one jot or tittle from truth and right. We must fearlessly examine these arguments and these considerations and do as the obligations of our consciences and our duty to God and man require—freely and fearlessly execute the justice of the law. Did this minister of the truth advise or countenance falsehood? He says he knew of the course of policy and action which Tilton and Moulton were pursuing with Victoria Woodhull. He did not discountenance it. He admits that, by his own testimony. They say he colleagued with them and coöperated in their efforts. Did he consent to suppress investigation before the Church Committee? Did he agree to a report varnishing over and concealing the truth? Did he make a statement putting himself upon the ground that the difference between him and Mr. Tilton and his family had been arranged by a satisfactory apology? Did he state that in his letter? Why, gentlemen, all this is not to be denied. This record is rife with the proof not only of his acquiescence, but of his active participation in this "policy of silence." He says he did. He swears he recommended that policy. And, gentlemen, it was *not* a recommendation of that policy with reference to the supposed injuries he had inflicted upon Mr. Tilton alone; because there the charge of filthy approach stood against him. It stood in the declaration of Elizabeth R. Tilton; not the one she destroyed, but in the letter to Dr. Storrs, communicated to that pure and upright gentleman, known of all men, Tracy knowing it, everybody connected in interest or action with these parties knowing it, and this man was scheming, according to his own statement, to stifle any agitation which would bring to the surface that accusation, and lead him, by the assertion of his own innocence, to resist and destroy it. He was then practicing deception. He was an accomplice in a series of lies, and it was deliberately done, not alone, I repeat, to protect Tilton or Mrs. Tilton, but to save himself. You are to say, gentlemen, whether that is consistent with the idea of purity and integrity claimed for this defendant.

It is singular how the reflections of different minds draw different lessons and applications from the same words and thoughts. My learned friend, Mr. Evarts, has alluded to and quoted from the poem of Burns addressed, under the title of an "Epistle to a Young Friend," advising him against improper indulgences, and has somehow made that applicable to the case of Mr. Beecher, as an argument to prove that this charge against him is baseless and unfounded; and yet, in January, 1875, I was favored with a communication from a lady in Binghamton making the same quotation, and asking me to read it to the jury, and drawing from it quite a different inference from that derived by Mr. Evarts:

JUDGE BEACH: In your speech or summing up, will you please quote or introduce Burns's celebrated protest against that particular sin, as recorded in the sixth stanza of his "Epistle to a Young Friend," where after warning his young friend against illicit indulgence, he says:

> "I waive the quantum o' the sin,
> The hazard of concealing;
> But oh! it hardens a' within,
> And petrifies the feeling!"

Which it has surely and fearfully done in this case. The recurring acted falsehoods, including many sins immeasurably worse than the recurring verbal falsehoods and perjuries; the latter involving only the ruin of the perjurer, the former the ruin and the wretchedness of others, reaching far into the future.

Do you notice here the occurrence of that word "perjury?" And this lady, utterly disconnected with this transaction, gives as the conduct and character and treatment of this subject by Mr. Beecher the same appellation that Mrs. Moulton bestowed upon it, and which seemed to strike my learned friend with so much incompatibility, that Mrs. Moulton should call this duplicity and this continual system of lying perjury, and yet it seems that the female nature does not differ very much in their conceptions of propriety. Neither of these ladies knew what was the technical definition of perjury, but they knew that there was moral perjury about it; they knew that there was the soul's degradation about it; they knew that the minister of truth who could descend to these acted lies fell under the description of that verse of Burns's:

> But oh! it hardens a' within,
> And petrifies the feeling.

Read that letter in 1871 so full of penitence and remorse, written when the shadow of his great sin and sorrow was thick and black upon him, when the softness of his contrition had melted his nature before the long course of concealment spoken of by Burns had hardened all within and petrified all the feelings. And contrast it, his actions and his expressions then, with the lofty and contemptuous and frivolous manner of the man upon the stand, who can joke and jest and utter his witticisms while his fame and character, and the honor of the Church and religion, are trembling in the balance. When from the spot where he sat he could see the deluded victim of his lust, and in his imagination

can look at that household, once happy and honored, which he has unroofed and desolated; where he could see its mistress, the wife of his old friend and companion and pupil, following him about the streets of your city and into the sacred presence of this Court, and flaunt her love and devotion in the face of this jury. Oh! how hardened, petrified, brutalized, the heart of this man has become ere it could exhibit such a change! Could you believe that Henry Ward Beecher, as he appeared to you upon this stand as a witness, speaking of the same subject, dealing with the same characters, surrounded by the same grave interests, that that man, so jocund and gay and wicked, could ever have written upon the same topic those words of anguish and agony? Ah, did not this lady well estimate the condition of his soul, and properly apply the forecasting language of the great poet?

THE "JUDGMENT DAY LETTER."

I must ask your attention, gentlemen, to the letter of June 1, 1873, not only because of its intrinsic importance, but because a new character, revelation, is given to it. It is claimed that this was a declaration of hostilities by Mr. Beecher, that at last his patience was exhausted and he strips for a fight, threatens to resign, be rid of the incumbrance of the church and the possibility of harm to it, and meet his accusers openly and boldly. Does this letter bear any such interpretation, either in its own language or by connection with surrounding succeeding events?

The whole earth is tranquil and the heaven is serene, as befits one who has about finished his world-life. I could do nothing on Saturday—my head was confused, but a good sleep has made it like crystal. I have determined to make no more resistance.

And yet, say my friends, why, he was preparing himself for resistance unto death. "I have struggled for four years with Tilton and Moulton to cover up our secret. You (Moulton) have tied up the storm which threatened to engulf us. Your trusty friendship has saved us again and again, but Theodore is unreliable, his temperament is of such a character that he is unstable and untrusty, moved by circumstances, and I will make no more resistance. Let the worst come. I will not fight, but I will make a statement which shall bear the light of the Judgment Day." Well—

It is only fair that he (Theodore) should know that the publication of the card which he proposes would leave him worse off than before.

"I am going to fight," say the counsel, "but I tell my adversary if he uses his weapons he is unwise; it will only expose things more; it will make him worse off than he was before," and this said by a man who had been driven to desperation and was determined at last to turn, as my friend Porter says, like a stag at bay and gore his adversaries. Not very consistent with that idea. Why should he deprecate the publication of a card by Tilton, if he had determined to resign his pastorship and to arm himself with a statement which would bear the light of the Judgment Day in defiance of his pursuers? Utterly inconsistent. The theory and the declaration cannot be reconciled:

The agreement was made after my letter through you was written. He had it a year, and he condoned his wife's fault.

Why is he pleading thus with Moulton and Tilton? Gentlemen, all your devices are at an end. Henry Ward Beecher, the gifted pastor of Plymouth Church, is become a private man, and for the simple purpose of meeting you in hostility, unincumbered by any embarrassment. "And yet, Theodore Tilton, you made an agreement with me but a year ago—made it upon the strength of a letter, which I wrote to you, of apology; and you condoned your wife's fault."

Then this settlement was made and signed by him. It was not my making. He revised his part so it should wholly suit him, and signed it. It stood unquestioned and unblamed for more than a year *Then it was published.*

Never, but parts of it. Those portions of that "Tripartite Agreement" which exonerated Theodore Tilton, justified his every act in connection with Mr. Bowen and with Mr. Beecher, were suppressed; and hence the storm of indignation raised by Samuel Wilkeson.

Nothing but that. That which he did in private when made public excited him to fury; and he charges me with *making him appear* as one *graciously pardoned by me!* It was his own deliberate act, with which he was perfectly content till others saw it, and then he charges a grievous wrong home on me.

But, there was the fault of the publication, that it was not full.

My mind is clear. I am not in haste. I shall write for the public a statement that will bear the light of the Judgment Day. God will take care of me and mine.

Why, what did he want any special interposition of God to take care of him and his if he was going to write a statement which would justify him, purge him before the world? If he was innocent, and he knew it, pursued by a false accusation, and was going to declare his innocence, why appeal to the protection of God in this sorrowful, pitiful way?

"When I look on earth it is a deep night."

Why, what should darken the earth to an innocent man who was at last in the presence of his God to make a statement which should clear him from every accusation, if he was going to fight and had hope of winning the battle?

When I look to the heavens above I see the morning breaking. But oh! that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity—your disinterested friendship. Your noble wife, too, has been to me one of God's comforters. It is such as she that renews a waning faith in womanhood.

Please remember that by and by.

Now, Frank, I would not have you waste any more energy on a hopeless task.

What was it? What task was it that had become hopeless? What was Frank Moulton? What is the trusty and undying friend of Henry Ward Beecher doing, and what had he been doing for three years? Why, trying to stifle and suppress this scandal against Mr. Beecher. And Mr. Beecher says to him, "Frank, it is a hopeless task. Trusty and faithful friend as you have been, untiring, self-sacrificing, yet it is a hopeless task."

With such a man as T. T. there is no possible salvation for any that depend upon him.

Salvation for Mr. Beecher! You say there is no salvation for you in dependence upon Theodore Tilton. Why, what was he to be saved from? What was the dependence upon Theodore Tilton?

With generous impulses, the undercurrent that rules him is self. With ardent affections, he cannot love long that which does not repay him with admiration and praise. With a strong theatric nature—[ah, there is the origin of that word "theatric"]—he is constantly imposed upon with the idea that a position, a great stroke, a *coup d'état* is the way to success. Besides these, he has a hundred good things about him; but these named traits make him absolutely unreliable. Therefore, there is no use in further trying. I have a strong feeling upon me, and it brings peace with it, that I am spending my *last Sunday* and preaching my last sermon. Dear, good God, I thank Thee I am indeed beginning to see rest and triumph. The pain of life is but a moment; the glory of everlasting emancipation is worldless, inconceivable, full of beckoning glory. Oh! beloved Frank, I shall know you there, and forever hold friendship with you, and look back and smile at the past. Your loving, H. W. B.

And this, my friends say, is the expression and the feeling of an innocent and noble gentleman, encompassed by clouds and doubtful circumstances, who at last feels that he could stand upon his manhood and innocence and justify himself before his God and the world. Does the tone of his letter, is there a sentiment in it, is there a single expression or reflection of that exhilaration and pride which would come from one like Mr. Beecher freed from turmoils, and at last at liberty to vindicate his Christian and manly honor? Oh, then, how idle it is. gentlemen, to talk about that letter being a challenge, how idle the pretense that this man intended to separate himself from his pastorship for the purpose of entering upon this contest? Why should he do that? If you are innocent, Mr. Beecher, if you mean to publish a statement which shall exhibit that innocence, what need of resigning your pastorship? Plymouth Church believes in you. You say you hold it in the hollow of your hand. There are some disturbing elements. Not suspicious of you; never questioning by a wandering thought your ministerial purity, only desiring to get rid of this firebrand and pollutionist from the congregation and church. All its members will rally around you with adoring unanimity, as you know it, Mr. Beecher; and if you intend to send out your statement to the world, what fitter place to do it than from the pulpit of Plymouth Church, which you have erected and lifted to an exaltation of honor and glory unparalleled in Church history? Why should you resign? Other parties would be created. These parties would spring up. There would be dissension, there would be contest. Why, what would make contest in Plymouth Church? Are there any there who would distrust your statement? Is there a member of that congregation who would disbelieve your word? When, in the language of that letter, you should make a statement which you should declare would "bear the light of the Judgment Day," is there a bold and hardened disbeliever in Plymouth Church who would falter from your side and distrust your assertion? What is to make contests? Upon what principle will parties separate and be formed?

Oh, idle and foolish pretense! The place for Henry Ward Beecher to assert his innocence, to purify his name, to sweep the dust and the stain from the pulpit which he had occupied for 25 years, was there, where he stood in his regal pomp and glory, the monarch of the minds of his congregation. Resign! Strip off his strongest and brightest armor, and for the purpose of contest! Ah, no; but if he contemplated a statement which should impugn his honor as a clergyman; if with the statement he threatened their connection, contest, fight, dispute, wrangling dissension, well and good; but if it was the truth-bearing testimony to his innocence, there was no necessity for Henry Ward Beecher to retreat from the citadel of his strength. No, gentlemen, when the very next day he publishes a card vindicating Theodore Tilton from a lengthy charge made against him in the public ear, Henry Ward Beecher did not contemplate contest. Even his magnanimous generosity, if he was preparing for a fight with Theodore Tilton, would not have armed his adversary with a new and a strong weapon against himself; and then from the very hour that letter was written Henry Ward Beecher entered again into his system of deception and untruth, commenced again his schemes for secresy and silence, took up again the policy of silence which he admits he entered into, if he did not originate, and goes continuously and steadily on in these triune efforts to suppress these scandals, until at last, driven to desperation, when no longer the upbraidings and uprising of his church could be quelled, when there must be revelation, truth breaking out from the darkness, then at last he adopts the course which he pursued through the Investigating Committee.

The Court here took a recess until 2 p. m.

THE DANGER TO BE AVERTED.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Beach—There is one statement in this letter which has excited much comment, and I confess it is difficult, although aided by all the surrounding circumstances, and guided by what, I think, are are very strong indica-

tions of the condition of mind in which Mr. Beecher wrote it, to give an entirely satisfactory solution of it.

I shall write for the public a statement that will bear the light of the Judgment Day.

I have endeavored to indicate, in contesting the idea that this was a preparation for controversy, and a declaration of defiance on the part of Mr. Beecher, to suggest that the mood of mind and feeling out of which this declaration arose was one of contrition, repentance and determination to make a full and a complete revelation and confession. and thus secure the acquitting and composing pardon of both God and man. It corresponds with the other expressions contained in this most remarkable document. The whole letter, with the exception of the first paragraph, is full of depression, sorrow, gloomy forecast; the earth all dark; but yet, when looking up to Heaven a gleam of brightness and peace breaking through the darkness! What does it mean? Does it mean innocence, or a broken spirit awakened at last to a true conception of those early and holy aspirations which first lifted his soul to his God? If we are to judge by what has gone before, if we are to trust to the revelations of human lips under the most solemn sanction; if we are to repose with any confidence upon our own intelligence and judgment, studying the expressions of this man under other circumstances; if we can draw any rational inference from fugitive efforts at concealments, from practices of duplicity and fraud by a great and religious teacher, why there can be no doubt about the construction of this letter. The appeals of Mrs. Moulton, strengthened by those whisperings which break down from heaven upon the heart, had touched the sensibilities and the conscience of this defendant. And, in the spirit of the prodigal, he had determined to rise up and go to his father and confess, "Father, I have sinned in thy sight," and receive the benedictions of parental forgiveness. This is the construction to be put upon this document; and we are to inquire, according to our own judgment, whether if guilty—if he had been betrayed by severe temptation, by the singular and urgent tendencies of his temperament and physical life—if, notwithstanding all the teachings of his better nature, and all the restraints of his religious belief and position—if, notwithstanding all this, Mr. Beecher had fallen into offense, his own faith, his own principles, the doctrines which he taught to his congregation constantly and familiarly, prompted him in the manner God directs, through the process His Providence leads the repentant sinner, to confess—is there anything repulsive in that idea to the Christian mind? I know what the heathen and the sinner would do. But we are canvassing the probabilities of action as applied to a man who has borne the character of a saint and a teacher; who has great capacities of being; whose spirit, according to the ideas of my learned friends, is as exalted and aspiring as his intellect, and we must expand our notions; we must lift ourselves out of our own conscious conceptions, and get as near to this man, in all his qualities and all his impulses, as we can. And I ask the Christian hearts upon this jury, who know something of experimental religion, and who know, if it is humiliating and crushing to kneel at the confessional in a spirit of godly contrition, that when the answer of peace and forgiveness comes, there is ample remuneration in the joy of its reception. It seems to me if the world needed a lesson—and it has had teachings enough of the weekness and infirmities of human nature—but if it needed a grand example of a great mind and a great heart falling beneath the fierceness of temptation, but yet, in the grandeur of its nature, and in the aspiring and exalted purity of religious faith, rising up before man and God and confessing its fall, and pledging itself to a renewed and more perfect life, Henry Ward Beecher could have given that example and honored his own nature, and exalted his own name, sanctified the church to which he belonged, and shed a more glorious light even around the doctrines he weekly taught. Well, it seems to me to conform to that interview between Mr. Moulton and Mr. Beecher and to that letter of Moulton in which Mr. Moulton says to him in substance: "Confess; if all the facts are revealed you can yet stand." Something has been said about the different commencements of these two letters. I have studied them with some care, and I see no difference in the sentiment—only in the form of expression, and for the purpose of attaching to the same expression which he uses in the corrected letter, a sentiment in this language—

Your letter makes this first Sabbath of Summer dark and cold like a vault. You have never inspired me with courage or hope; and if I had listened to you alone my hands would have dropped helpless long ago. You do not begin to be in the danger that has faced you many times before. If you now look it square in the eyes it will cower and shrink away again.

Well, what was this danger, gentlemen? Was it mere danger from the causes which have been assigned by Mr. Beecher? Was there any danger to come from the fact that Mrs. Tilton had fallen in love with Mr. Beecher? Why, clearly not. Mr. Tilton never suggested any such idea, never threatened any such revelation as that. There never was any such danger that had theretofore threatened Mr. Beecher. Well, there was no danger springing from the other circumstances impending over Mr. Beecher. The advice to Bowen, the advice to a separation created no peril to Mr. Beecher. Now, this is not a mere sentiment. This refers to threatened peril. Why, Mr. Beecher says that he was oppressed with remorse and sorrow and all that, looked with great affliction upon the mischief which Mrs. Tilton's love for him had wrought. That is all very well. But we are now coming to a charge, an assumption acquiesced in by him, that there had been, again and again, peril assailing him, and

when he had looked it square in the face in the mode which had been described by himself, as well as by other witnesses, why it cowered and shrunk away. Well, now, this implies sin; it assumes error. No such words as those could have been written to Henry Ward Beecher if his own story of his innocence is true, because he was exposed to no peril.

You know that I never have been in sympathy with, but that I absolutely abhor the unmanly mood out of which your letter of this morning came. This mood is a reservoir of mildew. You can stand if the whole thing were published to-morrow. In my opinion it shows only a selfish faith in God to go whining into heaven, if you could, with a truth that you are not courageous enough, with God's help and faith in God, to try to live on earth.

Now, what did that mean, gentlemen, in connection with the declarations in his letters that he had a strong belief that he was preaching his last sermon and living his last Sunday—in connection with the testimony of Mrs. Moulton, and with other parts to which I may possibly draw your attention, where the same design of suicide is shadowed forth? Why does Mr. Moulton, writing to Mr. Beecher, say·

It shows only a selfish faith in God to go whining into Heaven if you could, with a truth that you are not courageous enough, with God's help and faith in God, to try to live on earth. You know that I love you; and because I do I shall try and try, as in the past. You are mistaken when you say that Theodore charges you with making him appear as one graciously pardoned by you. He said the form in which he was abused in some of the papers made it so appear, and it was from this that he asked relief. I don't think it impossible to frame a letter which will cover the case. May God bless you. I know he will protect you.

Speaking of this letter Mr. Moulton says:

Mr. Beecher came to my house on the evening of the Sunday on which this letter was written, and I said to Mr. Beecher: "You never give me any strength at all. If I was to follow you my hands would drop useless. You give me no courage; you give me no hope. Whenever there is an emergency to face in the matter, whether it is easy or whether it is hard to meet, you drop; you don't suggest the way out. Now, if you were to express to your congregation the contrition which you have expressed to me in consequence of your intercourse with Mrs. Tilton, they, in my opinion, would forgive you, and you could stand. I don't see any necessity for the hopelessness of your letter this morning. It is nothing but discouragement;" and that is what I meant by the expression, "You can stand if the whole case were known."

Now, it is perfectly apparent, whatever might be the construction we might give to these letters or to this letter, without the aid of any testimony, it is perfectly certain that that declaration in the letter of Mr. Moulton was founded upon the theory that a frank confession by Mr. Beecher to his church would not displace him, would not disrobe him. If the Father in Heaven forgives may not man forgive? Is the Church holier than God, its founder and master? If coming with penitence and godly sorrow the deepest dyed sinner may claim forgiveness, might not Henry Ward Beecher, in human judgment so full of merit and deserving, tempted and fallen once, but yet repentant and redeemed, nobly confessing and retrieving error, living in a spirit of repentance and reform? What is there in this at all repulsive? We are all sinners. "There is none perfect; no, not one." The best of us are at fault, and the teachings of God to us are to confess, and the promises of God to us are, on confession, cheering and strengthening.

I submit to you that this letter of Henry Ward Beecher in all its spirit declares that sentiment and that purpose. It has been suggested—I don't know—it is hard to imagine that a man like Henry Ward Beecher should have contemplated the purpose of self-destruction. But in this letter—in other letters to Moulton, to Mrs. Moulton that purpose was avowed.

HOW OPEN CONFESSION WOULD HAVE BEEN RECEIVED.

And when we look at what is called this "ragged edge letter" and see what was the condition of this man, how it accumulates in its expressions the intensest exhibitions and revelations of anguish, all those conditions of the human soul which would lead to despair and to the fatal act of self-destruction, it does not seem so very wonderful. In this letter he describes the environments, the necessities, the dangers, the perplexities which surround him. He says his nights are sleepless; he says that the wearing and grinding upon the nervous system cannot long be endured, that he is tortured on the ragged edge of anxiety, remorse, fear, despair; that the horror of a great darkness is around him, that the bitterness of death is upon him, that he is continually suffering the torments of the damned, and all this accumulation of pictured horrors, representing the condition of his own soul, are crowded into this one letter of Henry Ward Beecher. Why, it is a painful and pitiful appeal to the sympathy of the man to whom it is addressed. It is telling him how hard, and hopeless, and desperate life is.

It cannot be endured much longer. I am well-nigh discouraged. If you, too, cease to trust me, to love me, I am alone. I have not another person in the world to whom I could go.

February 5, 1872, Henry Ward Beecher addresses to Mr. Moulton language of this character, and containing these disconsolate and despairing representations of himself. Why, who would want to live? I look around me, and the earth is all dark; but I look into the future and I am lifted in the hope to come. True, true, it was violating the command of his God. True, it was a dark and desperate sin; but think of this man as he pictures himself, so full of diverse moods, so sensitive, excitable in his nature, glad and hopeful now, and anon sunken and depressed, until everything is gloomy and repulsive. He is just—

if he truthfully represents himself—he is just one of those delicate and sensitive natures which under these strong influences of passion would be very likely to be betrayed into the intemperate act of self-destruction. When he declares it over and over again, when he shadows it in his writings, we cannot reject the suspicion, if not the conviction, that his great agony was a temptation he could but poorly resist, to self-destruction. Well, some think that is the theory, that he intended to make a full confession and die. Some contend that these desponding and depressing expressions in this very letter of June 1, 1873, are indicative of that purpose, when everything looked so black and unpromising around him on earth, and yet the serene and tranquil joy with which he contemplates the escape from sorrow here to peace and serenity hereafter. That is one theory of this. There is another. It is apparent from the evidence that Mr. Beecher, Mr. Tracy, Mrs. Tilton, were laboring under the idea that all these documents had been destroyed. Tracy declares it in his opening. Beecher declares it in his statements, part of them; Mrs. Tilton in hers. It may be that, relying upon that impression, feeling the strength of his position, confident without the production of these writings, that by his own strength, aided by the power and the influence of Plymouth Church, he could overcome all adversaries—it may be that he had determined to deny what these letters, in aid of parole evidence, would convict him of. I don't know, gentlemen; it is not consonant with my ideas of the true construction of these instruments, or of the character of Mr. Beecher, or his purposes. I can imagine how Mr. Beecher, with a conviction that there were no documents in existence implicating him, might with great confidence say to Victoria Woodhull, and to everybody else—challenge the whole world to produce any of his letters or any evidence containing accusations against him.

It is not my idea. You must attach such a construction, and make such an application of this declaration in this letter as will commend itself to your own judgments. That it was a declaration of intended contest it seems to me repugnant to all the surrounding circumstances, and to the future, the then future conduct of Mr. Beecher. I suppose Mr. Francis Moulton and Mr. Beecher, in the developments of the last few months, might with great confidence have counted upon the forgiveness, by Plymouth Church, of any offense of which Mr. Beecher may have been guilty. When we hear people say, "If he is guilty, I don't want to know it; he is too great a man to fall; he has too many interests involved, in his position and success," and when I see Plymouth Church rolling about him with so much unanimity and zeal, neither you nor I can doubt that if Mr. Beecher had assumed this attitude of truth and manliness, he would have been supported not only by that church, but, I think, gentlemen, he would have been sustained by the Christian world. Why, I read you the other day examples where, for licentiousness, high divines had been deposed and restored. What is there in this idea of human justice which forbids the idea of restoration—which for sin condemns inexorably, beyond redemption? It seems to me humanity is assuming very much to itself when it discards the Divine attributes of mercy and forgiveness. Men will sin, but if they repent and reform it is your duty and mine to accept them as chastened and purified. If not, we reflect upon the scheme of Divine redemption and upon the character of our Creator. And in the letter of Jan. 1, 1871, is contained an expression which has also been construed favorably to Mr. Beecher, as exonerating him, even under the language of this Letter of Contrition, from guilt:

I will die before any one but myself shall be inculpated. All my thoughts are running toward my friends, toward the poor child lying there and praying with her folded hands. She is guiltless, sinned against, bearing the transgressions of another.

Well, it is quite obvious, both in its own significance and in its association, that it does not bear any such construction as I have alluded to. "She is guiltless, without sin, bearing the transgressions of another." Well, in the novel of Walter Scott, "The Heart of Midlothian," he puts into the mouth of Butler, the seducer of Effie Deans, the same words. Butler applied to Jeanie, the sister of Effie, to give false evidence in regard to the still-birth of the child, to save her sister from the extreme penalty of Scottish law. She stood firm and untempted, and to save a sister's life would not take a false oath or give false evidence. Butler threatened, with a pistol at the head of the trembling girl, and yet she was true to her truth, and in the course of the colloquy, when Jeanie appealed to him to know whether or not her sister was the murderess of her young babe, to know how far she was guilty, Butler breaks out into the impulsive, impatient exclamation: "She is guiltless, guiltless of all except trusting a villain." Mr. Beecher was familiar with that, because in one of his sermons you will find an allusion to the sin and the character of Effie.

PASSAGES FROM JOSEPHUS READ.

There is, gentlemen, a very singular narrative which I think may perhaps interest as well as instruct you, in the works of Josephus on the Antiquities of the Jews, and I am sure you will be grateful to me for reading it:

There was at Rome a woman whose name was Paulina; one who, on account of the dignity of her ancestors and by the regular conduct of her virtuous life, had a great reputation. She was also very rich, and although she were of a beautiful countenance, and in that flower of her age wherein women are the most gay, yet did she lead a life of great modesty. She was married to Saturninus, one that was every way answerable to her in an excellent character. Decius Mundus fell in love with this woman, who was a man very high in the equestrian order; and as she was of too great dignity to be caught by

presents, and had already rejected them, though they had been sent in great abundance, he was still more inflamed with love to her, in so much that he promised to give her 200,000 attic drachmæ for one night's lodging; and when this would not prevail upon her, and he was not able to bear this misfortune in his amours, he thought it the best way to famish himself to death for want of food, on account of Paulina's sad refusal; and he determined with himself to die after such a manner, and he went on with his purpose accordingly. Now, Mundus had a freed woman, who had been made free by his father, whose name was Ide, one skillful in all sorts of mischief. This woman was very much grieved at the young man's resolution to kill himself (for he did not conceal his intentions to destroy himself from others), and came to him, and encouraged him by her discourse, and made him to hope by some promises she gave him, that he might obtain a night's lodging with Paulina; and when he joyfully hearkened to her entreaty, she said she wanted no more than 50,000 drachmæ for the entrapping of the woman. So when she had encouraged the young man, and gotten as much as she required, she did not take the same method as had been taken before, because she perceived that the woman was by no means to be tempted by money, but as she knew that she was much given to the worship of the Goddess Isis she devised the following stratagem: She went to some of the Isis's priests, and upon the strongest assurances [of concealment] she persuaded them by words, but chiefly by the offer of money, of 25,000 drachmæ in hand, and as much more when the thing had taken effect, and told them the passion of the young man, and persuaded them to use all means possible to beguile the woman. So they were drawn into the promise so to do, by that large sum of gold they were to have. Accordingly the oldest of them followed her to Paulina, and upon his admittance, he desired to speak with her by herself. When that was granted him, he told her that "he was sent by the god Anubis, who was fallen in love with her, and enjoined her to come to him." Upon this she took the message very kindly, and valued herself greatly upon this condescension of Anubis, and told her husband that she had a message sent her, and was to sup and to lie with Anubis; so he agreed to her acceptance of the offer, as fully satisfied with the chastity of his wife. Accordingly she went to the temple, and after she had supped there, and it was the hour to go to sleep, the priests shut the doors of the temple, when, in the holy part of it, the lights were also put out. Then did Mundus leap out (for he was hidden therein), and did not fail of enjoying her, who was at his service all the night long, as supposing he was the god; and when he was gone away, which was before those priests, who knew nothing of this stratagem, were stirring, Paulina came early to her husband, and told how the God Anubis had appeared to her. Among her friends also she declared how great a value she put upon this favor, who partly disbelieved the thing when they reflected on its nature; and partly were amazed at it, as having no pretense for not believing it, when they considered the modesty and the dignity of the person. But now on the third day after what had been done, Mundus met Paulina, and said, "Nay, Paulina, thou hast saved me 200,000 drachmæ, which sum thou might have added to thy own family; yet hast thou not failed to be at my service in the manner I invited thee. As for the reproaches thou hast laid upon Mundus, I value not the business of names; but I rejoice in the pleasure I reaped by what I did, while I took to myself the name of Anubis." When he had said this he went his way. But now she began to come to the sense of the grossness of what she had done, and rent her garments and told her husband of the horrid nature of this wicked contrivance, and prayed him not to neglect to assist her in this case. So he discovered the fact to the Emperor, whereupon Tiberius inquired into the matter thoroughly by examining the priests about it, and ordered them to be crucified, as well as Ide, who was the occasion of their perdition and who had contrived the whole matter which was so injurious to the woman. He also demolished the temple of Isis and gave order that her statue should be thrown into the River Tiber, while he only banished Mundus, but did no more to him, because he supposed that what crime he had committed was done out of the passion of love. And these were the circumstances which surrounded the Temple of Isis and the injuries occasioned by her priests.

Do you detect no analogy, gentlemen, between that story and the tragedy of to-day—a noble woman of the Jews, strictly moral and religious, above gross and earthly temptations, rejecting the approaches of the Jew Mundus, and yet submitting herself to the embraces of a fancied god, whom she believed to be God, and with her husband believing that that was no sacrilege to her honor—believing nevertheless that she was a chaste and a virtuous matron? How different is it from Henry Ward Beecher, in the majesty of his nature, and with the love and reverence which Mrs. Tilton felt toward him, coming to her as the god Anubis, teaching her that the indulgence of love was no impurity, she trusting to his teachings, and believing his word as sacred and as truthful as if it were a direct revelation from Heaven. Ah! Mr. Beecher was to her soul the Anubis of Paulina. It is the same spirit and principle, it is the same influence, and well might Henry Ward Beecher, knowing how he had tempted and overcome the nature of this woman—well might he say: "She is guiltless, bearing the transgressions of another." Well might he say, "I will die before she shall be inculpated." And I honor him, I honor him for those words. If there was guilt about it, as in my judgment there was, deep and profound, it attaches all to him, and it always does. Where a virtuous woman first falls, the guilt always belongs to the tempter, and the punishment should all be his. And yet strange are the ways of the world. The weak and deluded woman, falling through the very power and exaltations of her best affections, is damned in the estimation of the world, and he who should bear all the guilt here, as he will hereafter—he is accepted in the ranks of men as an acceptable associate of pure and upright men.

FRANCIS D. MOULTON.

I come now, gentlemen, to the consideration of the testimony of Francis D. Moulton. In the course of my reference to the evidence I have read numerous paragraphs from Mr. Beecher bearing the highest testimony to the integrity and fidelity of Mr. Moulton. Will you not

permit me, as they are collected here in very short expression, and it will take but a moment, to read them:

Many, many friends has God raised up to me, but to no one of them has He ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit.

That was on the 7th of February, 1871. On the same date:

The friend whom God has sent to me (Moulton) has proved, above all friends that ever I had, able and willing to relieve me in this terrible emergency of my life. His hand it was that tied up the storm that was ready to burst upon our heads.

On Sept. 30 of the same year, he says:

My heart warms to you, and you might have known that I should be here, if you loved me as much as I do you. I am, my dear Frank, truly and gratefully yours.

February 5, 1872.

During all this time you are literally all my stay and comfort. I should have fallen on the way but for the courage you inspired, and the hope which you breathed. I am well nigh discouraged. If you, too, cease to trust, to love me, I am alone. I have not another person in the world to whom I could go. With sincere gratitude for your heroic friendship, and with sincere friendship, even if you love me not, I am yours, though unknown.

Feb. 16, 1873.—Should any incident befall, remember how deeply I feel your fidelity and friendship, your long-continued kindness and your affection. I confide everything to your wisdom, as I always have, with such success hitherto, that I fully trust for the future.

June 1, 1873.—The pain of life is but a moment; the glory of everlasting emancipation is worldless, inconceivable, full of beckoning glory. Oh, my beloved Frank! I shall know you there and forever hold fellowship with you, and look back and smile at the past.

July 7, 1873.—My dear Frank: The country is beautiful, the birds as good to me as David's harp. I only need some one to talk to, and that one is you.

July 14, 1873.—My dear Frank: For a thousand encouragements, for services that none can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for your confidence and affection, I owe you so much that I can neither express nor pay it.

My Dear Frank: I have this morning got back, and want to send my love to you and yours. God bless you, my dear old fellow.

December, 1873.—This will be handed to you by my friend, Frank D. Moulton, whom I believe to be high-minded and honest, and whose statements should be received by all who know him with implicit confidence.

Dec. 3, 1873.—I believe him to be honest to the core. I would trust him with life and property, without scruple.

Dec. 30, 1873.—Mr. Frank Moulton I have known for years, and I should as soon believe that I myself had set on foot stealings and cheatings as that he had, or had had the slightest suspicion of it.

This collection of these utterances does not bring the testimonial up to as late a period as I desire; but, perhaps, one in addition will be sufficient. On the 10th of July, 1874, Mr. Beecher addressed to Mr. Moulton that letter with reference to Mr. Halliday and Moulton's interview with him, which I read to you this morning in another connection, in which Mr. Beecher addresses Mr. Moulton as his "dear friend," refers to and approves and applauds his interview with Halliday the night before, and then arranges with him for the purpose of "looking after" the future conduct of this difficulty. Well, that date, July 10, I suppose was after the calling of the Investigating Committee, according to the evidence.

Mr. Morris—About two weeks after.

Mr. Beach—About two weeks after the call of the Committee?

Mr. Morris—Yes.

Mr. Beach—Well, then, I will bring it up later. On July 24 Mr. Beecher writes, addressing Mr. Moulton as "My dear Moulton," and asks for papers, through Mr. Tracy, and for the "Heads of Difficulty," of Bowen, and says:

I heard you were sick. Are you about again? God grant you to see peaceful times. Yours gratefully,

Henry Ward Beecher.

Then, on the 28th of July, he writes:

My Dear Friend: The Committee of Investigation are waiting mainly for you before closing their labors, &c.

Then followed the correspondence in regard to the delivery of papers, or copies, which has been read to you; and then the break. So that, not until August, after the call of the Investigating Committee, was there any breach whatever between Mr. Beecher and Mr. Moulton; no abatement of Mr. Beecher's confidence, but a perfect stream of enthusiastic commendation and acknowledgments of gratitude.

THE BREAK BETWEEN BEECHER AND MOULTON.

Now, suddenly this man became transformed. Immediately after Mr. Moulton's declination to furnish to Mr. Beecher the documents or copies of them in his possession (which we may talk of a little by and by), Mr. Beecher became his reviler. He then makes against him, before the Investigating Committee, the charge of blackmail, and the charge springs into full life and activity at once under the culture of Plymouth Church. The whole land is flooded with it. Mr. Moulton is beaten down as by the force of a tempest; and no man, however sturdy and strong in this community, could have stood before that hurricane, with the charge of Henry Ward Beecher, supported by all Plymouth Church against him, of a false and outrageous conspiracy to blackmail Henry Ward Beecher. Why, the withering indignation of the world would blast the accused. Now, gentlemen, are we to judge Mr. Moulton by this after and interested judgment? True, Mr. Beecher, when forced, upon the stand, and in defiance of all the nudges and instructions of Shearman and Tracy, confesses that there was no blackmail; but yet, an odium deep and merciless was created against Mr. Moulton, under which he ap-

peared on the witness stand before you. Now, what does the law say? I will read you from the opinion of Mr. Comstock, delivered in the case of "Stacy agt. Graham" (14 N. Y. Reports). This was a case where a witness was sought to be discredited by proof of contradictory declarations. Through Mr. Comstock, who, in connection with his colleagues, has just obtained the most distinguished professional triumph in modern days, and who is a profound thinker, an accomplished logician, and an able lawyer, and was a useful judge, the Court say:

The only remaining question which has been argued relates to the admissibility in evidence of the defendant's letters dated the 6th of April and 4th of May, 1853. These were offered, as the case states, to show the estimation in which the defendant held the witness, Adams, and they certainly had no relation to the issue on the trial. The attempt to impeach the credit of the witness by proving his declarations, as we have seen, has been overruled, but his cross-examination was evidently conducted with reference to that object. This rendered it competent for the plaintiffs to sustain him, if they could, by proving any conduct or declarations of the defendant evincing that he held the witness in estimation as an honest and worthy man. The letters in question were written to the witness himself several months after he had been examined in this suit, and given, as was claimed, a false and perjured account of the transaction. They have some tendency to show that the defendant considered him to be a person worthy of confidence. Indeed, it is difficult to account for the correspondence at all, if we assume that the defendant then regarded the witness and his testimony, alike, false, as he afterward found it necessary to insist at the trial.

Now, we have these testimonials in favor of Mr. Moulton by this defendant. Why, gentlemen, we have the testimonial of Henry Ward Beecher upon this stand, in favor of Mr. Moulton; that is, to his fidelity in friendship, his faithfulness. Mr. Moulton gave "a new idea of friendship" to Mr. Beecher; and the learned counsel repeats that as a sarcasm, while Mr. Beecher spoke of Moulton's elevating his sense of the purity and devotion of manly friendship. It is plain, however, that up to August, 1874, after the organization of this Investigating Committee, Mr. Beecher trusted and commended Mr. Moulton as his earnest and devoted friend. And yet no man ever entered a court of justice, as a party or a witness, who was abused and vilified with more continuous and increasing asperity than Francis D. Moulton. Well, what has he done, gentlemen? He is called a traitor. Will you tell me where he was treacherous to Mr. Beecher? Was it at the Woodhull outbreak? Nay, was it when Tilton was the accuser, and at the first origin of the friendship between Mr. Moulton and Mr. Beecher? Was it at the times of these various publications, or threatened publications, by Tilton? Did he foment them, or did he restrain them? Was he an agitator and conspirator, disturbing the tranquillity and exciting the sensibilities of Henry Ward Beecher to promote the welfare and the interest of his friends? or did he suppress on the part of Tilton every document, until Mr. Tilton was so exasperated that no human power could restrain him? Did he soften and modify expressions? Did he suggest shifts and evasions, and carry them into successful operation and effect? And did he ever intermit his exertions until Mr. Beecher, before his Committee and in the correspondence in regard to furnishing the papers, imputed to him dishonor and dishonesty? Now, if a thing has happened in the experience of a man, he can tell when and how it happened; and I want some intelligent gentleman to tell me, in the four years' history of this affair, when and where it was that Francis D. Moulton was treacherous to the interests or false in the service of Henry Ward Beecher. [Applause.]

It is very easy, gentlemen, to denounce and revile—very easy to call men names. It is very easy for a power like Henry Ward Beecher and Plymouth Church to scout any man in this community from respectable presence and reception. Francis D. Moulton has felt this power. A young man but just starting upon the journey—the practical journey—of life; just mixing in the great struggle which disciplines and develops our nature and leads us to honor and success—ah, he thought it was a noble and honorable association between him and Mr. Beecher; he, the young, the unnoticed, the unfamed "heathen," welcomed to the great heart and friendship of Henry Ward Beecher; bearing in his hands the fate of the greatest preacher of the age; in daily conference with him—aye, and when sickness and disability overtook him, Mr. Henry Ward Beecher following him to his bedside, as if he were his *only* savior and trust, as Mr. Beecher declared he was. Well, this was rather a flattering and deceptive association. It might well be that even Christian honor, Christian integrity, might have been tempted to lie under such circumstances. Even without the necessity which overshadowed his boyhood's friend, and his family, Mr. Moulton might well be willing to sacrifice at least his formal veracity to protect the name and fame of so great a man. Well, gentlemen, if you pursue the history of this association later, you will see how true this man continued. He made one statement before the Committee. He says to Mr. Beecher: "I think this is a great mistake; I don't think this Investigating Committee ought ever to have been called, but I guess we can manage it yet." Then came a series of operations for the purpose of devising some form of statement, by Beecher, by Moulton, by Tilton, which would be acceptable to the Committee, and enable them to make a report which, while imputing a venial offense to Mr. Beecher, would protect Mr. Tilton and avoid the disgraceful revelations which might otherwise become necessary.

MR. MOULTON'S SHORT STATEMENT.

Mr. Beecher makes a statement sustaining this theory; Mr. Moulton makes a statement sustaining this theory, and Mr. Tilton draws a report for the Com-

mittee to which I shall ask your attention for a moment. And see, gentlemen, what this statement was on the 13th of July, 1874:

GENTLEMEN OF THE COMMITTEE: I appear before you, at your invitation, to make a statement which I have read to Mr. Tilton and Mr. Beecher, which both deem honorable, and in the fairness and propriety of which, so far as I am concerned, they both concur. The parties in this case are personal friends of mine, in whose behalf I have endeavored to act as the umpire and peacemaker for the last four years, with a conscientious regard for all the interests involved.

I regret for your sakes the responsibility imposed on me of appearing here to-night. If I say anything, I must speak the truth. I do not believe that the simple curiosity of the world at large, or even of this Committee, ought to be gratified through any recitation by me of the facts which are in my possession, necessarily in confidence, through my relations to the parties. The personal differences of which I am aware, as the chosen arbitrator, have once been settled honorably between the parties, and would never have been revived except on account of recent attacks, both in and out of Plymouth Church, made upon the character of Theodore Tilton, to which he thought a reply necessary. If the present issue is to be settled, it must be, in my opinion, by the parties themselves, either together or separately, before your Committee, each taking the responsibility of his own utterance. As I am fully conversant with the facts and evidences, I shall, as between these parties, if necessary, deem it my duty to state the truth, in order to final settlement, and that the world may be well informed before pronouncing its judgment with reference to either. I therefore suggest to you that the parties first be heard; that if then you deem it necessary that I should appear before you, I will do so, to speak the truth, the whole truth, and nothing but the truth. I hold to-night, as I have held hitherto, the opinion that Mr. Beecher should frankly state that he had committed an offense against Mr. Tilton for which it was necessary to apologize, and for which he did apologize in the language of the letter, part of which has been quoted; that he should have stated frankly that he deemed it necessary for Mr. Tilton to have made the defense against Dr. Leonard Bacon which he did made, and that he (Mr. Beecher) should refuse to be a party to the reopening of this painful subject. If he had made this statement he would have stated no more than the truth, and it would have saved him and you the responsibility of a further inquiry. It is better now that the Committee should not report, and in place of a report Mr. Beecher himself should make the statement which I suggested, or that, if the Committee does report, the report should be a recommendation to Mr. Beecher to make such a statement.

Was there any treachery to Mr. Beecher in that? Was there any want of fidelity? Is it true, as Mr. Beecher gives as an excuse, that, after the Bacon Letter, Moulton had no devices, no plans, made no efforts? What became of the conferences, and what was the cause of them between Moulton and Tracy and Butler? Long after the Bacon Letter, after the Investigating Committee was called, what was the cause of these reports? Who brought about the condition of things which led to them—the long and the short report?

A conversation is related by Mr. Moulton with Mr. Beecher, resulting in the first short report, as it is called:

I said to Mr. Beecher that after Mrs. Tilton had made her statement to the Committee, Mr. Tilton was very much incensed, and that Mr. Tracy, in a subsequent interview with him—in an interview subsequent to Mrs. Tilton's report to the Committee, or statement to the Committee, had so presented to him the influence which her statement had had upon the Committee that it melted the anger all out of Theodore Tilton, and he was perfectly willing to make a statement to the Committee which should not contain the fact of adultery between Mr. Beecher and Mrs. Tilton; that he was perfectly willing if Mr. Beecher would take great blame upon himself, and exonerate Theodore Tilton from dishonorable conduct toward him—from any injustice toward him—that he, Theodore Tilton, was perfectly willing to settle the matter without making any accusation before that Committee, and that he had prepared such a report for the Committee to make, and that he had shown it to Gen. Tracy, and Gen. Tracy had said to him, on the night of the conversation to which I refer, that the Committee seemed now to be of opinion that there was an offense, and that he thought it would not be hard to get from that Committee a report (unfavorable, it is true, to Mr. Beecher) on the ground of the offense, but which would really settle the whole business, and save all the parties concerned from dishonor in consequence of crime; that is all.

And that was the report.

MR. TILTON'S SHORT REPORT FOR THE COMMITTEE.

My friend has ventured to say that Theodore Tilton never uttered anything or drew anything which did not contain some high-flown commendation of himself. Well, there is the simple report which Tilton proposed, was willing to accept, and which would have ended this disgraceful difficulty:

The Committee appointed to inquire into the offense and apology by Mr. Beecher, alluded to in Mr. Tilton's letter to Dr. Bacon, respectfully report that, after examination, they find that an offense of grave character was committed by Mr. Beecher against Mr. and Mrs. Theodore Tilton, for which he made a suitable apology to both parties, receiving in turn their forgiveness and good-will. The Committee further report that this seems to them a most eminently Christian way for the settlement of difficulties, and reflects honor on all the parties concerned.

[Mr. Beach then read the following without comment:]

Q. You have now identified a proposed report that Mr. Tilton prepared for the Committee to make? A. Yes, Sir. Q. And you showed it to Mr. Beecher? A. I did. Q. And he asked you if Tilton would be satisfied with it? A. Yes, Sir. Q. Upon what or of what was that proposed report to be predicated? A. In the shape of a statement of the parties.

And then it follows that they were to arrange——

Mr. Shearman—That is the short report.

Mr. Beach—I am perfectly well aware of that, Sir.

Mr. Shearman—But not the one you have been reading?

Mr. Beach—Yes, Sir, that is the short report. I have been reading the short one, unless I am under a very grave error.

Mr. Shearman—You are right.

Mr. Beach—No man has ever paid any attention to the

progress and the revelations of this controversy without the clearest sense that it never ought, under all the circumstances connected with it, to have been exhibited to the public gaze and examination. Was not Moulton, when he was devising and attempting to carry into effect this mode of quieting and settling this whole difficulty, acting in the interest of the parties and of public morality? And if he had been successful, would not every man familiar with the circumstances have accorded to him his earnest gratitude if he could have foreseen the consequences which followed his failure? Gentlemen, I ask you again, following up this idea of settlement and suppression, carrying out the original theory on which Moulton commenced to act in conjunction with Beecher and Tilton, laboring to the last moment with unflinching courage, with unhesitating personal sacrifice, what is there Francis D. Moulton did which subjected him to the treatment he has received and to the scorn and condemnation of Henry Ward Beecher? Suppose, for one moment, that Moulton was the unprincipled and untrusty knave he is represented to be, that he is a man of the world and a heathen, subject to all the temptations of the world and a heathen, bad, really bad in all his qualities and spirit, why was it, when Theodore Tilton was lost, when Tracy had got him at the bottom of that abysmal depth which only the imagination of a Tracy could reach, [laughter] when he was damned beyond all rescue, when Beecher had called his Committee and got it all nicely dovetailed and arranged, when he had got the possession of Tilton's household, and his wife had deserted him, with Mrs. Morse as an ally, with Bessie Turner as a flying scout, [laughter] with all his other retainers and satellites, with Mrs. Ovington, with the contributions of money—after Moulton had done all for and got all from Theodore Tilton he could possibly acquire, if he was this ingrained and arrant knave, why didn't he desert Tilton and adhere to Beecher? You see these soldiers of fortune follow their interest, these men who are regulated by no moral principle, who have no aspirations above a bag of gold, who rather revel in filth and vulgarity, why, these men will follow the scent of profit and advantage; and why did Moulton stick to the failing cause? Can you answer consistently with his imputed character? When he saw the tempest gathering about him, when apparently his business prospects were ruined, when it seemed as if there was no salvation from ruin, why did he not turn to Henry Ward Beecher? There lay wealth, the smiles of fashion and fortune and religion. Why Francis D. Moulton could have been the best petted and the best pampered man in the City of Brooklyn if he would have been false to his truth and to his friend. [Applause.] Everybody knows it. And yet, in the face of denunciation and disaster, never for one instant faltering in his manliness, Francis D. Moulton has pursued the even tenor of his way, and even now, in the honest sense and appreciation of an American community, he stands disenthralled and redeemed. [Applause.] These epithets and denunciations of my learned friend have not, they will not, crush him; because, however passionate and intemperate and faulty he may be, he is yet true to his honor, faithful in his friendship; and that man, gifted with the intellectual qualities which Henry Ward Beecher ascribes to him, nay, clothed with those moral attributes which Henry Ward Beecher concedes to him, Francis D. Moulton will fully redeem himself and his fortunes, and all the power of Beecher and his minions cannot trample him to the dust. [Loud Applause.]

Judge Neilson—Gentlemen, this won't do. I have to request that there will be no such demonstration again. It is uncalled for.

AN ADJOURNMENT TO MONDAY.

Mr. Fullerton—If your Honor please, my associate could not complete another topic before adjournment if he should undertake it.

Judge Neilson—I have to suggest to counsel that, on a conference with one or two of the jurymen, it is thought desirable not to sit to-morrow. It is a question of convenience and health, in which I myself share; and if the counsel should be able, by continuing, to close his argument to-morrow or the next morning, there would still be an unsuitableness in giving it to the jury at the end of the week. I make this suggestion to the counsel to see what their convenience is.

Mr. Evarts—For us, of course, to object to the jury's convenience and wishes—for they have deserved everything at our hands, on both sides, as well as from the community and your Honor—and if their situation is such as makes it desirable for them that the Court should not sit to-morrow, it is not for us to interfere with that view. We should prefer, of course, to make the progress of another day this week if we could do so.

Mr. Beach—That would be my personal preference; but I quite cordially agree with the gentleman that there is no sacrifice or indulgence we can reasonably make for the convenience and accommodation of the jury that ought to be refused; and, besides that, I understand your Honor to intimate that you are in a physical condition which requires relaxation, and with that accumulated evidence I should have no hesitation whatever in acceding to any order your Honor may make.

Mr. Carpenter—(The foreman of the jury.)—I would say in behalf of the jury, that they are unanimous in desiring that, when you adjourn the Court, it be adjourned until Monday. Some of our number are quite feeble.

Judge Neilson—One of the jurymen was complaining yesterday, but suppressed his wish to adjourn.

Mr. Beach—Well, I don't wonder he is sick, Sir.

Judge Neilson—He did not ascribe to you the cause, however.

The Court then adjourned to Monday morning at 11 o'clock.

107TH DAY'S PROCEEDINGS.

GOOD FAITH OF THE JURY QUESTIONED.

MR. BEACH DECLARES THAT HE HAS EVIDENCE THAT JURYMEN HAVE BEEN IMPROPERLY APPROACHED —ASSERTIONS THAT BIASED OPINIONS HAVE BEEN EXPRESSED BY PERSONS ON THE JURY—A DAY ASKED FOR THE PRODUCTION OF EVIDENCE CONCERNING THESE POINTS — DENIALS FROM MR. BEECHER'S COUNSEL—HARDSHIPS OF THE JURY DETAILED BY ONE OF THEIR NUMBER—HE DENIES THAT THEY HAVE BEEN TAMPERED WITH—AN EXCITING SCENE IN COURT—CHARACTERISTICS OF MR. BEACH'S ARGUMENT TO-DAY — MR. BEECHER'S ALLEGED CONFESSION TO MRS. MOULTON DWELT UPON—THE VALUE OF MRS. MOULTON'S TESTIMONY.

MONDAY, June 21, 1875.

The twenty-fifth week of the suit of Theodore Tilton against Henry Ward Beecher was opened today by the continuation of the argument of Mr. Beach in his summing up for the plaintiff. The speaker confined himself for the most part to a consideration of the alleged confession of Mr. Beecher to Mrs. Moulton.

The interruptions on the part of the defendant's counsel were noticeable. They were in general to the effect that Mr. Beach was not accurate in his representations regarding the import of the testimony of various witnesses. The remarks on their part called forth remonstrance from Mr. Morris of the plaintiff's counsel.

The most exciting scene of the latter days of the trial occurred at the time of the adjournment of the Court in the afternoon. The rumors of charges of bribery against certain jurors which have been afloat, and which were by many deemed to have been referred to by Mr. Beach just after the beginning of his argument, culminated in an outburst and remonstrance from the jury, which the speaker at once proceeded to combat. After Mr. Beach had concluded his argument for the day, Mr. Hull, one of the jurors, arose and proceeded to address the Court, speaking for the jurors collectively in the strain of one who had been injured and who desired better treatment. He said that Mr. Beach had taken occasion to reflect on the jury and make insinuations against them. It was not the first nor the second time that they had been compelled to listen to such insinuations. Mr. Hull then referred to the jurymen's grievances in being forced to follow carefully the long and tedious proceedings in the case, in being obliged to neglect their vocations, and to disregard the ties of family and of home, with no other compensation than the pittance they were receiving. All these things were sufficiently grievous to them without their being obliged to listen to damaging insinuations, hinting at their being approached by influences which were to sway them from an honest consideration of the case. The only way in which they had been approached was by having sent to them in envelopes slips cut from *The Sun* newspaper.

Judge Neilson said that he thought the jury had misunderstood the utterances of the speaker. Allowances should be made for counsel speaking rapidly and in the heat of debate.

Mr. Beach said that his Honor's explanation might have been urged by him in excuse, but he would not offer it. He had good reason to believe that the jury had been approached by emissaries of the defendant. His evidence in the matter was pretty good, and he, perhaps, would present it to the consideration of the Court before the case was ended. He would show that members of the jury had given vent to opinions as to what they would do on various occasions, and that they had been approached.

Mr. Abbott of counsel for the defendant said, addressing the Court for the first time since the opening of the trial, that such remarks were out of order unless made with a sense of professional responsibility.

Mr. Shearman asked the plaintiff's counsel to produce their evidence immediately. He said he stamped the assertions made by counsel as utterly untrue. There was not one dollar of money which had been expended in the case which had come from any source except the pockets of Henry Ward Beecher and himself. He was ready for his own part to take the responsibility as to how the money had been expended.

Mr. Beach in reply suggested that Mr. Shearman should not make statements of circumstances and matters outside of his knowledge. He had made no charges against the jury until they were called out by the jury's remonstrances. He had been called on to produce his proof; he would take his own time and consult his own pleasure as to proving the charges made to the Court. He should be sorry if anything he had said would tend to prejudice the jury against his client—a thing which he as counsel had no right to do.

Mr. Hull, again addressing the Court, said that the jurymen had no prejudice in the matter at all, and he accepted the gentleman's apology.

Mr. Beach requested Judge Neilson to appoint a time for the hearing of the evidence on this matter.

Judge Neilson in reply suggested that that was not the proper time to bring the question to the attention of the Court. If the plaintiff's counsel desired to be heard, they could bring the matter before him by application made after the close of the trial.

THE DRIFT OF THE ARGUMENT.

Mr. Beach in beginning his argument for the day referred to an error made by him in the course of his speaking on Thursday last, when he referred to the persons in the story of Paulina in Josephus as being of the Jewish faith. They were not Hebrews. The alleged faithlessness of Mr. Moulton in refusing to Mr. Beecher access to the originals or permission to take copies of the documents in the possession of the former was then commented on, the speaker urging that Mr. Moulton had acted in the only way in which he honestly could act. Mr. Moulton's position at the time of the demand on Mr. Beecher's part was then explained by the speaker by references to the correspondence which passed on the subject between Mr. Beecher and Mr. Moulton. All attempts at a suppression of the scandal had come to an end, and Mr. Moulton could not in justice to the other side, to whom he owed a duty, give copies of the papers to Mr. Beecher. "Moulton would not be very severely condemned for following that 'policy of silence' which the interests of both parties demanded." At this point the speaker defended Mr. Moulton from the charge of being a heathen and one destitute of moral sensibilities. Mr. Tracy's invectives against Mr. Moulton's character were severely reprehended, the speaker saying, in concluding the topic, "The worst of it is, it is not even original with himself."

In taking up the testimony of Mrs. Moulton Mr. Tilton's counsel said that the only question for the jury to decide in regard to it was, whether or not she is to be believed. Mr. Tilton, Mr. and Mrs. Moulton had given testimony to the same point. These three witnesses must be convicted of perjury before Henry Ward Beecher can be adjuged innocent. With reference to Mrs. Moulton's character Mr. Beach read selections from Mr. Beecher's letters showing what estimate he had made of it.

The speaker then went on to urge the impossibility of Mrs. Moulton's having invented the interview of June 2, 1873. Mrs. Moulton had told the jury that her advice to Mr. Beecher on that occasion had been to tell him to go down to his church and confess. The improbability of her having given such advice was made a point in the argument for the defendant. "Well," said Mr. Beach, "it was Christian advice, gentlemen."

Again it had been alleged that it was improbable that Mr. Beecher, if guilty, should urge Mrs. Tilton, as he did, to separate from her husband. This advice was given, however, before Mr. Beecher knew of Mrs. Tilton's confession, and when "separation would rather facilitate Mr. Beecher's purposes" than otherwise. After December, 1870, Mr. Beecher always advised Mrs. Tilton to continue to live with her husband.

The difficulty of inventing such an interview as the one with Mrs. Moulton was again insisted on by the speaker, and the improbability of maintaining it if false under so strict a cross-examination as that to which she had been subjected, was urged. The terms "section of the day of judgment," &c., used at the interview were Mr. Beecher's words.

Mr. Beach then claimed that no alibi had been properly proved in regard to the interview. Mr. Beecher had accounted for certain hours of the day, but had not done so satisfactorily in respect to the time between 9 a. m. and the hour when he went over to *The Christian Union* office. Mr. Kinsella, it was claimed, would have been able to prove the alibi. Yet, said Mr. Beach, he had not been called, and the presumption was that if called he would not have aided the defendant's case by his testimony. The evidence of Mr. Janes, as corroborating Mrs. Moulton's statements, was here referred to, as was also the testimony of Mrs. Eddy. This part of the argument was concluded with an earnest appeal to the manhood of the jury not to condemn Mrs. Moulton to infamy as a perjurer.

Mr. Tilton's religious opinions were glanced at by the speaker, who put him in the same class of thinkers as Dr. Channing, Theodore Parker, Charles Sumner, and Edward Everett. Mr. Beach then aimed to show that Mr. Tilton, believing as he did in his wife's purity, had acted rightly in receiving back his wife. It was not in the nature of manhood to resist an appeal like that of Mrs. Tilton's to her husband. This closed the speaker's references to the direct testimony in the case.

Mr. Beach then took up the circumstances which he said were notable as affecting the guilt or innocence of the accused. Mrs. Hooker's alleged threat to expose Mr. Beecher's sin from the pulpit of Plymouth Church, and Mr. Beecher's correspondence with Mrs. Bradshaw in regard to her offer to tes-

tify before the Investigating Committee, were two of the topics touched on.

THE PROCEEDINGS—VERBATIM.

MR. BEACH RESUMES HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Beach—Speaking, gentlemen, in regard to the quotation I read you from Josephus, referring to the story of Paulina and Mundus, I very hastily and inaccurately designated those two characters as belonging to the Jewish faith. A moment's reflection upon the tenets of that persuasion would have shown me the error of the remark. I have been addressed by a very learned and accomplished gentleman belonging to that faith correcting that error, and he says:

DEAR SIR: In your address reported this morning, bearing date June 18, is a citation from Josephus which seems singularly apposite to the theory advanced by Mr. Tilton. You are, I apprehend, in error in classing Paulina and Mundus among the Jews. No Jewess could have entertained the belief that God would appear in carnal form. It is in direct antagonism to the fundamental principle of Judaism. There is only one instance on record that can be cited against my position, and that is the alleged Immaculate Conception.

I make the correction with acknowledgments of the service the gentleman has rendered.

MR. MOULTON AS THE CUSTODIAN OF THE PAPERS.

I cannot well pass from the consideration of the relation of Mr. Moulton to this trial without alluding to a very serious accusation advanced against him by my learned friends, charging him with faithlessness to Mr. Beecher in refusing to him either the originals or the copies of the documents which have from time to time been deposited in his hands. I cannot better explain the position which Mr. Moulton occupied, or his sense of the obligation which controlled his action, than by alluding to the correspondence upon that subject between him and Mr. Beecher. Mr. Beecher opened it by making an application, on July 28, 1874, for the papers. On Aug. 4 Mr. Moulton answered it substantially in these words:

MY DEAR MR. BEECHER: I received your note of July 24, informing me that you are making a statement and need the letters and papers in my hands, and asking me to send them to you for the purpose of having extracts or copies made from them, as the case may be, that you may use them in your controversy with Mr. Tilton.

I should be very glad to do anything that I may do, consistent with my sense of what is due to justice and right, to aid you; but if you will reflect that I hold all the important papers intrusted to me at the desire and request, and in the confidence, of both parties to this unhappy affair, you will see that I cannot in honor give them, or any of them, to either party to aid him as against the other. I have not given or shown to Mr. Tilton any documents or papers relating to your affairs since the renewal of your controversy which had been once adjusted.

I need not tell you how deeply I regret your position as foes, each to the other, after my long and, as you, I have no doubt, fully believe, honest and faithful, effort to have you otherwise.

I will sacredly hold all the papers and information I have until both parties shall request me to make them public, or to deliver them into the hands of either or both, or to lay them before the Committee, or I am compelled in a court of justice to produce them, if I can be so compelled.

So the matter rested until the afternoon, I suppose, of the same day, when Mr. Beecher addressed to Mr. Moulton a letter which has been read to you, and then followed the communication of Aug. 5 by Mr. Moulton to Mr. Beecher, as follows:

MY DEAR SIR: In all our acquaintance and friendship I have never received from you a letter of the tone of yours of August 4. It seems unlike yourself, and to have been inspired by the same ill-advisers who have so lamentably carried your private affairs before a Committee of your Church, and thence before the public.

In reply, let me remind you that during the whole of the past four years all the documents, notes, and memoranda which you and Mr. Tilton have intrusted to me have been so intrusted because they had a reference to your mutual differences. I hold no papers, either of yours or his, except such as bear on this case. You speak of "memoranda of affairs not immediately connected with Mr. Tilton's matter." You probably allude here to the memoranda of your difficulties with Mr. Bowen; but these have a direct reference to your present case with Mr. Tilton, and were deposited with me by you because of such reference. You speak also of a letter or two from your brother and sister; and I am sure you have not forgotten the apprehension which was entertained lest Mrs. Hooker should fulfill a design which she foreshadowed to invade your pulpit, and read to your congregation a confession of your intimacy with Mrs. Tilton.

You speak of other papers, which I hold "subject to your wishes." I hold none such, nor do I hold any subject to Mr. Tilton's wishes. The papers which I hold, both yours and his, were not given to me to be subject to the wishes of either of the parties. But the very object of my holding them has been, and still is, to prevent the wish of one party from being injuriously exercised against the other.

* * * In closing your letter you say, "I do not ask you to place before the Committee any papers which Mr. Tilton may have given you; but I do demand that you forthwith place before the Committee every paper which I have written or deposited with you." In reply I can only say that I cannot justly place before the Committee the papers of one of the parties without doing the same with the papers of the other, and I cannot do this honorably except either by legal process compelling me, or else by consent, in writing, not only of yourself, but of Mr. Tilton, with whom I shall confer on the subject as speedily as possible.

And you will recollect that Mr. Moulton, immediately after getting the mutual consent which he required, did appear before the Committee, and did present the papers, so far as they had been referred to in the previous proceedings before the Committee, but withholding all others which were not demanded by the necessities of the

then position of the case before the Committee, and which were withheld, as you remember, under the advice and request of Mr. Tracy, assuming to represent Mr. Beecher at the interview at the Fifth Avenue Hotel between him and Mr. Moulton and Mr. Butler.

GEN. TRACY'S REMARKS ABOUT MR. MOULTON.

It is my duty to refer, gentlemen, I think, for a moment to the terms in which Mr. Moulton is characterized in the opening address of Mr. Tracy. I pass from all other consideration of his evidence and relation to this case, because I am satisfied that you will believe that up to the time of this demand for the papers, and the answers which I have read on the part of Mr. Moulton, that he faithfully labored for Mr. Beecher and Mr. Tilton in carrying out the policy of silence upon which these several parties had agreed; and that his refusal to furnish the papers to Mr. Beecher, or, as he says, to Mr. Tilton, for the purpose of being used by the one in hostility to the other, was at a time when all hopes of suppressing this scandal had not been abandoned, and when there were active consultations for the purpose of devising some means, by an appearance of the parties before the Committee, and by a report imputing a modified offense to Mr. Beecher and exonerating Mr. Tilton. It is of this gentleman, thus laboring for the interests of these parties, having no interest whatever in what might be the result of his efforts, except an earnest and an honorable regard for the interests of the family of Mr. Tilton and the interests of Mr. Beecher. It is complained in the opening of Mr. Tracy that this was an unworthy effort; that Mr. Moulton, as an honorable gentleman of the world, without any regard to those influences which might be exerted over him by his conscientiousness, sense of right, duty to the Church and religion—that, as a man of the world, becoming acquainted with the offense of Mr. Beecher, it was his duty at once to publish it and bring him to a public account. There may be a variety of opinions in regard to the course demanded of the citizen by morality and truth under such circumstances. But with the views entertained by Mr. Beecher and by Mr. Tilton of the character of Mrs. Tilton, of the influences which led her to a sacrifice of her personal honor, with the views that have been very generally entertained by the community in regard to the disadvantage upon the cause of morality and religion, of an examination into this scandal, Mr. Moulton, I fancy, will not be very seriously condemned for adopting that policy of silence which was approved by the immediate parties to the transaction, and which seemed to be demanded by all the great interests which depended upon it. At any rate, it is not for the advocate of Mr. Beecher to censure Mr. Moulton. Whatever character it may please Mr. Tracy to confer upon Mr. Moulton, he was yet vastly inferior in intellectual power and in position to Henry Ward Beecher, and when Mr. Beecher appealed to him as a friend for salvation from the publicity of this accusation; when Mr. Beecher, with the power of his great character, advised and coöperated with the policy of silence, and made Mr. Moulton the chief and reliable instrument to promote it, it does not become either Mr. Beecher or his counsel, Mr. Tracy, to impute to Mr. Moulton any dereliction of morality or duty. I have no hesitation in averring that my judgment concurs with the conclusion which these gentlemen then formed—that it would have been vastly better for the interests of society, of morality, of the Church, believing that this wrong had been sincerely repented of by Mr. Beecher, that this whole matter should have been kept in perfect, entire silence. All the disastrous consequences which have followed the proceedings before the Committee, the investigations of this trial, would have been escaped. It would have been a sin concealed, it is true, from the knowledge of the world; but it was of that character, not being criminal in its nature, not calling for the investigation and the punishment of the law; it was of that character affecting only social and domestic morals which might well be concealed from the public. Says Mr. Tracy, speaking of this gentleman:

It is hardly necessary that I should occupy much time in describing the character of Francis D. Moulton, or in explaining the motives which have actuated him throughout this controversy. He has been in your presence for ten days. You have seen and heard him. No man in this court-room could fail to be satisfied that Mr. Moulton was a person well chosen by the plaintiff to play the desperate part required of the mutual friend.

Chosen by the plaintiff!—when Mr. Beecher tells you he was chosen by himself—when Mr. Beecher in repeated appeals of deep pathos and of unlimited confidence, says to Francis D. Moulton, "You are the only friend I have in the world upon whom I can rely, and if you cease to love me I am lost"—Mr. Moulton represented as the exclusive friend of Tilton, intriguing and conspiring against Beecher, when for four years, by night and by day, there was not an occasion when the reputation, the interest of Henry Ward Beecher was threatened, that Mr. Moulton was not ready, at hand, to interpose the zealous service of his friendship and effort.

Cool, fearless, plausible, of cultured tastes, not destitute of literary ability, gifted with a quick perception of human character, of tremendous energy, and totally destitute of any belief in conscience, in immortality, or in God, this man was well qualified, like his great archetype, to deceive the very elect. He has told you under the solemnity of an oath that he was a heathen, and by that you know what he means; not a heathen like Socrates or Plato, not a heathen like those men of old, who walked in darkness seeking for the light, and to whom the great poet of the Catholic Church has assigned a place in that other world free from pain, though far from heaven, but such a heathen as only can be found in the midst of Christian civilization—a man who despises the idea of personal responsi-

bility, who scoffs at the idea of future accountability, who laughs in his sleeve at the credulity of those who read the solemn words of Scripture, or who listen to the instructions of the Church, and whose only idea of a God is a convenient name for sounding an oath or enforcing an execration.

And this was written, gentlemen, after Mr. Moulton had been examined in regard to his religious faith or his idea of the presence and overruling providence of a God, of the immortality of the human soul, and of the existence of a future state of rewards and punishments. We have only the evidence of Mr. Moulton from which we can judge as to his religious belief or faith, and every word of that phillipic studied, written, read by Mr. Tracy is in direct contradiction of every portion of the evidence given by Mr. Moulton, is in direct contradiction of his whole character as exhibited through his testimony upon the stand or through any of the other evidence in this case. It is a direct, unqualified untruth.

Mr. Shearman—Mr. Beach, do I understand you to say that Mr. Moulton has given any evidence of his belief at all?

Mr. Beach—What do you say?

Mr. Shearman—Do I understand you to assert that Mr. Moulton has given any evidence of his belief in a God? He has not, as I understand it.

Mr. Beach—Well, I think that Mr. Moulton was asked the question; I am not clear in my recollection.

Mr. Shearman—No, he was not asked at all except——

Mr. Fullerton—Well, my friend Mr. Shearman is mistaken upon that subject.

Judge Neilson—Well, then it will be assumed that he stands in that respect as the rest of us stand.

Mr. Beach—I suppose so, your Honor, but I have a recollection that that question was put, at my suggestion, to Mr. Moulton. I am not able to refer to all the points of this voluminous testimony.

Mr. Shearman—My recollection is different.

Mr. Fullerton—Well, your recollection is wrong. His testimony was very explicit upon that subject.

Mr. Morris—I submit that these interruptions are not proper.

Mr. Beach—Oh! if I fall into an error, I should certainly hope to be corrected as I go along, for I design to make no misrepresentation. Suppose he had not spoken upon that subject, gentlemen, is any reputable gentleman who comes upon the stand, as a witness, without evidence, to be assailed in this opprobrious language by a counselor of this court? Have we such a license with the reputation of parties and witnesses? Is there no decorum, no sense of propriety attaching to our profession, standing in the face of men as reputable and honorable as ourselves? And will the necessities of any case, or will the malice of any counsel justify him in thus assailing a respectable gentleman, standing under the presumption of the law, and forced by the law to assume a position where he cannot protect himself? Are counsel to be tolerated in not only ungenerous but scandalous and false attacks upon witnesses and parties in such positions? I have not so understood either the right or the privilege of our profession. But, says this gentleman again of Mr. Moulton:

To promote the interests of that Christianity in which he did not believe, and to honor that God whose name he never used except as a byword, he tells you now that he told hundreds of lies, that he invented all manner of schemes, that he belied some men, that he accused others, that he made his own wife the associate and companion of prostitutes, and divided her lips between his own kiss and the kiss of Victoria Woodhull. You must not imagine that the man who would gladly associate with prostitutes and take pleasure in seeing them kiss his wife, all for the sake of the honor of the Church and the good of society, would dream of associating with prostitutes for his own pleasure.

An attack of this character, gentlemen, requires no comment. It cannot be approved by the decencies of a court of justice nor by the proprieties which attach to the practice of our just and honorable profession. No man who can make it, under the privilege of a counsel, is entitled to the respect which applies to an honorable member of that profession. He has not a proper sense of honorable obligation; he has not a due regard for the reputation and the rights of his fellow-men; he is governed by loose principles, and a looser morality; he evinces it in every word of the indecorous language which he sees fit to apply under these circumstances to Francis D. Moulton; and the worst of is that it is not even original with himself [laughter]; that he must get the aid—to gratify his malice—he must get the aid of keener brains than his own, and must stand here reading the production of others in the tone of a schoolboy who has but imperfectly learned his lesson. And this, this is the man who but a few months ago pledged his word and honor to the men whom he assails that he would hold their secrets, and would never appear in opposition to their interest. And this assault upon gentlemen whose honor he should have respected, at least, has been printed and circulated throughout this community, throughout this country, bearing in every quarter this reputation of a gentleman whom Henry Ward Beecher trusted for four years, against whom he has never brought an accusation except that he did not render to him his papers and letters when demanded, and who certifies upon this stand that in his devotion to his service he gave him a new character of the word friendship, not spoken in the satirical manner in which my learned friend has alluded to it, but as a brave and honest testimonial from the heart of Henry Ward Beecher to the fidelity and truth and courage of Francis D. Moulton. I pass from him, gentlemen.

MRS. MOULTON'S TESTIMONY.

There is but one other witness who testifies directly to the confessions of Henry Ward Beecher, and the most important witness in this case. She has no earthly ambitions to gratify; she has no greed to satisfy. She comes here from the quiet of a cultured and comfortable home, a lady in the truest sense of the word, a lady whom Henry Ward Beecher upon the stand and in his letters has eulogized almost as a paragon, in her simple and sincere sense of duty and of truth, and in those virtues of hospitality which commemorate her history in this case. And the question is whether she is to be believed, whether she is to meet the universal condemnation which our friends upon the other side have extended to every witness and every character who has appeared in support of the plaintiff's case. You will see by the allusion of Mr. Tracy, and the relations of that household, but if you will recall more distinctly, you will see by the grievous charges which were made against this lady by Mr. Porter, how she has been exhibited to the world. She is not only a conspiratress, she is not only a perjurer, but according to Mr. Porter she has surrendered her house as a resort not only for the parties to the conspiracy but for those base and infamous agents (as they say) whom it has suited the purpose of the conspirators to employ. She is charged with consorting with public prostitutes. Nay, my friend Mr. Porter could not spare that unmanly blow against the heart of a mother, when he charged her with exposing her only son to the influence of such association. It was not enough to heap odium upon her character for truth and personal chastity, but the instincts of maternal love and solicitude must be outraged to gratify the purposes of this defense. Gentlemen, it is a very serious question which you are called upon to determine. It is no common responsibility which rests upon this jury when they are called upon not only to disbelieve and defame Tilton and Moulton, the husband and the father, but to include the mother in the infamy. It may seem a light and trifling——

Mr. Porter—My friend is entirely in error if he thinks that I used either of the epithets which he has applied to Mrs. Moulton, that I spoke of her either as a perjurer—a word I never used and certainly never connected with her name—or that I cast any imputation upon her chastity, or that I used the word "conspiratress."

Judge Neilson—I am very happy to hear the explanation. The counsel was mistaken.

Mr. Beach—No, Sir, I am not mistaken. [Laughter.] I certainly did not say or intend to say that either of those epithets of "conspirator," or "perjurer," or "prostitute" was applied to Mrs. Moulton. I said no such thing.

Judge Neilson—Certainly not.

Mr. Porter—I understood you so.

Judge Neilson—I want to say to this audience that we must have quiet, and if a happy word is said by counsel it is not at all essential that it should be commended, and a decent respect for the place and the counsel and the jury, who want to hear, would indicate to persons fit to be here that silence becomes them best.

Mr. Beach—I am speaking, gentlemen, of the effect of the argument, and of the defense in this case. If Henry Ward Beecher is to be believed, and to be successful in this action, Mrs. Moulton is a perjurer, Mrs. Moulton is a conspirator; and if Mr. Benjamin F. Tracy is to be credited, to her belongs those other disgraceful appellations and associations to which I have directed your attention. Do my friends shrink from this consequence? Does not my friend Porter charge that Mrs. Moulton is a perjurer, that she is not to be believed? Does not he claim that she is a co-conspiratress? Do they admit the truth of her testimony? Well may they shrink back from that issue. Have they not given evidence here to prove, through an alibi, that her testimony was all false; and is there any means by which Henry Ward Beecher can be justified but by the condemnation of Mrs. Moulton? Most clearly not, gentlemen. That issue must be met. These three witnesses, upon the single oath of Henry Ward Beecher, must be condemned for perjury, or Henry Ward Beecher is guilty It is irreconcilable, the conflict between these witnesses. They accord with the other evidence: they harmonize with the writings of Henry Ward Beecher. There is not a single point of opposition or inconsistency between any other portion of this evidence, except Henry Ward Beecher's and the testimony of these three witnesses. But a very serious charge is brought in the outset against Mrs. Moulton, originating in the first place with my friend Mr. Shearman. He states as a matter of accusation that she did not once, while she was upon the stand, look into the face of Mr. Evarts; and Mr. Evarts a little more delicately puts it by charging her with being furtive in her manner.

Mr. Evarts—"Furtively glancing."

Mr. Beach—Well, "furtively glancing;" that is a little more eloquent than mine, but still it is "furtive." [Laughter.] Well, gentlemen, it is not, I think, very surprising that a lady who never before appeared upon the witness stand should be a little embarrassed and dashed by being placed upon a pedestal to be gazed at by several hundred people during several hours of a tedious examination. I suppose if she had had the freedom and the frolicsomeness of Bessie Turner, if she could have acted out with the spirit of that young lady all the phases of her testimony, why, she would have recommended herself as far more agreeable to Mr. Evarts and his learned associates, and to Plymouth Church and their gallant ushers. [Laughter.] She is not precisely of that character. She is not accustomed to these public appearances. She has not that dramatic instinct which belongs in unison to Bessie Turner and Mr. Henry Ward Beecher and *some* of his dis-

tinguished friends. She delivered her evidence with propriety, with modesty, and with reserve, and yet with the clearness and candor of an intelligent lady, speaking from a clear memory. But there may be, possibly, some other solution to this difficulty. It is barely possible that Mrs. Moulton saw nothing particularly attractive in the appearance of my friend Mr. Evarts. [Laughter.]

Judge Neilson—Mr. Beach, I sympathize with you, but I don't see how you can go on. This audience seems determined to interrupt you; and if you say a happy thing, it is to be drowned in the noise. It is hardly worth while to proceed.

Mr. Beach—Well, Sir, I think I will get along without difficulty. I am sorry that anything I should happen to say, Sir, should excite any impropriety in the court-room, and I assure your Honor that it is no particular pleasure to me—

Judge Neilson—No, it is no pleasure to you.

Mr. Beach [continuing]—to excite such demonstrations.

Judge Neilson—And you ought to be free from any restraint in any way. Mr. Rogers, see if you can discover who it is who interrupts the proceedings.

Mr. Beach—But if Mrs. Moulton could by possibility have ventured to observe my learned friend when he was so stern and severe in his cross-examination, I am perfectly certain if her eye had glanced beyond him and seen the phalanx of Plymouth Church, all arrayed and embattled before her, she would have cast down her eyes very certainly. It was very troublesome for any one to face the apparent condemnation and the frowning hostility of the various interests which appeared at once before them when they ventured to look abroad, and it was tolerably discreet, I think, and a sensible exhibition of womanly modesty and reserve for Mrs. Moulton to "furtively glance" if she had any curiosity.

MR. BEECHER'S ESTEEM FOR MRS. MOULTON.

You remember the attack which was made by Mr. Tracy upon this lady. I do not propose to reproduce it, but to oppose to it two or three brief extracts of the estimate expressed from time to time by Mr. Beecher in regard to this lady. In the remarkable letter of June 1, 1873, Mr. Beecher says:

But, oh, that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity, your disinterested friendship. Your noble wife, too, has been to me one of God's comforters. It is such as she that renews a waning faith in womanhood. For a thousand encouragements, for services that no one can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for confidence and affection, I owe you so much that I can neither express nor pay it. Not the least has been the great-hearted kindness and trust which your noble wife has shown, and which has lifted me out of despondencies often, though sometimes her clear truthfulness has laid me flat.

And afterwards writing, he sends kindest remembrance to Mrs. Moulton. That was written July 14, 1873. That was written after, according to the theory of my learned friends, this clerical gladiator had stripped himself for the fight and was determined to resist; it was after his memorable resignation, or prepared resignation; it was after he had arrived at the conclusion that he had been imposed upon and deceived by these other parties; it was when he had given up all hopes founded upon any attempted suppression of this scandal; it was after he had come to the conclusion that there was no safety for him but in revelation and contest, that he bears this tribute to the character of the two persons whom he is said, in June, 1873, to have considered his opponents.

MRS. MOULTON'S CONTRADICTIONS.

At the hazard of being somewhat tedious, gentlemen I must reproduce—and I take it as more brief from the cross-examination mostly—a portion of the testimony of this lady, bearing, as it does, upon several points. Under the examination of Mr. Evarts this question is put:

Q. Now, won't you tell us what Mr. Beecher said, the language that he used, as you remember it, and go through the whole interview in that form of what he said and of what you said, if you know what it is? A. Well, he began by saying that he was depressed and discouraged——

Q. Was this after your husband went away?

* * * * * * * * *

A. He expressed great sorrow for the misery that he had brought upon himself and Mrs. Tilton, upon everybody connected with the case, but said that he felt that he had thoroughly repented, and that he had been forgiven, and that he was better fitted now to preach than ever before; he expressed to me his love for Elizabeth, and his great remorse and sorrow that she should have ever confessed to her husband; that it had brought nothing but ——; it would bring only ruin in the end to all; after lying on the sofa a little while he got up and walked up and down the room in a very excited manner, with the tears streaming down his cheeks, and said that he thought it was very hard, after a life of usefulness, that he should be brought to this fearful end, and I said that I thought it was—it was very hard, and there was only one way out of it for him, there was only one chance for him left, and that was by confessing it after walking up and down for some time he sat down in the chair. I stood behind him and put my hand on his shoulder, and I said: "Mr. Beecher, if you will only go down to the church, Frank will go with you; he will stand by you through everything; it does not matter what comes to you, he will always be your friend, and, no matter what comes, I will always be your friend if you will only go down to the church and confess, because that is the only way out for you. I am convinced of that; you can never cover such a crime as this and continue in the pulpit, except through a confession on your own part. You have been guilty of crime, and you have got to take the responsibility upon yourself and suffer the penalty."

Now, it is said, this is very extraordinary language for a lady to hold to a pastor like Mr. Beecher, and it would be in the coolness of ordinary conversation and intercourse; but you must remember that a great secret had been con-

fided to this lady concerning this great man. You must remember that her husband, in whose judgment she relied, was striving to conceal that secret and protect Mr. Beecher from its consequences. You must remember that, at this very interview, Mr. Beecher was before her, an agonized and prostrate man in spirit, confessing his error, professing that he had confessed and repented in his private relations with his Maker and Redeemer; that here was a great spirit writhing and tortured with the remorse he felt for his offense; that this lady was the only woman on earth, as he said, to whom he could go for comfort and consolation. This is not a pretense, gentlemen; it appears in the letters of Henry Ward Beecher. He acknowledges the great comfort which this woman gave him, as a substitute for that which in olden times he derived from Mrs. Tilton, but of a different character and plane. Under these circumstances, in a scene of such intense interest, you are not to expect, as I have before said to you, that the distinctions and qualifications between rank and station or qualities are preserved. There is freedom not only of expression, but freedom of sentiment and of feeling. Great sorrow, great excitement of any kind, associates and equalizes human minds and hearts: and this woman, evincing precisely that faculty of which Mr. Beecher spoke in his letter, and which so "often laid him flat"—this woman, in the sincerity of her Christian spirit and womanly sympathy, and with the clearness of perception which accompanied her through the whole of her connection with these transactions, saw and said that the only escape was by confession. Not simply repentance in the closet and in the prayer, but confession to his church—a confession which would still all the disturbing elements of that congregation; a confession which would give peace and quiet to the stormy elements of their committees and their deacons—which would still West, which would satisfy Halliday and Bell and all the others who were distrustful or uneasy at the situation between Mr. Beecher, this scandal and the congregation. And this advice of this lady appealed to the judgment of Mr. Beecher, as expressed in his cooler and better moments. In one of his sermons he says:

The man who has been wallowing in lust, the man who has been on fire in his passions, and who by God's great goodness has been brought to an hour and a moment when, with the lurid light of revelation, his monstrous wickedness stands disclosed to him, and all excuses are swept away, and the impulse to reform is at last generated in him—that man ought not to wait so long as the drawing of his breath. Wherever he is, no matter how decorous his audience may be, if he does the thing that is safest and best he will rise in his place and make confession. Though it be in the church, and it break the order and routine of service, he will stand up and say, "Here I am, a sinner, and I confess my sin, and I call on God to witness my determination from this hour to turn away from it." That is the wise course, and you would think so if it was anybody else but yourself.

Gentlemen, that sermon was delivered on the 20th day of December, 1868.

Mrs. Moulton proceeds:

And he said: "Well, I never gather much comfort from you; you are always to me like a section of the Day of Judgment." And I said: "Well, I feel great sympathy for you; but I don't see how you can continue in this sort of life—living a lie; going into your pulpit and preaching Sunday after Sunday." I said: "I have never heard you preach since I knew the truth that I haven't felt that I was standing by an open grave; I cannot express to you the anguish and the sorrow that it has caused me to know what I have of your life. I believed in you since I was a girl—believed you were the only good man in this world. Now it has destroyed my faith in human nature. I don't believe in anybody; I don't go to church—all my interest in the church and in you is gone, and I am sure I cannot respect you unless you manifest to me that you are sincerely repentant, by going down to the church and confessing your crime. It is very hard for Mr. Tilton to be abused by your friends, and to be charged with treating his family ill—his unkindness to his wife—while he feels that you are principally the cause of all his trouble. It is very hard for him; it is very hard for all concerned. If you are only a mind to take this case into your own hands, you can settle it by confession. Your people will stand by you; they believe in you; they will forgive this one crime that you say you have committed, and which you have—which you say you have—sincerely repented for, and you believe you have been forgiven, and you feel that you are better able now than ever before to do great good in this world, if you can only be allowed to go on to the end of your life without all the particulars of this case being made known; that is all that you ask; and if the facts are to come out you want to go out of life; that you cannot live; that you cannot endure it any longer; physically and mentally you are worn out, and it is only with the greatest care that you have been able to preach Sunday after Sunday."

Mr. Evarts interrupted the witness and finally says:

My inquiry, if your Honor please, was whether this last was what she said to Mr. Beecher, and was in the form of what she advised him to say to his people.

The Witness—I don't know that I ever stated to him what the confession should be to the church. I simply left—I left that to him. He knew what his confession to the church could be better than I could—how much he was to confess.

Q. I understand your form of expression in this latter part to have been of what you told him he should tell his people. A. This was my conversation with him; I simply said to him that I thought he should make a confession to his people.

Now, a great deal has been said about the improbability of the idea that this lady should make this suggestion that Mr. Beecher should go to his church and make a bold and naked confession of all the details, the disgusting particulars of his offense, and it is said that it was improbable advice for any lady or anybody else to give to this pastor. Well, it is Christian advice, gentlemen. It is such advice as Henry Ward Beecher gave in December, 1868, in a public sermon. It is the only way of obtaining forgiveness for sin and a reconciliation with an

offended law-giver. It is what this woman had been taught, and she, in the sincerity and earnestness of her sympathy and affection for this man, said to him what every Christian, stirred to his or her heart's core by an exhibition of such suffering and penitence on the part of a great spirit, would at once and instinctively have said: "You are struggling with the world, Mr. Beecher; you have committed a great sin, and by penitence and confession to God you have obtained, as you say, his forgiveness; but you are involved in a whirlpool of secular difficulties—your church is distracted, you are preaching a falsehood by your appearance in the pulpit with this unconfessed sin and with the semblance of purity, before your congregation; you are giving cause of offense; you are scandalizing the pulpit; you are dissevering your congregation; you are fomenting and continuing this scandal, which is festering into the morality of the community. The only escape, the only way of relieving and extricating yourself from this trouble is to make some confession a truthful confession, not necessarily aggravated by details or by vulgarities, but confess your sin, plead the forgiveness of your God, and your willingness and your ability and your resolution to serve Him truly, sincerely, and without hypocrisy. That is peace; that is obedience to God; and it is the only salvation for you. Far better, far better than to contemplate the possibility of rashly fleeing from your responsibility here to meet the dread responsibility of a hereafter."

Very well; you can go on now. A. Mr. Beecher then spoke to me of coming some time, either the next day—to bring me some mementoes which he wished to give to his friends—something to Mrs. Tilton—asked me always to respect and care for her, and be kind to her; that she was not a bad woman at heart; that she had sinned through her affections.

Q. Well? A. I only remember that Mr. Beecher was in a very excited condition of mind on that day; that he told me very positively that he should take his life, and I believed him when he said so.

Q. You did believe him? A. I believed him at that time.

Q. Yes; well? A. And I rebuked him and told him of how much I regretted that he had committed this sin, because I had believed in him; how it had destroyed all my faith in human nature; his only reply was that he had repented and he believed that he had been forgiven; still he suffered greatly, fearing it would come to light; that the truth would all be made known; that he suffered first for the sake of the woman who had given her love to him, for the sake of his children; he said that he would—that his children, of course, would despise him; that he could never go back to his house, and then I said: "You could go up to your farm," &c.

* * * * * * *

Q. Well, did he come anywhere near that time and have a further talk with you on the subject? A. He came soon after; referred to this depression on that day, but said that he felt more hopeful; that he thought that his card in *The Eagle* was only temporary relief; he was living in a fear of—a constant fear and anxiety, not knowing at what time Mr. Tilton might break out with a truth.

And then she speaks of the time of day when he came on the 2d of June, which was early in the morning.

Q. Now, where did any interview occur in which he sent any messages by you to Mrs. Tilton, and how did it come about? A. He always asked me to bear his love to her?

Q. He what? A. To take his love to her?

Q. Do you say *always?* A. I think nearly always sent his love to her.

Q. Well? A. Wanted me to find out if there was anything she was in need of—any luxury, any little comforts she needed; if so, to let him know, and after I had repeated to him a conversation I had had with Mrs. Tilton when she felt that she could not live with Mr. Tilton any longer, and was going to live with her mother, he told me expressly to see her and say to her from him that, for his sake, if not for her own, she must remain with Mr. Tilton; she must be to him a good and true wife; to make his home as happy as she could.

MR. BEECHER'S ADVICE OF SEPARATION.

Now, it has been argued in this case, gentlemen, that it was highly improbable that Mr. Beecher, an adulterer, should have advised Mrs. Tilton to separate from her husband; but you will remember that from the time of the confession in July, 1870, until the latter part of December, 1870, Mr. Beecher had no information or suspicion that there had been any revelation by Mrs. Tilton in regard to their intercourse. During that intervening six months, Mr. Beecher felt as perfectly safe, and confident, in his trust in Mrs. Tilton, and in his reliance upon her discretion, as he had felt in the preceding period from October, 1868. Well, then there was no inconsistency or improbability in his so advising during that period; which was the period in which he advised separation, if he advised it at all. His advice was, according to the little note he wrote, separation with provision for the support of Mrs. Tilton by her husband. How did that embarrass Mr. Beecher? How did that interfere with his schemes of indulgence, if he had any? How did that tend to his exposure? Not at all. Separation would rather facilitate his purposes, would rather tend to concealment, and if, after his wife had left his home and protection, Theodore Tilton had made any complaint of this character, why it would have been at once attributed to irritation and revenge, springing out of the separation produced by this advice. It was therefore in this condition of ignorance that he gave whatever qualified advice he did give toward a separation; but after December, 1870, when Mrs. Tilton complained, spoke of any design or inclination to separate from her husband, this injunction from Henry Ward Beecher was sent to her, to continue to live with her husband, and to make the home peaceful and happy which he had invaded. More of that you will see:

Q. Did you ever carry any messages from him to her? A. Yes, Sir. Q. And from her to him?—if so, state what those messages were? A. I repeated to Mr. Beecher a conversation which I had with Mrs. Tilton; she said she felt very sorry for me, even more sympathy for me than

for herself, because that I had lost faith in Mr. Beecher; because I was unable any longer to attend the church; she begged me to go back to the church and believe in Mr. Beecher; and I said, "Elizabeth, how can you ask me to go back to the church? how can you ask me to take the communion from his hands, knowing what I do of his life?" and she said, "I want you to believe in him; he is a good man; it was not his fault; he is not responsible for the crime; I am the one that is to blame; I invited it;" and I said, "I think that I might hear Mr. Beecher preach, and perhaps derive some benefit from his sermons; but I can never go back to the church with the same faith that I had in him years ago."

Q. Did you report this conversation to Mr. Beecher? A. I did.

Q. How soon after the conversation occurred? A. Perhaps a day or two after; I don't exactly remember how soon.

Q. Now, had you any further conversation with Elizabeth that you reported to Mr. Beecher? A. I had.

Q. State, if you please, what it was? A. I think it was at the time that Mr. Beecher was—Mr. Tilton appeared down at the church—that I called to see Elizabeth, and I said: "If you are called before the church, what are you going to do to save Mr. Beecher?" She said: "I shall sacrifice my husband, and deny everything." I said: "Will you allow your husband to go down with the truth?" She said: "I think I should be justified in stating falsely under the circumstances; I think for the sake of Mr. Beecher, for the sake of the influence on the world, for my own position, for my children, I think it is my duty to deny it."

Q. And did you report this to Mr. Beecher? A. I did.

Q. What reply, if any, did he make? A. He said: "Poor child, she is trying to repair the wrong she has done in confessing it—in confessing her sin. But it is too late." * * * *

Q. State, if you please, what that message was? A. I once repeated to Mr. Beecher a conversation that I had had with Mrs. Tilton when she felt that she could no longer remain with Mr. Tilton; that he was continually referring to this sin which she had committed; that he would not let it die out; that he would not give her an opportunity—

Mr. Evarts—Mrs. Moulton, is this what you said to Mr. Beecher?

Mr. Fullerton—So she states.

The Witness—And that she felt she could not live with him any longer, that she was going home to live with her mother. Mr. Beecher said: "Tell Elizabeth for me that for my sake she must continue to live with Theodore, to be to him a good wife, to make his home happy and as attractive as possible. I know it is hard; I know she has much to endure; but she must do it for my sake, for her own, and for the children. I have a family; she has nothing to hope with me, and the only way in which she can ever see me is by living with Theodore, and living to him a good and true wife."

Q. State, if you please, again, what reasons she gave for wishing to leave her husband. A. Because Mr. Tilton was referring to this sin which she had committed.

Q, And would not permit her to do what? A. He would not permit her to live a better life with him."

A single word more, gentlemen.

Q. Do you remember asking her whether she should support her husband in a charge against Mr. Beecher, or if she should not, and her answer being made to you, that if there ever came a controversy, she should speak the truth? A. No, Sir; I never remember that.

Q. You don't remember that? A. No, Sir.

This is on the cross-examination by Mr. Evarts:

Q. Did you speak to her on the question of which side she should take? A. Yes, Sir.

Q. And did you express an opinion as to which side she ought to take? A. I don't remember that I did. * * *

Q. And did she not then tell you that whenever the inquiry came she would tell the truth? A. No, Sir.

Q. Did she tell you that she should not tell the truth? A. She told me distinctly that she should sacrifice her husband and deny everything for Mr. Beecher; that she believed, under the circumstances, that she would be justified in telling a lie.

Now, gentlemen, I have reproduced this evidence to you so that you might have it in mind and might judge of the propriety and force of the argument submitted upon the part of my learned friends with reference to the peculiar character of the narrative which this lady gives What I have read to you is pronounced by Henry Ward Beecher an entire fabrication. He takes the stand and, in face of all the other evidence, denies that the statement of the lady, in any of its essential particulars, is true, and you are to come to the conclusion, if Mr. Beecher is to be credited, that the lady, either spontaneously or at the prompting of somebody else, has invented the whole of this relation. Well, it requires some little ingenuity to accomplish such a feat. It would be difficult for even as keen and shrewd a mind as Henry Ward Beecher's, to invent and successfully maintain, under a rigid and close cross-examination without any of those evidences which show a manufacture and arrangement, a story of this complex character. If this lady on her cross-examination had repeated in exact and precise form the conversations as she gave them in her direct examination, one might well have had some suspicions in regard to her candor and truth; but evidently she speaks impulsively—she speaks from impressions received from some source, and indelibly imprinted on her mind. There is no arrangement; there is no mechanism; there is no formality She gives in different arrangement and in different form, upon her two examinations, the same substantial facts; she gives all the evidences of purity and truth so far as we can judge by those rules given to us by the wisdom of the law. Do you believe that that lady invented the language, "I never gather much comfort from you;" "You lay me flat," "You seem to be a section of the day of judgment?" Did Mrs. Moulton ever conceive an expression of that character? And if this narrative had been of her own manufacture would she, a lady, unversed in expressions of that kind, would she have placed in that narrative such an expression? Who doubts that it was the utterance of Mr. Beecher? Entirely consistent with his habit of rhetoric, and his modes of expression, and utterly unlike the mode of thought or of speech of a woman of domestic character? You probably have not forgotten an incident which occurred in the course of her examination. While she was detailing, upon cross-examination,

an interview with Mr. Beecher, Mr. Beecher leans over and suggests to his counsel the question whether Mrs. Moulton did not kiss him. She admits she did; that while he sat weeping and moaning and grieving in his chair she, under the deep excitement of that moment, leaned over his shoulder and imprinted a kiss on his forehead. What was the object of that suggestion?

Mr. Evarts—My object was to show she kissed him whenever she met him, as Mr. Beecher testified.

Mr. Beach—Yes, Sir, Mr. Beecher had not then testified.

Mr. Evarts—Yes, but he did testify afterwards.

Mr. Beach—No matter what your object was, we know what the question was.

Mr. Evarts—My question was that.

Mr. Beach—And we know how it came in.

Mr. Evarts—My question was that.

Mr. Beach—Your question was what?

Mr. Evarts—As to his mode of salutation.

Mr. Beach—You asked her whether she did not kiss him.

Mr. Fullerton—Then.

Mr. Evarts—Not a word of it.

Mr. Shearman—I made the suggestion myself to Mr. Evarts.

Mr. Evarts—The question will show for itself.

Mr. Shearman—The whole idea of that is nonsense, in my opinion.

Mr. Beach—Well, Sir, an interruption for correction I have not the slightest objection to submitting to, and I rather court it, for I don't wish to reason upon a false premise, but when counsel take that occasion to say that Mr. Beecher did n't make that suggestion when he swore that he did, and that he, Mr. Shearman, made it himself, it is over-stepping the bounds of professional right and endurance. [Applause.]

Judge Neilson—Officer Rogers, you will see that these demonstrations are not repeated. You will arrest any one that does it.

Mr. Fullerton—I think it was the whole audience.

Judge Neilson—I have tried to reason with this audience until I see it is perfectly idle to do so. The other officers will also pay attention strictly to discovering who are the disturbers.

Mr. Morris—It grows out of these interruptions.

MR. BEECHER'S ALIBI.

Mr. Beach—But, gentlemen, the whole credibility of this lady is placed upon one issue, and I have no hesitation in meeting that issue. She puts this interview on the 2d of June, 1873. Mr. Beecher swears he was not at the house of Mr. Moulton upon that occasion. Mr. Tracy in his opening thus speaks of it:

But, gentlemen, there remains a graver fact than any to which I have yet referred. You will observe that Mrs. Moulton fixed the principal interview with Mr. Beecher upon Monday, the 2d of June, 1873. She has identified that day with great particularity, and left no room for misapprehension as to date. She has also fixed the length of that interview at four hours, by reference to circumstances which cannot now be explained away. The motive for naming this day is obvious. There were but two days on which, even according to the plaintiff's theory, the idea of suicide could possibly have been talked about, namely, May 31 and June 2, 1873. And Mrs. Moulton was required to confirm her husband's story of Mr. Beecher's contemplated suicide on May 31, which was Saturday. The testimony of Mr. Moulton has left no room for a four hours' interview between his wife and Mr. Beecher. The next Monday was therefore chosen as the only available day, and it has been specified, I repeat, with the utmost particularity. The subject of this pretended conversation, and the circumstances under which it was had, are such as to make it certain that it either took place on June 2, 1873, or never took place at all.

Gentlemen, in all this the interposition of Divine Providence is most singularly manifest. For, upon that very morning of June 2, 1873, Mr. Beecher was detained at his own house in consultation with a gentleman well known to you all; and at the very time at which, according to Mrs. Moulton, she was tucking him up on her sofa, and encouraging him to confess, he was seated by the side of his own wife, and speeding his way to Peekskill!

Mr. Beecher sustained by his oath the theory of the opening, and the question is, whether under this evidence they have sustained Mr. Beecher. Mr. Tracy, you know, in his opening, predicted that after this evidence should be given, it would be so satisfactory and convincing that Mrs. Moulton would at once come back upon the stand and attribute another venue to the conversation—place it upon another day. On the contrary, Mrs. Moulton came on the stand and adhered to her original statement. I think I may as well, if your Honor please, ask your attention at this point to an authority or two upon the evidence requisite to maintain an alibi. In one sense, perhaps, not its usual and ordinary one, this is a defense of alibi.

Wharton on Homicide, in the note at Section 652, quoting from Mr. Webster's case, says: "This is a defense often attempted by contrivance — subornation and perjury. The proof, therefore, offered to sustain it is to be subjected to a rigid scrutiny, because without attempting to control or rebut the evidence of facts sustaining the charge, it attempts to prove affirmatively and in part wholly inconsistent with it—and this defense is equally available, if satisfactorily established, to avoid the force of positive, as of circumstantial evidence."

Judge Neilson—And mainly applies to identity.

Mr. Beach—Yes, Sir. Not that exactly. It is for the purpose of showing, where an offense is attributed to an individual, the possibility of his committing it, and the fact that at the time he was at another place. The principle applies here.

Mr. Allison, in the second volume of his treatise on the criminal law of Scotland, says:

One of the most ordinary pleas resorted to by a panel—that is, an accused—is that of alibi, and doubtless when duly qualified and fully proved it is among the most effectual of any—but it requires to be carefully scrutinized both as to the sufficiency of the evidence and the inference to be drawn from the facts if fully proved, be-

cause the plea is not conclusive unless the alibi is circumstanced and qualified in such a manner as makes it not only unlikely, but impossible, that the panel could have done the deed as the time and place libeled. The proof of alibi is in most cases a direct impeachment of the veracity of the prosecutor's witnesses which is not to be admitted on higher grounds, and because it is a plea of that short and simple sort, with respect to which the panel's witnesses can easily contrive an uniform and false story, such as the prosecutor can or will disprove, as he can cite no new witnesses in reply.

That must be under the law of Scotland.

Indeed, as the circumstances may be true and the falsehood lie only in applying them to a different day or hour from that on which they actually occurred, and it is by that contrivance that pleas of alibi are in general rendered so difficult to disprove.

Now, Sir, with your permission, I will adopt, as the most concise and accurate argument I can present upon the two branches of this defense of *alibi*, an article which I observed in a New-York journal of April 5, 1875, as it is a strict consideration of the two questions whether there may not be a variation as to time and place and yet the evidence assailed be true, notwithstanding an *alibi* may be proved as of the precise time and place about which the conversation is often located, and then as to the character of the *alibi* itself:

All those who have read the examinations and cross-examinations of witnesses on this trial, must have been impressed with the apparently undue importance given by both sides to the memory of the exact date of an event which occurred between three and six years ago. And now, as readers know, there is said to be expectation of a great point in favor of Mr. Beecher, by showing that as he was elsewhere on the 2d day of June, 1873, he could not have been with Mrs. Moulton on that day, when she testified that he made certain confessions to her. That, of course, is clear enough. If Mr. Beecher were at Peekskill or in the office of *The Christian Union* all that day, the interview, as alleged, could not have taken place. But as far as the public judgment goes, this is a comparatively small matter. The substance of that allegation, the gravamen of that evidence, was not that the interview happened on the 2d of June, but that Mr. Beecher made, about that time, certain admissions to Mrs. Moulton. Now, we all know that a mistake in a date is the easiest of all mistakes to make, and such a mistake does not at all invalidate, in the general judgment, the testimony of an otherwise truthful-seeming witness who makes it. Which of us, undertaking to describe an interview so interesting to us that we remember the minutest particulars of it, would be sure about the date, perhaps within a week, even if it happened six months ago. Mr. Beecher's advisers may be sure that they cannot lead the public to set aside such testimony as Mrs. Moulton's by this plea of *alibi*.

The plea of *alibi* is a good defense, the very best, when it can be thoroughly well sustained, and when it is applicable. But in the very nature of things it is applicable only to events the date of the occurrence of which is unmistakable.

This portion of this argument I think very sagacious and sound.

In cases of murder, robbery, assault, arson, and the like, the date is fixed. It is an absolute factor in the problem. We know that at such an hour, or within a very few hours, the man was killed, the robbery committed, the house fired. In such cases, to show satisfactorily that a man charged with the crime was in another place, *alibi*, than that in which it was committed, at the time within which it must have been committed, is an all-sufficient defense. But this does not apply in common sense, however it may in law, to an interview with a woman which happened nearly two years ago. For the absolute factor in the problem is wanting. It is quite impossible, for instance, that Mrs. Moulton could make any mistake as to the nature of a certain interview which she alleges she had with Mr. Beecher, or as to the substance of what she alleges that he then said to her—quite impossible, without deliberate perjury on her part. But nothing is more possible than that she might mistake the date of that interview by some days—nothing, hardly, more probable than that she should do so, after such a length of time, even with the best effort of recollection, and with all the means of so doing accessible to her. This all reasonable men and women well know, and they will not be ready to believe that Mrs. Moulton invented that remarkable interview which she described so clearly, and yet with such modest reserve, merely because she may have been wrong, although positive, as to a date. They will be far readier to believe that she might forget whether a certain day was numbered (invisibly) 1, 2, 3, or 4, than that she could invent such a Beecherism, and one so appropriate to the alleged situation, as styling her "a slice of the day of judgment." Mr. Beecher's advisers must not lead him to rest too strongly on his *alibi*.

And I see the author of that article, in quoting the expression which it seems, to wit, to him a very clear Beecherism, has made the mistake of calling it "a slice of the day of judgment," probably having in recollection that Coleridge, in one of his letters, uses the term, "a huge slice of eternity." Now, those remarks are sensible; they are lawyerlike as well as practical. But I do not adopt that theory. If I was satisfied that Mrs. Moulton was wrong in fixing this conversation on the 2d day of June, I should submit to you with great earnestness the principle of that discussion. But she is not wrong, gentlemen. Mr. Beecher swears that on the morning of the 2d day of June, between 9 and 10 o'clock, I think (and I hope to be corrected as to hours if I mistake), between 9 and 10 o'clock Mr. Beecher swears that he was at his house in consultation with Mr. Kinsella as to the form of the card which was published at 2 o'clock of that day. In the first place, there was no necessity for a prolonged interview between two such ready writers as Mr. Beecher and Mr. Kinsella in regard to the form of a little card of fifteen or twenty lines which had been substantially prepared, and which underwent but a slight degree of alteration. That could have been done in a very few moments at the office of Mr. Kinsella or at the house of Mr. Beecher; and as Mr. Beecher is a notoriously early riser, doing all his laborious work for his sermons and publications before 10 o'clock, it is quite easy to be believed that whatever intercourse there was between Mr. Kinsella and him upon that subject was prior to the hour of 9 o'clock, about which time Mrs. Moulton thinks he came to her house. Then Mr. Beecher, according to his tes-

timony, passed over to *The Christian Union* office in New-York, and from thence to the railroad, taking passage for Peekskill. It is quite as easy, I think, to believe that Mr. Beecher, or any other gentleman who has spoken in regard to seeing him on the 2d of June, might have been so mistaken as to suppose that the witnesses who spoke of his presence at Mrs. Moulton's on the 2d of June were mistaken. But, passing that, the question is where was Mr. Beecher from 9 o'clock until the period, whatever it was, that he went over to *The Christian Union* office on his way to Peekskill. I do not stop to consider at any length the question as to the time exhausted in this interview with Mrs. Moulton. She thinks it continued until her lunch time, at 12, or 1, or 2 o'clock, whenever it was. She speaks of those hours, and is of the impression that it was 2 o'clock, but speaks of it with no confidence as being that hour exactly; she says "about."

[Mr. Evarts here spoke to Mr. Beach in an undertone.]

ALLEGED AVAILABLE TESTIMONY NOT PRODUCED.

Mr. Beach—I say she does not speak with any confidence or attempt at accuracy as to that hour, and I read her evidence with reference to that point. I will listen to any reading of the evidence which may correct me, but not to a mere assertion. I attach no significance whatever to that. An interview of two hours under such circumstances, involving such intense interests, might well have been enlarged by Mrs. Moulton to three or four hours, and she might have very well imagined, when Mr. Beecher got up to leave under those circumstances, that the hour of lunch had come, and ask him to stay and take lunch. There were no indications of it, as she says, and there was no truth in the lunch; it is a mere impression as to the continuance of an absorbing communication which left its distressing marks upon her appearance, as is proven by other evidence. But the question returns: Where was Mr. Beecher between 9 and 11 or between 11 and 12 o'clock? He says that one hour at least of that was exhausted in company with Mr. Kinsella. Where is Mr. Kinsella? Mrs. Moulton and Mr. Beecher stand in direct and unqualified contradiction upon that one point as to the whereabouts of Mr. Beecher between 9 and 10 or 11 o'clock. Mr. Beecher says he was at home in consultation with Mr. Kinsella. Mrs. Moulton says she was in her parlor under the circumstances she describes. Mr. Kinsella is in this city, the editor of a partisan journal in favor of Mr. Beecher, though conducting it with great propriety, and against him or his we have no complaint to make; but he was an accessible witness, the friend of Mr. Beecher, a competent, reliable, and trusty gentleman, whose appearance upon that stand by his oath confirming the evidence of Henry Ward Beecher would have been destructive of the proposition that Mr. Beecher was at Mrs. Moulton's on the 2d of June, 1873. He is in this city, I repeat, accessible to his friend, Mr. Beecher. He is not produced as a witness. And, do you remember the presumption of law as I read it to you the other day? The presumption is as against Mr. Beecher, when this issue is fairly made between him and Mrs. Moulton, and he has a friendly and trusty witness by whom he can prove his *alibi*, and fails to produce him, that if produced he would not confirm his theory. It is the judgment of common sense. If Mr. Kinsella would have supported Mr. Beecher and contradicted Mrs. Moulton, no man supposes for a moment that the counsel of Mr. Beecher would have failed to produce him. And what, Sir, does my learned and distinguished adversary, Mr. Evarts, do? Instead of producing Mr. Kinsella, he produces his paper, and ventures to read a portion of his editorial as proof that Mr. Kinsella was with Mr. Beecher—as my friends know, no evidence in this case; as my friends know, no proof of any statement which may be contained in it—and we have the argument against them not only that they suppress evidence, but that a learned counselor, against his duty and his right, attempts to substitute an editorial written by Mr. Kinsella or somebody else, we don't know who, for the evidence which he ought to have presented. Now, what says Mr. Janes on this subject?

Did you see Mr. Beecher on the 2d of June, 1873? A. I recollect that I did.

Q. And where did you see him? A. I saw him first as he was about stepping from a little bridge crossing the roadway—carriage roadway, which leads down to Wall Street Ferry at Montague-terrace.

Q. From which direction was he coming? A. From the direction of Columbia Hights.

Q. There is where Mr. Beecher resides? A. I understand so.

Q. No. 124 Columbia Hights? The residence has been given. A. I don't know the number.

Q. And when he passed the bridge which direction did he take? A. He took the direction leading toward Remsen-st.

Q. Montague-terrace? A. Yes, Sir, crossing Montague-terrace.

Q. Did you see him turn in Remsen-st.? A. He turned toward Court-st.

Q. And that is toward Mr. Moulton's house? A. Yes, Sir.

Q. Toward 69 Remsen-st.? A. 49 Remsen-st.

Q. 49 I should say. Now, about what hour in the morning was that? A. As accurately as I can fix it, it was shortly before 9 o'clock; I think not after that.

Q. How far is Mr. Moulton's residence from Montague-st. where you saw him turn?

Mr. Beach—From that corner.

Mr. Morris—From that corner.

The Witness—I am unable to fix it accurately, but I should think a few houses—four or five houses.

Q. In that block? A. Yes, Sir; it is in that first block, if I recollect correctly.

Q. From 124 Columbia Hights to Mr. Moulton's residence, that would be the most direct route to go, wouldn't it? A. I should judge so.

Q. About how far is 124 Columbia Hights from Mr.

Moulton's? A. I very seldom pass through Columbia Hights, and I am unable to say, Sir; I should think it would be about ten minutes' walk, if you want a guess—possibly more.

Mr. Beach—Well, get it by somebody else.

Mr. Morris—Yes; I will get that by some person who knows better than you. Now, then, state the circumstance, if any there was, in your meeting Mr. Beecher that morning that impressed it upon your mind? A. In order to explain that I shall have to explain my state of feeling

Q. Well, explain that. A. [Continuing] When I started out of the house. The 2d of June is a very pleasant anniversary to me. My custom is always, if possible, when business permits, to make a semi-holiday of it. On that occasion I was—felt obliged to go over to New-York at an earlier hour than usual; I usually reached my New-York rooms in the vicinity of half-past ten, but on that morning—after a few days about that time I was obliged to go earlier, and I left the house with the intention of returning, if possible, earlier than usual, and making a sort of holiday of it, and with a very—in a very pleasant mood of mind. On seeing Mr. Beecher I recognized him at once, and, perhaps egotistically, thought that he would recognize me when we met, as we did very nearly. But as I came nearer to him I saw his countenance indicated a person who was troubled.

Mr. Evarts—Well, it is no matter about the indication of his countenance.

Mr. Beach—It is some matter to us.

The Witness—His head was cast down. He appeared to be in trouble, and it produced a change of my state of mind that fixed itself upon my memory, and upon returning home at night I repeated the incident to my wife.

Q. And how near were you to Mr. Beecher—how near did you pass by him? A. I should think nearer, or as near as I am to him now.

Q. He did not recognize you? A. He did not appear to recognize me. I don't think from his appearance he would have recognized any one.

That is struck out. Now, that is the substance of Mr. Janes's testimony.

Judge Neilson [to Mr. Beach]—Can you suspend now, Sir?

Mr. Beach—Yes, your Honor; I had no idea it was 1 o'clock.

The Court then took a recess until 2 p. m.

THE AFTERNOON SESSION.

The Court met at 2 o'clock, pursuant to adjournment.

Mr. Beach—Of course it is possible that any gentlemen speaking to an incident which happened two years ago, or a year ago, may be mistaken in regard to a particular date or hour. It is one of those topics upon which the memory is particularly defective, and especially apt to be in error—mistaken. For instance, Mr. Cleveland, who speaks of Mr. Beecher having been at *The Christian Union* office on the 2d of June between 11 and 12 o'clock, having no particular circumstance, no memorandum or data to direct and fix and fasten his recollection, undoubtedly is subject to mistake, however upright and honest he may be in his statement, and so it is with Dr. Janes. I have no doubt that he is just as liable to error as other gentlemen, but it would seem as if the circumstances which attracted Mr. Janes's attention could not very well mislead him. The 2d of June was the anniversary of his wedding day, to which he was accustomed to attach some significance; an occasion, at any rate, upon which his mind reverted to his marriage relations and his home. He remembers that upon that day he saw Mr. Beecher, and it was not a mere casual observation. There was something in the appearance of Mr. Beecher which impressed itself upon the mind of Mr. Janes, as he swears, and that connected it in his memory with that anniversary of his marriage. Of course, being acquainted with Mr. Beecher, and having served him in the course of his professional business, Mr. Beecher being accustomed graciously to notice him, the fact of his passing near Mr. Beecher without any recognition from him, considering the relative positions of the two gentlemen, would be a circumstance which would attract his attention—fix his attention. He might have felt a little chagrined, mortified. But he noticed upon Mr. Beecher's countenance, usually so cheerful and radiant, into whose eye to look in his moods of ease and comfort is to be at once inspired with cheerfulness and mirth—he noticed an unusual depression. He was sorrowful and moody, his head cast down, none of the stately and towering characteristics of Mr. Beecher about the man. He turned into Remsen-st. without noticing this gentleman. It was at the time, gentlemen, you remember, when the "Tripartite Covenant" was published in part, when Theodore Tilton was demanding from him defense, correction, righteousness, and threatening if he did not receive it to publish the letter which he had prepared containing Mr. Beecher's own Letter of Contrition. It is true that the horror of a great darkness was then around him. He felt that a crisis had approached, and he saw no rational escape from it. He feared that the revelation against which he had been contending with the aid of Mr. Moulton was inevitable, and it is not wonderful that he should have been cast down. At any rate, the testimony of Mr. Janes upon that point is not to be discredited. [To Mr. Morris.] Mr. Beecher was not recalled, was he?

Mr. Morris—No, Sir.

Mr. Beach—Mr. Beecher was not recalled after the testimony of Mr. Janes to modify any statement made by that gentleman, and it stands, therefore, uncontradicted upon this record that Mr. Beecher was met by Dr. Janes under the circumstances to which that gentleman testifies. Now, the testimony of Dr. Janes is passed off by my learned friend, Mr. Evarts, with a jest, hardly worthy the seriousness of the topic. Substantially all he says about this gentleman is that he appears to have seen Mr. Beecher through a stone wall. That is not, in my judgment, the mode in which evidence upon a point so central and so significant as this should be met and answered. I grant you the possibility of error, but when a gentleman

of respectability fortifies himself with such circumstances sustaining the accuracy of his recollection, and when his testimony harmonizes and connects itself with the general fabric of the proof, something more must be urged against him than a witticism. It was not through a stone wall that Mr. Janes saw Mr. Beecher. It was with full opportunity to see, in full view, and there can be no mistake in regard to the condition of Mr. Beecher, which was entirely conformable with the spirit with which Mrs. Moulton invests him when he reaches her house, was entirely conformable with the condition of mind in which Mr. Beecher on that 2d of June would naturally have been. Now, this evidence we gave, and I repeat to you again, when Mr. Beecher had been then overcome by the testimony of Mrs. Moulton, strengthened by the evidence of Dr. Janes, where was Mr. Kinsella? If Mr. Beecher on that 2d of June was in Montague-place and turned into Remsen-st., but four or five doors from Mrs. Moulton's, then he could not have been in company with Mr. Kinsella at his house at that period. Quite possibly he may have seen Mr. Kinsella prior to this, but at that particular time, about 9 o'clock, he was in the vicinity of the very spot where Mrs. Moulton says he was holding this memorable interview with her.

But, gentlemen, Mrs. Moulton says that she related that story to George C. Robinson and Jeremiah P. Robinson. On the night of the 2d of June she says she told it to her husband, and my impression is that on the next day, or at least within a day or two subsequently, told it to George C. Robinson and Jeremiah P. Robinson—to both these gentlemen. George C., a pleasant and worthy member of Plymouth Church, one of the lights of that institution—nay, it is said by our adversaries, a member of the firm of Woodruff & Robinson, from which Mr. Moulton, in consequence of his connection with this investigation, was excluded. Why do not my friends produce George C. Robinson? If within a day or two of that period, or a recent time of that period, Mrs. Moulton communicated that story to George C. Robinson, it must have been true. If she didn't, and my friends could have proved that she did not, Mrs. Moulton would have been discredited and overthrown. There is no avoiding that issue, gentlemen. According to the law as I have read it to you, according to your own sentiments of justice and right and common sense, if George C. Robinson could have contradicted Mrs. Moulton upon that vital proposition of her testimony, he would have been placed upon the stand, and so would Jeremiah P. Robinson have been asked when he was upon the stand.

Again, if Mrs. Moulton had fabricated this story; if the hostility and unfriendliness of Mr. Beecher in the month of August, when he made his statement before the Committee, had exasperated this woman; if she saw the reputation of her husband assailed so that all her Christian principles, all her regard for truth and integrity was lost, swallowed up in the desire to support her husband, would she have testified, without necessity, that she made a revelation, a repetition of this interview with Mr. Beecher, to Mr. Robinson, furnishing the ready means by which she could have been destroyed if it was untrue, giving to Mr. Beecher the surest means of annihilating her integrity and her testimony? Is that the way that conspirators, perjurers, act? Consider upon this point of alibi the testimony of Mrs. Eddy. Mrs. Eddy met Mr. Beecher at some time coming out of the house of Mrs. Moulton about the time she specifies, depressed, gloomy, head down, and noticing nobody. A lady acquaintance meets him upon the stoop, and so absorbed is he upon the subject which has been writhing heart and soul that he passed out without extending to her any notice whatever, and Mrs. Eddy goes directly into the house, being admitted by Mrs. Moulton, and finds Mrs. Moulton in agitation and tears, and I believe Mrs. Moulton testifies that it was upon that second day of June that Mrs. Eddy so came into her house.

Mr. Fullerton—Certainly.

Mr. Beach—My friends have justly eulogized Mrs. Eddy as a lady of respectability, and the daughter of the respected Judge Sutherland. Is that allegation of Mrs. Moulton true? Was it on the second day of June that she met Mr. Beecher coming out? Why did my learned friends object when we offered to prove by Mrs. Eddy that upon that occasion of which she speaks, the date of which she could not fix, when she found Mrs. Moulton in this condition, Mrs. Moulton revealed to her this very story? We supposed we had a legal right to prove it, under the circumstances. Our learned friends objected, and his Honor differed from us; but with a lady of that unimpeachable character, unsuspected by our friends upon the other side, when we had the means through her of determining certainly whether this conversation occurred on the 2d of June with Mr. Beecher, they reject, they close all the avenues of proof; they will not examine the witnesses in their control, at their command, and they will not permit us to prove the truth of Mrs. Moulton's allegation by those witnesses whom we can command. Is there any question upon this evidence, not only upon the proof affirmative, but by the suppression of evidence upon which the law raises a condemning presumption—is there any doubt that this interview occurred on the 2d? Would Mr. Kinsella be suppressed? Would Mr. Robinson, both of them, be withheld? Would Mrs. Eddy be silenced? Would this man, who has stripped himself for the fight and defies from every source the production of evidence against him, have thus conducted himself if there was any belief, real, sincere belief, that the story of Mrs. Moulton was untrue? It is true, gentlemen; true from the intrinsic evidence it bears; true from the force and power of her oath, betrayed by no interest, misled by

no passion, having nothing to lose except her own consciousness of right and of honor; confirmed as it is by these circumstances concerning the evidence produced in this case, her story is true, and I am guilty of no improper assumption when I say that the conscience of every juryman pronounces it true. Not the juryman who will say that Mr. Beecher is too virtuous and eminent a man to be convicted, not the juryman who shuts his heart and his conscience to the appeal of evidence, and looks only to the grandeur of this defendant's supposed character, and would uphold him under the mistaken idea that he is maintaining Christianity and the Church, when he defiles the pulpit and the temple. And this lady, by the judgment of men, of husbands, of brothers, is not to be turned from this court-house upon reasoning of this character and stamped with the infamous brand of perjury. In the name of manhood, pleading for virtuous, helpless womanhood; in the name of that instinctive principle to which my friend Porter appealed, and which he recognized and which he practices, appealing to you for a conscientious and sincere construction and application of the evidence in regard to this lady, I may demand from this jury that she shall be sustained upon her own common sense and common reason, upon the instruction and the judgment of the law. Nay, gentlemen, Henry Ward Beecher must be stricken down. If every stone in the foundation of Plymouth Church must be razed to the ground, let it come, before one lady, supported as this lady is, shall be condemned to disgrace by a jury of men in a court of law. [Applause.] What is in store for that lady I don't know. I don't know but there may be found a jury in a Christian land which, under these circumstances, will leave a record which would teach that only child of hers the infamy of his mother. For the father, he is a man and can take care of himself, and will work out his own true manhood in its natural instincts and impulses and results. But this woman has a right to appeal to you from that witness stand. She has a right to beg you, for her own honor and for the honor of her child, that you do her no injustice. And strong as I know are the influences which are appealing to some of this jury, while I know the sympathies which move every generous man toward Mr. Beecher, yet, when all these considerations are confronted with honor and justice as toward a woman, they should have no standing in a manly heart.

MR. TILTON'S RELIGIOUS CREED.

I have next to consider Mr. Tilton, and I have made pretty extensive notes for that purpose. I am not going to use them, gentlemen. Whether Mr. Tilton is a Deist, whether he is a free lover, whether he is offensively a woman suffragist, are matters which to him, in his reputation before the world, are of considerable consequence; and if I had not trespassed upon the time of this jury a great deal longer than I had anticipated, and unendurably, I should not pass these subjects without discussion. I maintain that upon no evidence in this case, upon no utterance which has been made by Mr. Tilton, does he deserve either character. He is a Unitarian. He does not believe that Christ was God. He has an unsettled, indistinct idea, such as Mr. Beecher presents in regard to the divinity of man, as to the divinity of Christ. Well, gentlemen, a very large part of the intelligence of the Christian world—a very considerable part both in numbers and in intelligence entertain the same belief—the whole body of Unitarians. Mr. Tilton is simply a Unitarian. Mr. Beecher, whatever may be his precise dogma in regard to that matter, in one of his sermons, speaking of the name of Jesus, says:

They who theologically disown it morally receive it, and call it transcendent. They who deny divinity and claim that Jesus was but an extraordinary man, a moral genius, readily and willingly advance him to the forefront.

And that is true of Mr. Tilton. Again, he says:

If Christ is to you so much divine that He comes to you an object of imitation, of absolute trust, of faith, and of all the affection that your heart is susceptible of feeling; if He is in such a sense your moral model and leader that you are willing to commit to Him all that you have to commit to any one, you cannot rise higher than that. But, while you may not, theologically and technically, accept the Lord Jesus Christ, emotively and practically you do accept him so far as you could if you crowned him with the name of Divine.

So that it does not seem to be entirely essential to piety, to religion, to salvation, in the view of Mr. Beecher, that men should believe Christ to be divine. Again, Mr. Beecher says:

The deepest natured, the deepest minded men of every age have always been the most skeptical.

Mr. Beecher allows very free speculation upon these subjects. There is no man who is more accustomed to it than himself, and he recognizes the fact that the largest minded men, they of the broadest capacities, are the most likely to indulge in these philosophical and religious speculations and thoughts. Again, Mr. Beecher says:

I declare that Christ was the first and the sublime radical.

Well, if Mr. Tilton had uttered a sentiment of that kind, dealing so freely and lightly with the idea—thought of Christ, there would have been no end to the denunciations for his irreligion, sacrilege. But it is enough to say that upon that subject, of the divinity of Christ, Mr. Tilton is in accord with some of the most learned and religious men of this and the past age. I am not familiar enough with the history of denominations to name them. I remember some great names of Boston, some of whom were Unitarians, and some far beyond them in their skeptical notions concerning religion. There was Dr. Channing for one, I remember, a leading Unitarian, and in no degree below Mr. Beecher in all

that consitutes greatness and genius. There was Theodore Parker, far more radical in his notions; and there was Charles Sumner, a Unitarian, Edward Everett, both names sanctified in the history of this country not only for learning and statesmanship and patriotism, but for all those virtues which constitute the true citizen and the man of piety. These men entertained the same belief as Mr. Tilton, and it is no disgrace to them or to Mr. Tilton. It is no reason in the law or in common sense and our own practice and belief for discrediting them. I don't know that I ought, gentlemen, to pass this subject without reading to you somewhat of the testimony of Mr. Tilton in regard to his belief. But I shall venture to pass it.

MR. TILTON'S FORGIVENESS OF HIS WIFE.

There is one subject connected with this, gentlemen (perhaps two), which need a remark or two. No precise proposition has been presented by our learned adversaries upon the fact that Mr. Tilton forgave the error of his wife. In the language of Mr. Beecher upon two occasions, used for the purpose of expressing his supposition that Mr. Tilton had thus condoned away his right of action with his condonation of his wife's fault, has been found the text for a severe reprobation of Mr. Tilton, and a circumstance upon which our learned friends insist as evidence that this idea of a seduction is wholly unfounded. I have said something upon that subject before. I do not intend to repeat those ideas. But will you be kind enough, gentlemen, to consider what Mr. Tilton could have done under the circumstances, other than he did do? Certainly he was justified in concealing the circumstances of his household. If he sincerely and honestly believed, with Mr. Beecher, that his wife was guiltless, it was just as much his duty to pardon her and to accept her to his love and his respect as if she had been outraged by violence. If Mr. Tilton believed that by the course of sophistry and of casuistry suggested by Mr. Beecher, and by the power of his influence over this woman, he had fascinated her mind as well as her heart and had imbued her with the conviction that it was her duty to him, to the church, and to religion, to accept his teachings as true in the same spirit and for the same reason that she would lie to save him from disgrace, then it was the duty of Mr. Tilton to accept her as he did. But, without reasoning on that question, what, as Christians, do you say a man should do when he believes that the sin of a woman does not proceed from a corrupt and carnal vulgarity—when he believes that, notwithstanding the error, the mind and the heart of the woman are not debased? As a Christian man, what, under those circumstances, are you bound to do, in imitation of the example of Him who said to the woman brought by the Scribes and the Pharisees before Him, caught in the act of adultery, "Go and sin no more?" In the light of his treatment of that name which is synonymous for woman's degradation Mary Magdalene, she who was last at the cross and first at the sepulcher, what are we to do under such circumstances of present penitence and sorrow, but more still where the sin has been under a mental illusion, where the power of a great and a pious man, standing in the eye of the sinner next to his God, and believed in as God; where such a man has overspread a human heart, a weak and a frail woman, with hallucination, fascination, subdued every principle of her nature and being, won every passion and emotion, to whom the woman looks, and in whom the woman trusts? What will you do with a woman who, under such circumstances, has sinned, but has redeemed her sin by confession, has at last awakened to its enormity, and done all that an erring and a sinful heart can do, and with all the plaintive appeal of a woman's nature, of a wife's renewed affection, of a mother's love, appeals to you for forgiveness, and, as this woman did, professes that the delusion had passed away, and that her inner nature had woke up to all the enormity of her fault, and that she could be a true and a loving wife to the end? Oh! whatever, whatever, may be the repulsive emotions a husband may feel at the desecration of his wife's body, yet if he can adopt this belief in regard to the intrinsic purity of her being, it is not in the nature of manhood to reject such an appeal. But do not my friends see—did not Mr. Beecher see when Mrs. Moulton told him that Mr. Tilton intended to publish the evidence he had against him, he said, "He has no case; he has condoned his wife's fault." Did not Mr. Beecher see that there must be sin before there can be condonation—that there must be error before there can be forgiveness? What was it that Mr. Beecher meant was condoned by the husband? Not wandering affection; not desire to separate. There was some more radical, intrinsic offense. Condonation does not apply to any such error. Condonation is the forgiveness of guilt. In that sense it was understood—in that sense used as between Mrs. Moulton and Mr. Beecher. So it is used in his letters when Mr. Tilton stood up prepared to make accusation. When it was understood what that accusation would be and had been, then it was in answer to that that Mr. Beecher says, "He has no case; he has condoned." It is a confession of guilt. The woman or the man accused of adultery who sets up condonation in answer to it confesses the sin; and that is just the attitude in which these gentlemen have placed themselves and their client.

MR. TILTON'S SELF-ESTEEM.

Well, gentlemen, I cannot speak of the imputations upon Mr. Tilton of being, in the language of Mr. Tracy, "moved by an all-dominating selfish egotism"—"infected with constitutional vanity"—"trampling upon wife and family to reach the applause of the world." Queer way to reach the applause of the world.

But where has Mr. Tilton exhibited these qualities? Where has he ever failed in rendering to Mr. Beecher the highest meed of respect and honor? Wherein has he failed in his reverence for virtue, and greatness, and position wherever it has made itself manifest? Certainly he has conducted himself with great propriety and modesty in his appearance before you, both as a witness and as a party. He has not offended your good sense. He certainly has not obtruded any selfishness or egotism upon your attention. His constitutional vanity has not been very prominent certainly. And upon what is it that our learned friends make these severe accusations against the man? Why cannot he have decent, fair play before this jury and in this community? Well, I could answer my own question very easily if I chose to. It is not because of the want of any merit in Theodore Tilton, I am certain.

THE CHARGE OF IMPROPER PROPOSALS.

Well, it is said, in conclusion, upon that matter, that Mr. Tilton has, over and over again, declared that the only offense which he charged against Mr. Beecher was making undue solicitations, improper proposals to his wife. I have said all that I care to say upon that, except to recall your attention to the fact that while Mr. Tilton was making these statements for the public, alleging a modified offense as against Mr. Beecher, yet, whenever the question came to an issue before any private party he uniformly declared, and declared early in the history of the matter, that that was not the whole of it. You remember the interview with Dr. Storrs. You remember Mr. George A. Bell as to the interview with Halliday. You cannot have forgotten how earnestly Mr. Bell insisted to Mr. Tilton that there was nothing that should prevent him from denying this whole matter; that it was his duty to himself, to his family, to the church, to Mr Beecher, to everybody, that there should be at once a public and a distinct denial of any crime, that it was nothing but an undue solicitation, and when Mr. Tilton, again and again, told him he could not do it, Mr. Bell forced him to the declaration that that was not the whole truth, that there was still more. So it was with Mr. John W. Harman, and so it was with Mr. Redpath, whose significant evidence on that point you will not have forgotten. So that, while what they call these inconsistent declarations were being made, not only was there a reason for them, explaining them, but at those very times there were secret and unaffected declarations made by Mr. Tilton in regard to these modified statements, that they did not reach the whole truth.

Mr. Evarts—Mr. Beach, we think you are wrong about this statement to Mr. Bell, and Mr. Harman, and these people.

Mr. Beach—Do you think so?

Mr. Evarts—I do not understand there is any such testimony.

Mr. Beach—Don't you? Well, I must try then and show it to be so. Mr. Bell in his testimony says—with permission I won't read it all over—Mr. Bell says:

Mr. Tilton, if that is all there is of this matter, your duty to your wife, to Mr. Beecher, to your pastor, to the church, and your duty to yourself, all demand that you should come out and make a denial of this scandal. He said in answer to that that he could not do it; I said very pointedly and emphatically, "That is absurd." Of course I am not repeating the exact words; I am merely giving my memory of a very long conversation. I said to him, "That is absurd. Who is suffering by this? Mr. Beecher, your own wife, yourself, all your friends, and the church—they are all suffering, and there is no reason whatever that should prevent your coming out and denying this thing." Then I made some remarks about the gentleman who had told him these stories, &c. * * * * He said, "Mr. Bell, I cannot make that denial." I said, "Why not?" "Because," he said, "there is something in this thing which prevents me." I said, "What is it?" At this point of the interview I think I remember that I took almost the control of the conversation. He then narrated circumstances or impressions, opinions of his in regard to Mr. Beecher's conduct toward Mrs. Tilton, and when he was through with that, I said, "Why, even then—even now I cannot see why you should not come out and contradict this matter." He said, "I cannot do so, it would be—there is an underlying truth in this story told by these women, which would make it worse for Mr. Beecher if I were to come out and contradict it than if I were to let it alone."

That, I think, sustains my representation in regard to Mr. Bell.

Mr. Shearman—Excuse me Mr. Beach, Mr. Tilton had not told Mr. Bell previous to that of any offense at all. It turns out from Mr. Halliday's testimony that he told him finally of the improper solicitations, and said that was——

Mr. Evarts—That was the thing that, he thought, ought not to be told.

Mr. Beach—What? Who?

Mr. Evarts—That Mr. Tilton said that the improper solicitations ought not to be told.

Mr. Beach—No, by no means.

Mr. Shearman—Well, you will find out.

Mr. Beach—Well, it is easy to say you will find it so, show it so.

Mr. Shearman—We have the testimony ——

Mr. Beach—This gentleman says:

He said he had called there at the request of Mr. Moulton, who had told him that Mr. Beecher had been to see him the previous night, after service, informing him that there was to be action taken by the deacons of the church or by the Examining Committee; that Mr. Beecher had suggested to Mr. Moulton that he should see Mr. Tilton and tell him to come down and see Mr. Halliday, and make some explanation to him which would make it unnecessary for the deacons to have their meeting. He then went into a long history of the scandal prior to the Woodhull and Claflin publication, which had then taken place but about a fortnight, or three weeks or four weeks, commencing with the affairs of the publisher of *The Independent*, and what the publisher had stated to him; he

said to us that these matters he gave to us in the strictest confidence, not to be mentioned by us to any one; after he had done that I think he paused, and I said to him, "Why don't you deny?" &c.

Mr. Shearman—That is, he told Mr. Bell the Bowen stories.

Mr. Beach—Oh! I don't want you to reason about it; if you have got any evidence to produce, read it.

Mr. Shearman—He told him about the affairs of *The Independent* and what the publisher had stated to him.

Mr. Morris—I submit that these continual interruptions are out of order.

Mr. Beach—Why, what was it, Sir?

I said to him "That is absurd. Who is suffering by this thing? Mr. Beecher, your own wife, yourself, all your friends, and the church—they are all suffering, and there is no reason whatever that should prevent your coming out and denying this thing."

After the publication of the Woodhull scandal, who doubts as to what they were talking about, and as to what communications Mr. Tilton made to them?

He then narrated circumstances or impressions, opinions of his in regard to Mr. Beecher's conduct toward Mrs. Tilton, and when he was through with that I said: "Why, even then—even now I cannot see why you should not come out and contradict this matter." He said: "I cannot do so; it would be—there is an underlying truth in this story told by these women which would make it worse for Mr. Beecher if I were to come out and contradict it than if it were let alone."

Well, I am forced, gentlemen, to refer to Dr. Storrs, to whom the "True Story" was read. That imputed improper solicitations. No doubt about that, I think.

Mr. Shearman—That is conceded; that is conceded.

Mr. Morris—Never mind, Mr. Shearman.

Mr. Shearman—I can take care of myself.

Mr. Morris—May be you can.

Mr. Shearman—That is conceded that he told Dr. Storrs so. It is only about Mr. Bell and—

Mr. Beach—Only about whom?

Mr. Shearman—Mr. Bell and Mr. Halliday.

Mr. Evarts—And Mr. Harman.

Mr. Shearman—And Mr. Harman.

Mr. Beach [reading]:

Dr. Storrs turned to me and said, "Mr. Tilton, before I can consult with you on this subject, or give you any advice worth anything, you must answer me one question." I said, "What is it?" He then said, "I want you to tell me whether this narrative which you have read is the plain and honest truth—what is called in a court the truth, the whole truth, and nothing but the truth." I said, "I will answer that question if you will promise not to ask me any further questions on the subject." "Well," says he, "I will not catechise you against your will or wish." I then said, "It is not the whole truth; it is only a part of the truth; it is an understatement, but it is all I am willing to give to the public." "Then," he said, "I advise you not to publish it."

Mr. Morris—Your first statement was correct.

Mr. Beach—That is the "True Story." [Applause.] Mr. Harman had also the "True Story" submitted to him—the "True Story" containing the charge of improper solicitations, and he says:

I said to him, "I am very glad to meet you, because I have been wanting to see you for several days," and I said, "Have you seen this monstrous story of the Woodhulls?" I think he said to me that he had just returned to the city; I don't know whether he said he saw it or not. I told him what it recited, and said, "Now, Theodore, for God's sake and your family's contradict it, give it a broad denial, because, I take it, you can?" He stood there, and he says, "But suppose I can't?" "Well," I said, "I assume that you can; you have never charged any such offense against your wife as that, and your first duty is to your wife and children, and I think that you ought to lose no time in coming out to contradict the monstrous story." "Well," he said, "I don't know: suppose I can't?" I think he repeated that again; and he said Elizabeth—he always called her Elizabeth—was opposed to saying anything about it; she was willing to suffer herself if she could only save the church; her theory seemed to be—he said she was fanatical; either on that or some other occasion he said that she was fanatical, and she seemed to think her duty was to save the church, although she might suffer herself and might go down; and the policy, her policy, seemed to be to say nothing about it; I said, "If I were you I should contradict the story, as I believe you can—as I think you can," or "understand you can;" something to that effect.

This is a witness of their own, Mr. Harman; and he says that Mr. Tilton, when he was pressed, said substantially that he could not contradict the story; and there is no dispute about Redpath; and so, while this gentleman was consistently putting forth these statements and letters and representations, reducing the character of Mr. Beecher's offense, and holding his wife pure and spotless and free from all reproach, yet whenever he was forced to make a declaration as to the truth of these evasions and excuses, he at once put himself (without then declaring the whole truth) upon the ground that he could not make a full revelation. And, gentlemen, I make this remark to you that you may reflect upon it, that never, according to the evidence in this case, has Mr. Tilton pronounced one single untruth in regard to the character of this offense. He has qualified, stated, represented, related, invented, modified, offenses and excuses and qualifications, but he never has made an assertion of a falsehood upon that subject in the whole history of all he has written and said about it.

I pass Mr. Tilton with this very cursory examination. There are subjects connected with these imputations to him of creed and doctrine which I should find some pleasure in discussing with any gentleman, though not by any means qualified to hold a contest upon theological subjects with anybody—but there are some topics in regard to social science, in regard to marriage and divorce, which naturally possess interest for any reflecting mind. I do not entirely, by any means, agree with the notion of Mr. Tilton, if he carries it so far as to maintain the right of separation of husband and wife at their mere volition, under State regulation and as to the

disposition of property and the support of children, and all that—if he goes to that extent I, by no means, agree with him; but I maintain that that is not the extent of his doctrine upon that subject. That is the true free love doctrine as it is taught in the school of the day. It is not for me to justify or excuse that, or support, or condemn it. I have nothing to say about it. But I do say, that a just and fair examination of the creed of Mr. Tilton in regard to religion, and in regard to social science, will exhibit him as a reflecting, thoughtful, and judicious public man.

MR. TILTON'S CHALLENGE TO MR. BEECHER IN PLYMOUTH CHURCH.

That closes the discussion of the direct evidence in this case, as founded upon the testimony of Tilton, Moulton, and Mrs. Moulton, the testimony derived from Beecher's letters and all that mass of moral evidence which springs out of the particular subjects we have hitherto been considering. May I now ask your attention to a few circumstances? It was a somewhat notable event, gentlemen, when Mr. Tilton appeared in Plymouth Church, upon an occasion when the question was whether or not he had slandered its pastor, and, in the face of the congregation, and of the pastor, defied and challenged investigation. Now, remember the circumstances. The West charges were under consideration, the third specification of which charged upon Mr. Tilton the declaration to Mrs. Bradshaw of sexual intimacy as between Mr. Beecher and Mrs. Tilton. It was upon the records of Plymouth Church; and the question was whether in that allegation Mr. Tilton had slandered Henry Ward Beecher. Mr. Tilton offered himself to investigation. You remember the letter which he wrote to Mr. Belcher. Hearing that it was the purpose of the Committee of the church to charge that he had withdrawn himself from investigation and claimed immunity because he was not a member of the church, he went down with that letter of Belcher, waiving that immunity, tendering himself, as a member of that church, to its jurisdiction, and saying to the pastor in the face of his congregation, and with these charges pending upon the records of the church: "If you have any complaint to make against me—against me, who have charged you, as your records show, with adultery with my wife, I am here to answer it. I do not deny what I said"—and there is no declaration in all that Theodore Tilton has written upon that subject, wherein he denies the fact that he did charge adultery—"I don't deny having made the accusation; I am ready to meet everything that I have said and to redeem all that I have declared." Well, we would suppose that when that church was convulsed with this difficulty, when Mr. West and other conscientious gentlemen of that congregation had for nearly three years been pressing investigation—it would seem when the judicatories of that church had Mr. Tilton before them, submitting to their jurisdiction, and when everybody saw that it was for the interests of the church to wipe from Henry Ward Beecher the stain of this scandal and to condemn his audacious slanderer; it would seem that then was the time when injured innocence and indignant virtue would have stood up, in the person of Henry Ward Beecher, and would have denounced his libeler, cleared himself and his church from the infamy of this scandal, and stilled the disquiet and discontent which were disturbing the peace of his congregation. Would he not have done so if innocent? The only question involved there was whether Mr. Tilton had falsely charged Henry Ward Beecher with adultery with his wife; no other question. And Mr. Beecher, he who is so proud and confident to-day, when, in that open court in the temple of his God and before the world Theodore Tilton declared that he had uttered no untruth against Henry Ward Beecher and challenged him to the issue—he slunk from the issue. "I have no charge to make," says Mr. Beecher. And why not? When everything was crowding thus to the investigation, when every interest demanded it, when he had the power and the control of the tribunal which was to examine and to pronounce upon it—Why not? It must be answered, gentlemen. It will not do to say that Mr. Beecher was fearful about the influence on Tilton's family. It will not do to say that he understood that Mrs. Tilton had, unsought, conferred upon him her affections. The inquiry involved no such issue, no such question. No necessity, no necessity for referring to it; and up to that time nobody had ever suggested it, so far as we can hear.

MRS. HOOKER'S THREAT TO INVADE HER BROTHER'S PULPIT.

Why was it that this matter was not then examined and disposed of, under circumstances eminently favorable for a disposition of it satisfactory to truth and to the interests involved? It appears from the testimony of Mr. Tilton as follows:

Mr. Beecher came into Moulton's house about the time I have mentioned, I think it was between the death and the burial of Mr. Greeley, saying, with a good deal of excitement of manner and holding out some papers in his hands which he had received from his sister, Mrs. Hooker—he said that his sister had threatened to come down to Brooklyn and to invade his pulpit and to read from the desk the confession of his relations with Mrs. Tilton to the entire congregation; and said he, "What shall I do?" and he showed Mr. Moulton and me the letters. Mr. Moulton read them; I read them. Mr. Beecher said: "What do you think of the condition of a man who gets such letters as this from a member of his own family?" and he expressed profound grief and great agitation and excitement, and he repeatedly asked, "What is to be done; is there no end of trouble or complication?" Mr. Moulton asked me what I thought ought to be done, and after some reflection I said, "Give

me the letters, and I will go and see Mrs. Hooker; I will stop this mischief;" and I took the letters, and I saw Mrs. Hooker, and I stopped the mischief.

And a report of the result was made, I believe, and he says:

The substance of what Mr. Beecher said was that he was profoundly thankful that he had escaped a great danger which menaced him from a member of his own family.

That is not contradicted by Mr. Beecher. Will you please reflect upon it a moment, gentlemen. A sister writes to Mr. Beecher that she will come down, and, in his pulpit in Plymouth Church, read a confession of his connection with Mrs. Tilton. Now, there is no dispute that such a letter was written; there is no dispute that Mr. Beecher called to his aid the services of Mr. Moulton and Mr. Tilton; there is no dispute that Mr. Tilton s w Mrs. Hooker and quieted the mischief; and yet that man, with that admitted, tells you upon the stand that he never was guilty of the slightest impropriety toward Mrs. Tilton, and you are asked to believe it! "Mr. Beecher did your sister threaten to do this thing, from your pulpit, expose an improper connection between you and Mrs. Tilton?" Mr. Beecher is silent. "Did you give her letters to Mr. Tilton and permit him to interview your sister for the purpose of quieting her threat and averting the great danger brooding over you?" No answer from Henry Ward Beecher. It is true then. The threat was made. Mr. Beecher concedes the force of the threat, and instead of meeting defiantly and like an innocent man, all demands and threats of that character, he allowed it to be settled by the intervention of Mr. Tilton! Well, in the name of all that is credible and credulous are we to disregard such evidence, and are we to believe such a theory as Mr. Beecher presents? It is not the simple question of adultery. If Mr. Beecher has falsely represented in regard to his associations with Mrs. Tilton, has denied improper solicitations when the improper solicitations were made—if you believe upon this evidence that Henry Ward Beecher did unduly and basely solicit his parishioner, Mrs. Tilton, then it destroys his evidence utterly; the solemn and oracular sentence of my learned adversary, Mr. Evarts, condemns him—"false in one, false in all." If you did basely approach this woman, Mr. Beecher, and have dared to deny it as a witness, you are not to be credited, and the full weight of the evidence of Moulton and Tilton and Mrs. Moulton, and of the argument to be derived from your own letters, is uncontradicted, and there must be judgment according to it. That was a subject that was not thought of sufficient consequence by my learned friends to receive special comment.

MRS. BRADSHAW'S LETTER TO MR. BEECHER.

There was another that seemed to escape their attention. I believe all concede that Mrs. Bradshaw is an estimable and pious lady. Certainly everything we have seen of her, in her appearance in court and in the letter to Mr. Beecher, which I am about to read, commends her not only to our confidence but to our respect, because, when she was speaking in regard to Mrs. Tilton, when she knew of the charge which Mr. Tilton himself had made, but before she had received a confession from other sources, she still spoke of Mrs. Tilton with the utmost affection and commendation; and, notwithstanding, as we saw, she had the means of apprehending perfectly the relations between Mr. Beecher and Mrs. Tilton, she could not—confirming our theory and Mr. Beecher's and Mr. Tilton's opinion in regard to Mrs. Tilton's character—she could not but bear testimony to the character of Mrs. Tilton for piety, lady-like decorum and purity. Well, these West charges were pending. Mrs. Bradshaw was a witness; it was to her that Mr. Tilton had made the declarations contained in the third specification. This woman, for twenty years a devoted and serviceable member of Mr. Beecher's church, thus addressed Mr. Beecher on the 4th of October, 1873:

MR. BEECHER—*Dear Friend:* I want very much, if you are willing, to have a few words with you in regard to the statement which I, in good faith, consented to make before the Church Committee in your behalf and Elizabeth's, for I felt that my intimacy with her and my love for her and for you gave me a right to speak in her vindication. I could not and would not believe that you had been otherwise than basely calumniated. Now, Mr. and Mrs. Tilton come and warn me not to do it, if I value your welfare, and refer me to you for advice in the matter I shall be governed entirely by what you say, for I would part with my right hand sooner than to destroy the love and confidence which is imposed in you all over the world. Will you see me for a few moments here or wherever you may appoint. Or must I accept Theodore's awful story for truth? Do mitigate it, be it ever so little, if you can. Elizabeth has never made any confessions to me.

She had not at that time.

God knows that I do not seek an interview from any motives of morbid curiosity; the subject is too painful for that. Believe me, you have no sincerer friend than M. A. Bradshaw. Please do not send a verbal answer by Mr. Halliday, to whom I intrust this note, because I do not wish to intrude at your house. Of course I do not wish to see you if you prefer otherwise, but send me a line in reply if you do not come, that I may know what to do, for I cannot take the word of any other person in this matter. M. A. B.

Now, take in the whole condition, gentlemen, of things, then; the source from which this appeal came; the pitiful anxiety of the appeal on the part of a devoted Christian woman who wanted to do right, who wanted to protect Mr. Beecher, who would not, as she says, for her right hand, reduce the respect with which he was regarded throughout the world. "Oh! Mr. Beecher, Mr. and Mrs. Tilton come to me and tell me I had better not defend you. They refer me to you—must I believe the

infamous stories that Tilton has told me against you? Oh, do modify them, if it only be a little." And what is the reply?

MY DEAR FRIEND: I thank you for your cordial and sympathizing note, and accept your expressions of confidence and affection; and I need not say to you how sincerely I reciprocate them. In regard to the matter of which you speak, let me say frankly that I think you will do the greatest good to all parties concerned by pursuing the course which I have done from the first, namely: refusing to allow the public to meddle with domestic and private affairs. It is impossible ever to bring domestic matters, complicated by elements which cannot be stated or understood, and without which all explanations will be barren, into public without doing a deal more harm than good. To be let absolutely alone is the sure and safe remedy; and, in this case, whatever difficulties have arisen have been amicably adjusted by those most deeply concerned. I know very well that the impulse of affection leads a generous nature to wish to fly to a friend's succor; and I am sure that you would not spare yourself any pains to help those who need you. But, happily, the best help you can give is to continue to love and trust those whom you have always trusted, and to refuse to have any hand in giving mischievous publicity to private affairs, even by allowing them to be discussed in your presence. With sincere affection, old and new, I remain, very truly yours,

HENRY WARD BEECHER.

"Oh! Mr. Beecher, is that awful sorrow told by Theodore Tilton the truth? Do mitigate it, be it ever so little, if you can." Do you believe that reply under those circumstances was written by a man who could stand up in the presence of his fellow-men and declare that there was not a single shadow of offense upon his heart; that he had never offered even an incivility to Mrs. Tilton. When this pure and devoted woman was appealing to him for a contradiction of the awful sorrow, as she calls it, told by Mr. Tilton against him, it appearing that that sorrow, by the records of his church, was a charge of adultery with Mrs. Tilton, would this man, if innocent, treat this estimable and trusting lady with an evasion of this character? What was the difficulty in his saying, "This story is not true?" When the appeal came to him from this lady to mitigate it, could not he have given a denial? He knew the truth of the story, and he knew more, too, that it was not safe for him, to Elizabeth Bradshaw, who had received this communication, as is proven, through Theodore Tilton—it was not safe for Mr. Beecher to lay Mr. Tilton in the lie. At any rate, instead of relieving the anxiety of this woman, instead of tendering a denial, which would have been received by her implicitly, he refuses all explanation, and she refuses to go before the Church Committee.

MR. BEECHER'S OFFER TO RESIGN.

It is admitted that Mr. Beecher prepared a resignation. In his letter he declares that he is willing to sacrifice himself for Tilton; I will not read it again; that he is willing to step down and out if it will pacify the difficulty. Why, please, gentlemen, what a spectacle that is for an innocent man who had never done anything wrong; whose conscience was free and clear, saying to Theodore Tilton and his wife, who had made a false charge against him of improper solicitations; who had retracted and repeated that charge; who had not only done that, but had sent a letter to Mr. Storrs, whom he had consigned to damnation, reiterating the same charge, and making it in thus far public, this man in 1873, after he had come to the conclusion upon the payment of $2,000 that there was blackmail somewhere hidden in the transaction, he saying to the people whom he thus condemned and dishonored, "If it will relieve you, if it will be of any service to you, I'll step down and out, I'll leave my pulpit, consecrated to the service of my God, which for 25 years I have followed with devotion and diligence, bearing up the great interests of Plymouth Church and of universal religion; yet, you conspirators and blackmailers—you woman who have charged me with improper solicitation against your virtue—you, my parishioner, who makes this false charge against me—O, I will resign, I will step down and out, if you desire. All you have got to say is 'Do it,' and I will sacrifice myself for you." Why, in the name of all that is wonderful, that is an argument, a proposition addressed to twelve sensible men, and an intelligent community, that Henry Ward Beecher could do that thing without a taint of guilt upon his heart. Why what for? What could Mr. Beecher sacrifice himself for? You see it is in his writing, it is in Mr. Beecher's own letter, above his own signature, and he can't deny it. There is no talking here now about resignation for the purpose of fights; there is no squaring off for an encounter; no shaking off of impediments. The man is willing to step down from his pulpit and to sacrifice himself and all the great interests which hung around him; and for what? If he was innocent and pure, if he had done no wrong to Tilton and his wife, why at their demand should he step down from his pulpit, and lay down his honor and his duty? Why, gentlemen, you must answer this. What reason have my friends given? By what argument or explanation do they meet this concession? Could there be a deeper, clearer confession? By any word or act could Henry Ward Beecher more humbly and penitently declare his sin? Gentlemen, that is a fact written by Mr. Beecher, which can't be erased from this record. It appeals directly to your sound sense and good judgment, and it is a fact that must be conscientiously disposed of. When we find that fact conspiring with the other evidence in the case to prove adultery, it cannot be pushed aside with inattention; you must think of it, you must dispose of it, as logical and truth-loving men; and, if you can do it consistently with the entire innocence of Mr. Beecher, why you have a power of logic and ingenuity inconceivable to me. Now, I am not going to stop to

reason upon the readiness with which Mr. Beecher gave up his idea of resignation when Mr. Tilton threatened violence if it was tendered. I do not conceive it of importance enough. The other fact lifts itself so immeasurably above any such consideration, and overshadows trifling circumstances and inferences so grandly, that I do not propose to waste its effect.

THE CLANDESTINE LETTERS.

On the 7th of February, 1871, Mr. Beecher wrote to Mrs. Tilton a letter, which has been read I believe several times, commencing with:

MY DEAR MRS. TILTON: When I saw you last I did not expect ever to see you again or to be alive many days. God was kinder to me than were my own thoughts.

And he commended in that letter Mr. Moulton to Mrs. Tilton.

You have no friend, Theodore excepted, who has it in his power to serve you so vitally, and who will do it with so much delicacy and honor. I beseech you, if my wishes have yet any influence, let my deliberate judgment in this matter weigh with you. It does my sore heart good to see in Mr. Moulton an unfeigned respect and honor for you. It would kill me if he thought it otherwise. He will be as true a friend to your honor and happiness as a brother could be to a sister's.

A true friend to Mrs. Tilton's honor! How was her honor involved? Why did her honor need a friend, and a true and devoted friend? What had she done by which her honor was assailed so that it needed a friend to defend and uphold it?

In him we have a common ground. You and I may meet in him. The past is ended, but is there no future, no wiser, higher, holier future? May not this friend stand as a priest in the new sanctuary of reconciliation, and mediate and bless you, Theodore, and my most unhappy self?

This is written after, according to Mr. Beecher's testimony, he was forbidden, as he understood, by Tilton, to enter his house, after Mr. Beecher had written in another letter that he could not visit Mr. Tilton's again without Theodore's consent, and he did not think it would be wise to do it with that; after Mr. Beecher, according to his present evidence, had, to his great astonishment, learned that the wife of his friend had, unsought, bestowed upon him her idolatry, so that it had disturbed their family relations, ruptured the peace and harmony of Theodore Tilton's household, made this woman restless and uneasy, uncheerful and repulsive; it is then that Mr. Beecher undertakes to write and correspond with Mr. Tilton. They are called clandestine letters. I care nothing about that. The point is that Mr. Beecher, under these circumstances, believing, if he did believe, that this woman was devoted to him, that she had strayed from the love of her youth, should dare to send appeals such as those he did make, as I will show you, to that woman, fomenting her passion, appealing to her affection, craving from her the tenderness and the affection which would restore his own blighted and suffering nature, daring in the face of the theory he presents in this court, imputing to this woman the indelicacy of loving him without solicitation, when it was all revealed to him, when he had this great sorrow and suffering upon him. Aye, it was at that very time when the darkness of death was gathering around him, the horror of great darkness, the piercing thrust of those ragged edges of remorse and despair; it was then, as he pretends, that this man sent these inflammable epistles of his, full of his own love, and of solicitation for hers; nay, nay, suggesting opportunities of meeting, exerting all his influence to wean this woman from the love of home and children, and to hold her still in the hands of the delusion through which she had sacrificed herself to him. Why, if there was nothing else in this case, upon his own theory, to show the conduct of the man, to prove that he was barren and rotten at the heart, it would be these letters. Instead of admonishing that woman as a holy priest should do, of the impropriety and sinfulness of her strayed affection, instead of pointing her to husband and children and home, and to the precepts of her Redeemer, he addresses her in terms of affection and desire, and suggests to her considerations that are calculated widely, and more widely, to separate her love from her husband, and her soul from her God.

Judge Neilson—Gentlemen keep their seats until the jury retire.

JUROR HULL DENIES IMPUTATIONS ON THE JURY.

Mr. Hull [one of the jurors]—If your Honor please, I would like to say one word. The gentleman has taken occasion this afternoon to reflect—possibly to make two reflections on the jury. It is not the first time——

Judge Neilson [To the audience]—Silence! [To Mr. Hull] "The first time——"

Mr. Hull—It is not the first time, nor the second, nor the third, nor the fourth, nor the fifth, that we have been compelled to listen to those reflections during the last eight days of the court session. Is it not enough that we are compelled to sit here day in and day out, week in and week out, month in and month out, for the last six months, deprived of all means of following our usual avocations, and deprived of the means of labor which makes our home happy and comfortable, submitting to the bare pittance of nine dollars a week, without submitting to the insinuations and reflections of counsel? I can safely say, your Honor, I believe this jury has not been approached with undue influences, except through the means of these envelopes [producing a document from his pocket-book], which inclose a slip cut from *The New-York Sun*, which was sent through the New-York and Brooklyn Post-Offices to us. I hope your Honor will instruct the gentleman to be kind enough to refrain from such reflections on the jury. [Applause.]

Judge Neilson—I have—— Silence! Can't we have quiet

one single minute? I must say to the juror that I think—while I appreciate what he says—I think he utterly misunderstands the counsel. I do not think the counsel intended to make a reflection, or to make any suggestion that the jury have been approached. Some allowance must be made for counsel speaking rapidly, and often under excitement. Very few of us speaking thus fail to fall into an occasional remark that is not intended, or which may lead to a misapprehension.

Mr. Hull—It is very hard, your Honor, to submit.

THE DEFENSE CHARGED WITH TAMPERING WITH JURORS.

Mr. Beach—It may be hard for that gentleman; and it may be, your Honor, that it would be politic for me to accept the excuse of hurried debate, which your Honor makes; but I have good reason to believe, Sir, that this jury has been approached, members of it. I have got pretty clear and satisfactory evidence of it, Sir, and it may not be impossible that I may present it to your Honor for consideration before this case is ended. [Applause.] I do not make any imputation against any person upon this jury, but that members of this jury have made most improper declarations in regard to their opinions and purposes in this case I have the means of proving; and that they have been approached by the emissaries of the defendant I have the means of proving.

Mr. Abbott—If your Honor please——

Judge Neilson—Will the audience keep still? Allow me, Mr. Abbott, to remark——

Mr. Abbott—Will your Honor allow me to state that such remarks are out of place unless in connection with some serious application to your Honor made upon professional responsibility, which will give at once significance and the opportunity of meeting them. We submit that such remarks are not called for in this connection.

Mr. Shearman—If your Honor please——

Judge Neilson—One moment, Mr. Shearman.

MR. SHEARMAN DENIES THE ACCUSATION.

Mr. Shearman [continuing]—We respectfully demand that he should produce the evidence here and now; and as far as the defendant is concerned I pronounce all these assertions, if they are intended to reflect upon any one representing the defendant or his counsel, or having, directly or indirectly, the slightest authority from them, as utterly untrue.

Judge Neilson—He doesn't pretend to say they do come from them.

Mr. Beach—Oh, no, Sir.

Mr. Shearman—Your Honor, there was a charge made early in this case, and made against the defendant and his counsel, of some tampering with their witnesses, or something of that kind, which I pronounced utterly untrue. Very early in the opening reference was made to money having been used, and money used by Plymouth Church. And now, Sir, I desire to say to my friend—and he has known me five years, if not 30, and knows intimately my character—I desire to say that I will take the responsibility of any tampering, if there has been any, for there has not been one dollar of money used in this case which has not come out of my personal pocket, and there is no human being that has contributed to the expense of this suit except Henry Ward Beecher and myself, from personal, private funds.

Judge Neilson—I desire that this subject end here. I am very sorry that the remarks were made.

Mr. Beach—One moment, Sir; one moment, Sir. The assertions of counsel are evidently beyond his knowledge, because it is very possible that parties interested in this litigation, in sympathy with the defendant, could very easily use means and for purposes which were not known to Mr. Shearman; and however ready he may be to take the responsibility of all the mischief which may have been done on the part of the defense, he certainly cannot speak with a full knowledge in regard to it. Now, Sir, it would have been exceedingly improper that anything of this kind should have been said, if I had not been arraigned by one of the jurymen.

Judge Neilson—I regret it very much, Sir.

Mr. Beach—I have not made any charge, Sir, against this jury. I beg to repeat, Sir, I have not made any charge against this jury, until I was called out by this appeal of the juryman. I have said that there were notorious and prominent influences surrounding this court and this case, and everybody sees it and knows it, without imputing any corrupting influence. And when the gentlemen calls upon me to sustain what I may say in an argument to your Honor upon this question, why, I shall take my own time and consult my own pleasure as to the mode in which I shall do it. And I shall be very sorry, Sir, if anything which I have said has been offensive to the juryman who has taken occasion to address you, because I should very much regret if I should do anything to sacrifice the respect of that juryman; and, more than all, if I should do anything imprudent, to injure the cause of my client. I have no right to do that, and I do not wish to do it; and I hope that that gentleman will not be induced to any feeling of prejudice in consequence of anything which I may have said.

JUROR HULL ACCEPTS MR. BEACH'S EXPLANATION.

Mr. Hull—I would state, your Honor, that there is no prejudice in the matter. It was merely a request on my part that the gentleman would refrain from casting any reflection, as it appeared to me he had done before in his argument, without any prejudice either one

way or the other. I accept the gentleman's apology, with all due deference and respect. [Laughter.]

Mr. Beach—Well, Sir, as this subject has now been suggested, we request your Honor to appoint a time when you will hear us in regard to these approaches.

Judge Neilson—If any question of that kind is to be considered, let it be after the case is all over, when some person ought to be appointed. That is the appropriate time.

Mr. Beach—Well, Sir—

Judge Neilson—In my opinion, I think it is.

Mr. Fullerton—Well, Sir, the challenge came from Mr. Shearman to do it now. If "now" means during the progress of the trial, we will accept the challenge.

Mr. Shearman—*I* will accept it.

Judge Neilson—It would not be orderly, I think, now.

Mr. Fullerton—Well, we want to manifest a disposition to meet the question on the other side, and to show what we have got, because he will find that there have a great many things probably taken place during the progress of this trial that he doesn't know anything about.

Judge Neilson—Gentlemen will keep their seats until the jury retire. Eleven o'clock to-morrow morning gentlemen.

The Court then stood adjourned to Tuesday morning.

108TH DAY'S PROCEEDINGS.

MR. BEACH DRAWING NEAR A CONCLUSION.

THE QUESTION OF IMPROPER APPROACHES TO THE JURY AGAIN DISCUSSED—MR. FULLERTON DECLARES THAT HE POSSESSES AFFIDAVITS IN PROOF—COMMENTS FROM MR. EVARTS—CONTINUATION OF MR. BEACH'S ARGUMENT—THE INTIMACY BETWEEN MR. BEECHER AND MRS. TILTON—WHY WAS NOT MRS. MORSE CALLED AS A WITNESS?—MR. BEECHER'S ALLEGED INCLINATION TOWARD SUICIDE — TESTIMONY OF MR. WILKESON AND MR. BELCHER CONSIDERED—MISS TURNER'S EVIDENCE AS BEARING ON THE CHARGE OF ADULTERY—THE ORIGIN OF THE ALLEGED CONSPIRACY AGAINST MR. BEECHER—THE DEFENDANT DIRECTLY CHARGED WITH PERJURY —HOW HE MIGHT HAVE JUSTIFIED THE ALLEGED CRIME TO HIMSELF—WANT OF ORTHODOXY IN MR. BEECHER'S SERMONS.

TUESDAY, June 22, 1875.

At the continuation of the suit of Theodore Tilton agt. Henry Ward Beecher to-day Mr. Beach resumed his argument in the summing up for the plaintiff. The "notable circumstances" of the case, as they were called, were first discussed, and following them came an examination of the testimony of Bessie Turner and that of Henry Ward Beecher.

Mr. Beach's manner of speaking continues unchanged. His voice is somewhat husky, but his tones have a deliberate earnestness that gives full effect to his vigorous words. Several attempts at satire were made by him. One of these that was greeted with a laugh by the supporters of both parties to the controversy, had reference to an extract from Mr. Beecher's sermon on "the nobility of confession," preached Oct. 4, 1868. Mr. Beecher says that a person should take counsel, wise counsel, before confessing; "counsel like Shearman and Tracy," said Mr. Beach.

It was with a little more than ordinary interest depicted on their countenances that the audience, counsel, and parties to the suit reassembled in the court-room this morning. The spirited remonstrance from the jury against the alleged insinuations of counsel had excited comment, and it was generally believed that further reference to the topic was exceedingly probable. The popular anticipation in the matter was speedily gratified. Shortly after the opening of court, Judge Neilson introduced the subject by referring to a conversation had by him with the jury in reference to it. He thought the jury still labored under a misapprehension in regard to the charges made by the counsel.

Mr. Fullerton hinted in reply at the number of communications which were received by the plaintiff's counsel, and to which they could not turn a deaf ear. It would be a surprise to his Honor and the jury if they could know of this information.

Judge Neilson caught at the suggestion contained in Mr. Fullerton's remarks as to the surprise which the jury would experience in hearing of the information. This implied, said he, that the jury were not parties to it. He was ready to accept this suggestion.

Mr. Fullerton, who bore the brunt of the discussion on the plaintiff's side, said that counsel had affidavits in their possession from persons "purporting what men have heard and what communications have been made to them by jurors." He did not know whether these were true or not.

Mr. Evarts, speaking for the first time on the subject, regretted his absence on the preceding day when the topic was broached. Mr. Beecher and his counsel, he remarked, met there before his Honor and the jury whatever was alleged against them in any respect, whenever it was presented in a shape

that the law made it possible for them to meet it. Continuing, he said: "Yet it seems an awkward thing that the defendant, in the very stress of his life, that presents himself here in court and by counsel, to meet whatever the justice of this country has to relate against him, should also have to meet what the justice of his country has not to allege against him in the shape of published evidence after the proofs are closed and in the shape of suggestions about what has gone wrong or rumored to have gone wrong." The difficulty was finally smoothed over for the present, and Mr. Beach allowed to proceed with his argument.

PROGRESS OF MR. BEACH'S ARGUMENT.

Mr. Beach began by referring to Mrs. Tilton's letter of March 8, 1871, and Mr. Beecher's reply thereto, and he called attention to the fact, which he considered surprising, that Mr. Beecher, under the circumstances, should resort to Mrs. Tilton for cheer and comfort. The letter of Mr. Beecher he regarded as an appeal to Mrs. Tilton to pour on him her sympathies.

Mrs. Tilton's letter of May 3, 1871, in which the phrase "nest-hiding" is found, was then taken up and analyzed. The speaker said the plaintiff had never given to the expression "nest-hiding" the signification of adultery. It meant concealment of Mrs. Tilton's love for Mr. Beecher. This meaning at once attached to the phrase after a consideration of its origin. The letter was significant as being the first communication between Mrs. Tilton and Mr. Beecher after the memorable interview of December, 1870.

Mr. Beecher's alleged inclination toward the commission of suicide was then referred to, the speaker confining himself to the reading of passages from the letters of Mr. Beecher, which he said expressed that inclination, and on which he would not comment.

The familiarity of the relations of Mr. Beecher and Mrs. Tilton was the next topic discussed by the speaker. This familiarity was evinced by the circumstances given in Kate Carey's testimony and the evidence of Mrs. Mitchell in regard to Mr. Beecher's visit to Mrs. Tilton when the latter was on her sick bed. Mr. Richards's testimony was also referred to, and it was urged that this was extremely probable.

The testimony of Mr. Redpath was then considered, especial emphasis being laid on Mr. Beecher's alleged determination "to make a clean breast of it" and "vindicate Theodore and Elizabeth." Stress was laid also on the fact that Mr. Beecher made to Mr. Redpath no denial of the charge of adultery. The speaker thought that the community would have been spared the infliction of the scandal had Mr. Beecher only followed the promptings of his own generous nature, and not have listened to the promptings of his lawyers.

Mrs. Morse's letter to Mr. Beecher, in which she addresses him as "my son," was commented on, and the question asked, "Why was she not called as a witness?" The alleged interview at Mr. Freeland's house on the occasion of Mr. Bowen's presenting the letter of Mr. Tilton to Mr. Beecher was also referred to. Mr. Tilton demanded Mr. Beecher's retirement from Plymouth Church and from Brooklyn. "An insolent demand," thought the speaker, "if Mr. Beecher were innocent." Yet Mr. Beecher had nothing to say. He put the note in his pocket, and it was not until Mr. Bowen asked him as to its import that he said anything. This bearing of Mr. Beecher was contrasted with what would "have been the natural impulse of an outraged minister under the circumstances," and inferences drawn unfavorable to Mr. Beecher. Mr. Bowen's alleged "treachery" on that occasion was referred to by Mr. Beach. "By it" he thought "Mr. Beecher had secured a useful ally, and had silenced a dangerous tongue."

The speaker then recapitulated the facts in what he called "the affirmative part of the case." There had been sustained by three witnesses the "confession" on Mr. Beecher's part, and this testimony was itself sustained by Mr. Beecher's written communications—he might call them "confessions."

The blackmail theory was combated as not being entertained even by Mr. Beecher himself, and as being the fruition of the instructions of his lawyers.

The testimony of Wilkeson, of Belcher, and others as well as that of Bessie Turner was declared to be immaterial so far as the vital point of the case was concerned, and as affecting only the question of damages. Damages, however, were not claimed by the plaintiff. Again, Bessie Turner's testimony was intrinsically incredible. After referring to some of its features, Mr. Beach declared that the jury "were not called on to believe ridiculous travesties of that character." This remark had reference to the "knocking down" scene and the story of Miss Turner's having been carried from her bed to that of Mr. Tilton. One thing material, however, thought the counsel, was revealed in Miss Turner's testimony. This was that Mr. Tilton as early as December 14,

1870, had made charges of adultery against Mr. Beecher. Again, Mr. Tracy had said that the conspiracy began on December 26, 1870. What became of this idea in the face of this evidence?

The last topic touched on by the orator was the consideration of the evidence and character of Mr. Beecher. There was no alternative for the defendant, Mr. Beach thought, except a brave and a bold denial "fortified by his character and supported by his church and congregation." That Mr. Beecher had committed perjury was declared to be "just as certain as the course of human evidence," and the speaker went on to give a theory on which he believed Mr. Beecher had justified his course. This was the doctrine of the casuists who thought and avowed that "under certain circumstances it is not only the privilege but the duty of a man to lie." References were made by Mr. Beach to a letter of Thomas K. Beecher, to the writings of Prof. Wilkinson, to Mr. Beecher's sermons and other sources, to show that this opinion had been entertained by many theologians.

Mr. Beecher's orthodoxy in matters of belief was also touched on. Mr. Tilton had been declared heterodox. How near was Mr. Beecher to orthodoxy in his creed? Mr. Beach read selections from Mr. Beecher's sermons to show the opinions of the Plymouth pastor in regard to the inspiration of the Scriptures and the divinity of Christ. "Then the Bible theory of the atonement is a false philosophy," was Mr. Beach's comment. The speaker claimed that Mr. Beecher had set aside the Church, and put it in the same class with literary institutions. He had brought the Church into disrepute, and sought to bring its ministers to the same level. He had undervalued the sacredness of the Sabbath day, and ventured to dispute the condition of Adam and Eve in Paradise. This part of the argument was illustrated with Scriptural citations and a reading of the hymn "Rock of Ages."

THE PROCEEDINGS—VERBATIM.

NO REQUESTS TO CHARGE YET MADE.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—I wish to make an observation, and it is the first time, in a sense in my own behalf. I have not at any time thought it proper to waste a moment here by referring to anything stated about myself, and should not do so except that I find in an article in an evening paper, in the midst of compliments to which I am not entitled—an article written in a spirit of great kindness—the statement of a fact or supposed fact, which might lead to a misapprehension. It is said that the papers, meaning some of the newspapers——

The papers, not so well "posted" as the lawyers, have, from usage rather than information, concluded that part of a day at least will be occupied with requests for the Judge to charge on. Those requests have already been handed in. The Chief-Justice got them a month ago privately; and has woven such of them as he approves of into his charge, which is not written out.

It would be a blissful state of affairs if that were so, because in that case I should not have been working last evening and until 2 o'clock this morning, and almost hourly calling upon my friend Mr. Bigelow, a sworn officer of this Court, for not copying memoranda as promptly as I could wish. This might lead the gentlemen concerned on each side of the case to suppose that I received from the other side certain papers. No requests whatever on either side have been handed to me, and if any had been handed to me I should at once have delivered them to the attorney on the other side for examination. I think that is due to myself in view of the possibility that there might be misapprehension.

Mr. Fullerton—Your Honor will recollect that it was the understanding at an early day that the requests to charge should be handed in by the respective parties, to your Honor, and there should be an interchange of requests, so that we might deal with the matter intelligently.

Judge Neilson—Yes.

Mr. Fullerton—I suppose it has been overlooked, and I call attention to the fact now—

Judge Neilson—Still that was not done.

Mr. Fullerton (continuing)—In the hope that it may be done without any further delay.

Judge Neilson—My hope is that for once a Judge might be found who could deliver a charge so entirely fair on each side that counsel might do him the compliment of making no requests. I should like very much the opportunity of trying that experiment. Still, if requests are necessary they will, of course, be made.

Mr. Fullerton—We shall very cheerfully acquiesce in that suggestion so far as we are concerned.

THE CHARGE OF TAMPERING WITH JURORS.

Judge Neilson—I ought to say, too, although I did not intend to, that the gentlemen of the jury were in my room this morning conversing about the occurrence of last night, and they still are under what I then regarded and still regard as something of a misapprehension. I said to them this morning, as I felt upon reconsideration, and was inclined to feel last night, that the learned counsel, in the rapid course of utterance and in making some remarks about what he supposed to be adverse influence, intended to characterize and complain of that; but, as I think, I was justified this morning in

assuring the gentlemen of the jury that counsel had no intention to reflect upon them as having actually recognized approaches, or as having allowed any person to approach them, or as having done anything that at all impaired their character as jurors or citizens here in the discharge of their duty. I hope the thing may be so regarded, if my view of it is correct.

Mr. Fullerton—Well, it is a very unfortunate state of things, undoubtedly, but they are not under our control. Your Honor would be surprised, and the jury would be surprised. if they could know what information reaches us constantly, not only by written communications, but by oral communications as well, and these communications purport to state facts within the knowledge of those who communicate them. As a matter of course we cannot turn a deaf ear to these things, although we make great allowances, as a matter of course, and fearing that there is some truth in what has been stated to us, we, as a matter of course, have been more or less excited by it, and have spoken of it. Under the intimation of your Honor yesterday the time will come when your Honor will be put in possession of what is now in our possession upon this subject.

Judge Neilson—Well, Mr. Fullerton, when you say that the jury would be surprised if they knew what have come to you in the form of information, you utterly exonerate them from being parties to it, because if they were parties to it they could not be surprised. I accept that suggestion.

Mr. Fullerton—Why, I do not pretend to say that they communicate the facts themselves, or that they had any instrumentality in them; of course not.

Judge Neilson—That is all that the jury desire, then, in the way of satisfaction to them.

Mr. Fullerton—But parties have gone so far as to place in our hands affidavits upon this subject, Sir, purporting to state what men have heard and what communications have been made to them by jurors. There is no use of concealing the fact at all. Whether true or false I do not know, but such is the fact.

Mr. Evarts—If your Honor please, an important engagement, that it was desirable I should be able to keep punctually, carried me out of the court-room about 15 minutes before my learned friend, Mr. Beach, would have reached the natural close of his remarks, and the time that he did reach them, I spoke to my friend, Mr. Fullerton, that I hoped it would not be regarded as impolite in me to go, because I had really the necessity, and he concurred with me in that view; and I regret that I happened to be absent when, perhaps, some attention to the cause on the part of our client—my client—might make it desirable that all his counsel should be present. Now, I have a word to say about this matter. Mr. Beecher is a defendant in this action, before the tribunals of his country, for which tribunals, in all the functions and in all the opportunities of the administration of justice, he has entire respect. He and his counsel meet here before your Honor, and in the face of this jury, whatever is alleged against them—against Mr. Beecher—whatever is alleged against Mr. Beecher in any respect, and against his counsel in any respect, we meet whenever it is presented in a shape that the law makes it possible for us to meet it. Now, when my learned friend, Judge Fullerton, says that people would be surprised at this, that and the other thing, and that it has gone so far as that affidavits are in existence and in their possession, he does nothing that does not seem to him suitable, but really your Honor sees that we cannot meet any suggestions of that kind in any definite form of responsibility. We must hear these things stated—must see these things stated in newspapers, or we must hear them mentioned. Whether they are solid or not, whether an experiment of justice upon them, and an answer to them, would leave anything of importance we cannot say; we know nothing about that; and yet it seems a very awkward thing that the defendant, in the very stress of his life, that presents himself here in court and by counsel, to meet whatever the justice of this country has to relate against him, should also have to meet what the justice of his country has not to allege against him, in the shape of published evidence, after the proofs are closed, and in the shape of suggestions about what has gone wrong, or rumored to have gone wrong, here and there, yet that is a part of this defendant's position which he must bear, and which we must bear as well as we can. I rise only to suggest, what there can be no difference of opinion about, that as yet nothing has been presented for Mr. Beecher or his counsel to meet except what has been produced on the witness-stand, and has been made in the arguments of counsel. Now, I observe that one of the papers this morning speaks of Mr. Hull as being a German, and not understanding the English language, and as being the gentleman that I objected to when the panel was being formed because he did not understand English. Now, I don't know—we might just as well say that your Honor was a German, or any of the counsel are Germans.

Judge Neilson—My grandfather was a German. [Laughter.]

Mr. Evarts—Well, then, there is, perhaps, even more color than there may be in Mr. Hull's case. But it looks as if there was a sort of desire to produce an impression that Mr. Hull had not understood things because he did not understand our language. That seems an injustice to Mr. Hull, and it is certainly an injustice to say that he was the gentleman that I objected to because he did not understand English, because the gentleman that I did object to, your Honor will remember, was set aside.

Judge Neilson—I remember that perfectly, and I also recognize the fact that during the last four months or more of intercourse, and very free intercourse, I am happy to say, with this jury, I have got, I think, quite in-

timately acquainted with each of them, and have got a brotherly regard for each of them and perfect confidence in them. And as to Mr. Hull, he had impressed himself upon me, not only as a gentleman understanding the English language, but apprehensive and sagacious in every sense.

Mr. Fullerton—Well, your Honor will bear in mind that what I have said this morning was not voluntary. It was called out by the existing state of things, and I am very happy to learn that my friend upon the other side is in a somewhat similar situation, because it seems that something has been said or published to which he has called the attention of the Court, and against which he makes objection also.

Judge Neilson—Well, I hope we will proceed now pleasantly.

Mr. Evarts—In regard to the matter of requests to charge, if your Honor please, we shall endeavor to do what seems suitable to your Honor's wishes, and if we shall find they concur with what we think is our duty—

Judge Neilson—It is understood, then, that after what I have said to the jury, which I felt called upon to say, the counsel will feel at liberty to present any requests which they may see occasion to.

Mr. Evarts—That I understood; but I wished to reserve the consideration whether we may find some portion of our request only suitable to be laid before you.

Judge Neilson—Yes.

Mr. Evarts—We will confer with your Honor upon that.

Mr. Fullerton—We shall desire some information if that course is taken by the other side.

Mr. Evarts—Of course.

MR. BEACH CONTINUES HIS ARGUMENT.

Mr. Beach—On the 8th day of March, 1871—the letter which I last read of Mr. Beecher bearing date Feb. 7, 1871—Mrs. Tilton writes this communication to Mr. Beecher:

WEDNESDAY.

DEAR FRIEND: Does your heart bound *towards all* as it used.

The words "towards all," italicized, seeming to indicate an intention under that general phrase to make a personal application to herself.

So does mine! I am myself again. I did not dare to tell you until I was sure; but the bird has sung in my heart these *four* weeks, and he has covenanted with me never again to leave. "Spring has come." Because I thought it would gladden you to know this and not to trouble or embarrass you in *any way* I now write. Of course I should like to share with you my joy, but can wait for the Beyond!

When dear Frank says I may once again go to old Plymouth I will thank the dear Father.

Following that Mr. Beecher writes this letter to her:

The blessing of God rest upon you. Every spark of life and warmth in your own house will be a star and a sun in my dwelling. Your note broke like Spring upon Winter, and gave me an inward rebound to life. No one can ever know, none but God, through what a dreary wilderness I have wandered. There was Mt. Sinai, there was the barren sand, and there was the alternation of hope and despair that marked the pilgrimage of old. If only it might lead to the Promised Land—or, like Moses, shall I die on the border? Your hope and courage are like medicine. Should God inspire you to restore and rebuild at home, and while doing it to cheer and sustain outside of it another who sorely needs help in heart and spirit, it will prove a life so noble as few are able to live, and in another world the emancipated soul may utter thanks.

THE "TRUE INWARDNESS" LETTER.

It is a little surprising, it seems to me, that Mr. Beecher should find occasion under these circumstances to resort to Mrs. Tilton to be cheered and sustained, professing that he sorely needed help in heart and spirit. And why? If Mr. Beecher was so entirely free from any sentiment toward this lady that was not justified by their relation, and his character and position, if he was so entirely cheerful and comfortable and innocent in all his conscience with reference to associations with this lady, why is it that he should need from her cheer and comfort? It was a cheer and comfort to be rendered to him in addition to the rebuilding and reinstatement of her own home and position. It was a personal appeal to this lady to pour upon him her sympathies and affections, to cheer and console him in the desolation of his life outside of her association. No other construction can be given to it.

If it would be a comfort to *you* [the "you" italicized], now and then, to send me a letter of true *inwardness* ["inwardness" italicized]—the outcome of your inner life—it would be safe, for I am now at home here with my sister; and it is *permitted to you* ["permitted to you" italicized], and will be an exceeding refreshment to me, for your heart experiences are often like bread from heaven to the hungry. God has enriched your moral nature. May not others partake?

"If it would be a comfort to you to send me a letter of true inwardness, it would be safe." If this phrase referred only to that permissible and proper communication which should pass between an afflicted and spirit-broken woman and her considerate and careful pastor, of course no exception could be taken to it. But why was it necessary to give assurance to Mrs. Tilton that such a communication would be safe? What hazard was there about communion of that sort? Why was it that the pastor and parishioner should feel that there was a hazard or peril in the permissible intercourse? Why should Mrs. Tilton need the encouragement or the assurance that it would be safe for her to pour out her true inwardness upon Henry Ward Beecher, who appeared, not as the Christian comforter, as the solacer in affliction, but as the beggar at her heart, to be cheered and comforted by her; not rendering pastoral service, not solacing her with prayer and with precept, but bending his head in affliction at her side, and praying the consolation of her

countenance. "All this will be safe, Mrs. Tilton. It is permitted to you, for I am now at home with my sister." What does that mean, gentlemen? It is written by Henry Ward Beecher to this lady, all communication with whom he but a few days before pronounced as unwise and improper. Why does he tell her that she may communicate her inward thoughts to him because he is alone with his sister, his wife absent? Some significance must be given to this language. It must be construed in connection with the other circumstances in this case. It must be made rational with reference to the proven intercourse between these parties. It communicated some idea, it presented some request to the mind of Mrs. Tilton, and was it an idea or request which would be likely to soothe and quiet the disturbance of her own heart, as Mr. Beecher describes it, or the uneasiness which existed in her own home, as he represents it? Was it a letter to be addressed under these circumstances by a pastor professing the condition of things Mr. Beecher states upon this stand?

THE TERM "NEST-HIDING."

Then comes the letter of May 3, 1871, which, so far as we know, closed the correspondence.

MR. BEECHER: My future, either for life or death, would be happier could I but feel that you forgave me while you forget me.

This is the lady, you will observe, who in her conversation with Mrs. Moulton took upon herself all the blame, and declared that she invited the sin which was practiced.

In all the sad complications of the past years, my endeavor was entirely to keep from you all suffering, to bear myself alone, leaving you forever ignorant of it. My weapons were love, a larger untiring generosity and *nest-hiding*.

Very considerable speculation has been spent upon that term "nest-hiding," and the learned counsel upon the other side states that according to our construction of it, it means adultery. We have never given to it any such signification, and do not suppose that it bears it. Counsel reads it as if it were: "My weapons were love, a larger, untiring generosity and adultery," adding to it "adultery." That is not its signification. It means concealment of something. "My weapons were love, a larger, untiring generosity and concealment." It would be very easy to reason to a conclusion that that meant concealment of sin; and, looking at the very obvious origin of that phrase, as given by Mr. Beecher, that would be the meaning which would at once be attached to it. Speaking of the romance "Norwood," written by Mr. Beecher, he was asked if he recollected describing Mr. and Mrs. Wentworth, and especially the peculiarities of the lady, in that book. "No, I had forgotten it."

Q. Do you remember using this language: "It would seem as if, while her whole life centered upon his love, she would hide the precious secret by flinging over it vines and flowers, by mirth and raillery, as a bird hides its nest under tufts of grass and behind leaves and vines as a fence against prying eyes."

Now, a delicate lady concealing her love is likened by Mr. Beecher to a bird hiding its nest under flowers and leaves and tufts of grass. This chapter of "Norwood" containing this sentence had been a short time previous, or a time previous, submitted by Mr. Beecher to Mrs. Tilton, and it is not at all unlikely that an idea of that character, beautifully expressed as this is, would strike at once the imagination of Mrs. Tilton, and it is altogether probable that "nest-hiding" was adopted from that figure, and that, as used by Mrs. Tilton, the term means simply a hiding of her love. Very little significance is to be attached to all this, because the force and application of these letters consist in the circumstance that they were written by such a man to such a lady under such circumstances that they were soliciting an imprudence at least. That they were indecorous and indelicate under the circumstances no gentleman, I think, will hesitate to say. That they were unwise with reference to the complications which existed between these parties, according to the admission of Mr. Beecher himself; that they were well calculated, if not designed, to perpetuate the emotional delusion under which this lady suffered; that they not only provoked but suggested communications of her true inwardness to Mr. Beecher, and solicited from her that consolation and sympathy she had been accustomed to render to him, is perfectly clear. And it is suggested that this which I have read of Mrs. Tilton is the first communication which was made by Mrs. Tilton to Mr. Beecher after the meeting of Dec. 30, when the charge was made against the latter. If that was a false charge, if Mrs. Tilton had untruly communicated to her husband whatever she did communicate and upon the faith of which he acted, would she have addressed, in three months afterward, a note of that character to Mr. Beecher? A private, unsigned communication, true, with proper frankness, delivered by Mr. Beecher to Mr. Moulton, but yet proceeding from Mrs. Tilton under the belief of entire secrecy.

MR. BEECHER'S ALLEGED THOUGHTS OF SUICIDE.

It is thought proper, gentlemen, that I should very briefly direct your attention to those passages in the letters of Mr. Beecher, and in the evidence, which indicate a purpose to commit self-destruction. I am not intending to comment at all upon that feature of this case; and permit me to say here that I am purposing to hurry with great rapidity through the several thoughts which I desire to submit to you without any amplification, and for the purpose, if possible, of concluding my argument this afternoon. The first is in a letter which I read yesterday:

MY DEAR MRS. TILTON: When I saw you last I did not expect ever to see you again or to be alive many days. God was kinder to me than my own thoughts——

in the memorable letter of June 1, 1873, he says

I have a strong feeling upon me, and it brings great peace with it, that I am spending my last Sunday and preaching my last sermon.

The letter, you remember, opens with the sentence, "The whole earth is tranquil and the Heaven is serene, as befits one who has about to finish his world life." In the evidence of Mr. Tilton you remember the interview in which he says that Mr. Beecher desired him to give him notice of any intention to publish the confession, as it is called, by Mr. Beecher, "in order that he might either go out of the world by suicide, or else escape from the face of his friends by a voyage to some foreign land." In the testimony of Mrs. Moulton you remember that he declared that he was determined to take his life, and with the circumstances which are detailed by her evidence. I believe that is substantially the evidence upon that point, gentlemen, and you must give it such consideration as you choose.

MRS. KATE CAREY'S TESTIMONY.

We have got some testimony concerning the intercourse and its familiarity between Mr. Beecher and Mrs. Tilton. You remember the detail of circumstances through which we became acquainted with Kate Carey. It is not necessary to read her evidence. She describes a situation between Mr. Beecher and Mrs. Tilton that, in connection with the avowed affection between these parties—at least the acknowledged love of Mrs. Tilton for Mr. Beecher—gives rise to very unkindly surmises, to say the least. She is a very humble person; she is an unfortunate person; she is addicted to a habit which necessarily deforms and degrades womanhood. Yet it is not inconsistent with the possession of truthfulness, and there is no evidence that this vice was so extreme and degrading as entirely to stifle the instincts and the proprieties of her sex and nature. An attempt has been made to impeach her, and his Honor will tell you that that, if he sees fit to consider the subject at all, entirely failed. It was but the gossip of a particular family with which she was residing, and was not that general reputation which the law requires to impeach a witness under oath. You must give, gentlemen, to her evidence such regard as appears to be proper. It is pretty hard, even in the case of a woman of her station and position, where it is perfectly evident that no influences have been brought to bear upon her, where the discovery of her narrative and knowledge was purely accidental, it is pretty hard to impute to her a deliberate manufacture of the circumstances which she relates. It is difficult to assign any motive for any such wrong, and the circumstance that this woman can surround and support herself by high station and notorious respectability where there has been no successful effort to impeach her general character for morality or for truth, ought not to weigh against her credibility. There is a slight circumstance appearing in the testimony of Mrs. Mitchell which would seem to support the imputation from the evidence of Kate Carey. Mrs. Mitchell had been very solicitous, as you recollect, to protect Mrs. Tilton from disturbance on this night of the 30th of December, and our learned friends had exhibited with great particularity the inopportune call of Mr. Moulton and of Mr. Tilton and their unwise and disturbing interference with the quiet and repose of Mrs. Tilton, who was then, although convalescent—her doctor having left her the morning of that day—yet suffering undoubtedly from debility and prostration. But this lady who complains so greatly against Mr. Tilton and Mr. Moulton admits Mr. Beecher at once to the room of Mrs. Tilton, and, without any caution to him, without any protest against disturbance of that lady so suffering and so weak, so far as she can remember, without any direction or intimation from any source, this prudent and careful nurse at once, without any question, admits Mr. Beecher, leaves the room, him with her patient, goes down stairs, and is absent about an hour until Mr. Beecher has finished his interview. It was, at least, in view of the impression which he had sought to give, of the inhumanity, unkindness at least, of Mr. Tilton and Mr. Moulton; it was a very singular circumstance. The lady was not able to explain it; how she should have forgotten her care and sympathy for Mrs. Tilton, how she should have waived her prudence and admitted, not the husband of Mrs. Tilton, but the pastor of Mrs. Tilton to a private disturbing interview with her, and that after she had retired for the night, is a circumstance that will excite some disagreeable surmise. It is one of those slight circumstances, gentlemen, which, if you will remember the authorities I read to you from the English Consistory Court—one of those slight circumstances which, in connection with an acknowledged improper affection, an opportunity is all that the law requires to satisfy its judgment upon the presence of a charged offense.

JOSEPH RICHARDS'S TESTIMONY.

I must trouble you with a few words from the testimony of Mr. Richards. In answer to a question in regard to what he had observed as to the conduct of Mr. Beecher and his sister, he says:

Well, Sir, on this occasion I spoke of seeing them in the morning, this one occasion. I called at the house and was in the upper story, the second story I think; I descended to the parlor floor and opened the door of the parlor, which was closed, and I saw Mr. Beecher seated in the front room and Mrs. Tilton making a very hasty motion, and with a highly flushed face, away from the position that Mr. Beecher occupied. It was such a situation as left an indelible impression on my mind. That is all, Sir—in relation to other matters—

Q. And how far was Mrs. Tilton from Mr. Beecher when your eye rested upon them? A. Well, she was not far,

Sir—in the act of moving as I opened the door; there was a moving away from the position.

You may not give us on the part of the plaintiff credit for any delicacy of sentiment in regard to this gentleman and Mrs. Tilton. You may suppose that we did not feel the horror of that necessity which compelled us to put a brother upon the stand to testify in regard to the chastity of the sister, and may perhaps wonder that when we asked that gentleman how near were they together—what was the position—when he evidently evaded a circumstantial description of it, that we did not press with more tenacity a direct and full answer to the interrogatory. But it was enough for our purpose—it is enough according to the judgment of the law. Remember what Mr. Beecher then supposed. Remember what is clear from all the evidence in regard to Mrs. Tilton that she had an absorbing love for Mr. Beecher. Remember, as we say, as is expressed in every line and in every action of the word and deed of Mr. Beecher, that he had at least a tender and close affection for this lady. Remember all these circumstances reflecting alike upon the disposition, the emotions of these two people, one toward the other, and then find them in the condition described by Mr. Richards—Mr Beecher on a chair, the door suddenly opened, and this woman springing from a position, with a burning cheek, under circumstances leaving an indelible and agonizing impression upon the heart of that brother. What meant it? Is that man pure and innocent as he represents himself to be, with no suspicion of wrong on the part of Mrs. Tilton, and no indulgence of sinful emotion on his part? Ah, he tells us that in those interviews he prayed with this afflicted lady, that he breathed into her soul the consolation of his own exalted spiritual nature. This was not the attitude of prayer. This woman was fleeing from dangerous proximity to this pastor. She was conscious of sin, for Conscience burned a confession upon her face. "But," says the gentleman, "what did Mr. Richards think of it? He went forward and shook hands with his sister." Well, what, what should a brother have done under those circumstances? Should he have raised an uproar; should he have assaulted Mr. Beecher; should he have upbraided his sister, or should he maintain the address and the character of a gentleman, and leave the solution of the circumstance to a deliberate and proper consideration which would protect the reputation of his sister, and the honor of her children? It is suggested that in the embarrassment of that moment Mrs. Tilton did not, as would have been the natural impulse of an undisturbed lady, advance to her brother to meet his salutation, and render her own, but she passed to the window away from the brother, in appearance, in action, giving the sense of conscious impropriety. I suppose Mr. Richards is to be believed. Upon that subject (his credibility) I have said sufficient heretofore. It is one of the dire necessities of this defense that whenever we reach an issue material and important in this case, every witness, all evidence, on the part of the plaintiff to maintain it, is to be discredited. There is corruption and perjury. No matter how pure the life, how eminent the character, how unassailed the reputation, still it is necessary to travel over all, and to consign every gentleman, every lady, at once to unlimited condemnation.

MR. REDPATH'S TESTIMONY.

What shall be done, gentlemen, with the testimony of Mr. Redpath? He is a witness for the defendant. Mr. Beecher has given him a certificate of character by putting him upon this stand. There is no testimony in this case which reflects so significantly, both upon the conduct and character of Theodore Tilton and Henry Ward Beecher as the narrative of Mr. Redpath, and you must pardon me for reading it in brief. He relates an interview at Mr. Tilton's house with him.

One day I went over early in the forenoon, and as I was—as I passed up stairs I passed Elizabeth in the entry—in the passage, up stairs, coming out of one room on the right hand side; she had an expression of extraordinary determination and resolution in her face that I had never seen there before, and I thought there had been some domestic row. I went into Theodore's room; he was lying on the bed stretched out, I think with a coverlid over him, without his coat or vest; I think his pantaloons were on; and he had a look of extreme sorrow, as if he had been stricken by some terrible blow. I was startled at the expression on his face, there was so much sorrow on it, and I went forward, and he had the roll of the "True Story" lying this way. [Illustrating.]

Q. Open? A. I think it was open. I said, "Theodore, what is the matter with you this morning?" He said, "I have had a talk"—or "conversation." He did not use the word "talk;" he used some work like "controversy"—"with Elizabeth." He said it was wonderful, the amount of resolution that that little woman had. "Well," I said, "what is the matter?" During this I was observing his face very closely, and was very much pained by the look of almost agony that there was on the face; I had never seen it there before. He said, "Elizabeth threatens, if I publish it, or if it is published, I am not sure which—I think, 'if it is published'—that she will come out and deny it." I said suddenly, "Theodore Tilton, you have not told me the whole truth in this case, have you?" He dropped his eyes and said, "No." I said, "My God." I went forward and put my hand on his head, stroked his hair. I found that his head was burning, his temple throbbing. I sat with him. I think neither of us said much—possibly ten minutes or a quarter of an hour—passing my hand over his head, and I thought then that the extreme mental strain that was on him was going to render him insane. Now, I had no cause for thinking that from anything he said, but simply from knowing his face well, and from watching its expression then. Well, I acted on that belief for one whole week afterward. He said, either there or down stairs, "It ought to be published." By and by after, he very soon became quieted, when I sat with him for a while, and I asked him to rise and go out and have a walk. I got him down stairs as soon as I could, coaxing him to hurry up, and that sort of thing, and went down stairs with him. We went over to Boston—to New-York

together, and during—in going over the ferry, and in the distracted manner that he had, my impression was confirmed that this thing—that he was either in a fever or was going to become insane; he said in going—of course we talked a good deal; I am only saying now all that I am able to recall, because I have tried to think of it for the past few weeks; he said he was going—I think it was that same day, or the next day, perhaps—he was going on some lecture engagement, I think in Indiana or Kentucky, as nearly as I remember, and he said that he was in such a state, his head—he was feeling so badly or his head was in such a state, that he did not think he would go; I went over, and I think he spoke to Mr. Clark about it—Mr. Clark, the editor of *The Golden Age*.

That description given by Mr. Redpath of the condition in which Mr. Tilton was, I think, quite as forcibly as any other evidence in this case, exhibits the true condition of Mr. Tilton, the intense and extreme feeling he had upon this subject, and is a revelation of his soul that has been given by no other narrative in this long trial. That there was something bearing upon his soul—something that stirred the deepest emotions of his nature, something which broke down heart and brain when the full force and significance of it were presented to them, can hardly be questioned under the testimony of such a witness as Mr. Redpath. But he had an interview with Mr. Beecher. Before passing to that, however, I will read a single paragraph further from his testimony referring to the interview with Mr. Tilton:

Q. Well, what did you say upon that subject, Mr. Redpath—what did you say to Mr. Tilton in regard to his having told you the whole truth? A. I said, standing, looking at his face (that being the first time that I had any idea that he had any other theory of the "True Story"), I said: "Theodore, you havn't told me the whole truth?" I said it as a question. * * He dropped his eyes, and said in a low tone, "No."

Q. Did he tell you at that time what the whole truth was? A. He said no more; I did not ask any more.

Then he says that in the "True Story" the accusation against Mr. Beecher was of improper proposals; and, upon the basis of the "True Story," Mr. Redpath says to Tilton: "You have not told me the whole truth;" and he answers, "No."

Now to the interview with Mr. Beecher; passing all further description, but reading, so that you may have in your minds what, upon another occasion was said by Mr. Moulton in connection with Mr. Tilton and Mr. Redpath:

Theodore was lying on the lounge, Frank was sitting near the fire-place, and I was sitting at the end of the lounge. Theodore said, "Redpath is going up to Mr. Beecher's to see Mr. Beecher to-morrow." Frank said "Is he? What are you going up about?" to me. I said that I was going to try to get Mr. Beecher to arrange dates for lecturing. Theodore said, "Tell him that I am going to charge adultery." Frank said, "No, don't, Redpath." I said, "I am not a fool, Frank; that would be a pretty way of introducing a business conversation; I have no intention of telling him that." Theodore said, "Yes, you had better tell him." At this time Frank had risen and was walking uneasily about the room, and suddenly he stopped before the—before us, and said, "Theodore was mad at me yesterday for saying that I loved Mr. Beecher more than"—then he stopped—"as much as I love you. I don't care a damn, but much as I love both of them, Redpath, I would smite either of them to the earth," or "to the ground, if either one of them at tempted to crucify the other. Tell Mr. Beecher that." "No, I won't," I said, "You seem—yes, you better, you better tell him." He said, "Take that message from me." I said, "Frank, you seem to forget that although Mr. Beecher——"

Here he was interrupted by Mr. Evarts, and then he said further:

Then Frank said—I said, "You seem to forget that I have never spoken to Mr. Beecher on that subject, and I certainly should not introduce it." He said, "You will find him ready enough to talk." That is all I remember of now.

Mr. Redpath had an interview with Mr. Beecher, which it is not necessary to read, and in answer to the question, "Did you see Mr. Beecher?" he says:

At his suggestion and Mr. Cleveland's, I went to see Mr. Beecher at his house; I went there, I think, about 3 o'clock; I didn't see him for an hour or an hour and a half afterward; he was up-stairs asleep; then we went down—then we went down to tea. Oh, I asked in the parlor—I asked him if nothing could be done to stop this yet. He placed his hand on my knee and said, "O, that is all right now," or some expression like that; "I have made up my mind;" we went down to tea, and after tea he took me into the garden or yard, and went to the front part and talked a little about the cellars a minute, or the vaults underneath, and in going back he said—I forget the remark I made that led to it—he said, "I was with some of my friends until 2 o'clock this morning, and my mind was not clear."

Mr. Fullerton—Speak a little louder, if you please.

The Witness—"But when I awoke this morning I saw my way clear; I shall make a clean breast of it; I shall tell the whole truth; I shall take the whole blame on myself; I shall vindicate Theodore and Elizabeth." I said, "Well, Mr. Beecher, without any reference whatever—without any reference to what the truth is, I am very glad of it." Then he asked me something about what the effect—what effect the scandal would have on the lecturing. I don't know how the question was phrased. I think it was then that I replied, "That without any reference to what the truth was he would find a stronger and better class of friends around him than he ever had before."

Now, Mr. Redpath had communicated to Mr. Beecher the message of Mr. Tilton that he was going to charge Mr. Beecher with adultery, and *after* that Mr. Beecher says to Mr. Redpath, "My mind is clear; I am determined to tell the whole truth; I am determined to vindicate Theodore and Elizabeth." How vindicate Theodore, who was charging him with adultery, who *had* charged him to Redpath with adultery, who had charged him to others with adultery—how was Mr. Beecher going to vindicate Theodore Tilton? This was in July, 1874, after the Investigating Committee had been called, and with a full knowledge of the extreme character of the charge. Knowing all that Theodore Tilton in the past three years had done, knowing what the charge of Mrs. Tilton was, which he pronounces to-day false, which was reiterated

by her in the letter to Dr. Storrs; ready, as my learned friends say, then, for contest and for fight; this gentleman, to his intimate friend and his witness, declares that he will make a clean breast of it and vindicate Theodore Tilton and Mrs. Tilton. Was there any denial to Redpath of the charge of adultery? Did he disabuse the mind of Redpath as to the truth of the accusation which Mr. Tilton threatened then to present? Was there any of the indignation, was there any of the fearlessness of innocence, the determination to throw off the weight and the stain of this scandal, and by demonstration of his own purity, confront the alleged conspirators against his honor and fame, and relieve his church and the world from the dread of the accusation made against him, founded upon this scandal? But I return again to the inquiry, gentlemen, how was Mr. Beecher to vindicate either Theodore Tilton or Mrs. Tilton? If his position to-day be true, if Theodore Tilton is the depraved and abandoned profligate the defense represents, if he had been circulating these false and dishonoring rumors against Henry Ward Beecher, how was he to be vindicated consistently with the innocence of Mr. Beecher? There is no way, gentlemen, in which human ingenuity can reconcile these two contrasting conditions of the mind of this gentleman. *Then* he was determined to do what his conscience taught him, and what his duty to Theodore Tilton and Mrs. Tilton taught him—to tell the truth so far as the truth was necessary and proper in their vindication. Whatever he might choose to communicate in regard to Mrs. Tilton, be sure it would be that which would protect her fame, which would take to himself all the responsibility for the difficulties which had sprung up in the household of Mr. Tilton, and which would rationally account for the rumors which had afflicted and corrupted the ear of the public. What that confession was, what that statement was, which would thus carry with it the vindication of those he had ruined, and how far it would impute guilt and dishonor to himself, is not for me to say, nor for you to say. It is sufficient that then, on the 14th of July, 1874, this man had made up his mind to make such a statement as would produce that desired result.

But, gentlemen, the result in this instance was precisely as Mr. Beecher represents that it was in regard to his changing and conflicting opinions about the charge of blackmail. The instant that Mr. Beecher fell under the control of his two lawyers, Tracy and Shearman, their influence, aided and strengthened by the interests and the influence of Plymouth Church, or the leaders of that church—that instant the better instincts, the purer impulses of Henry Ward Beecher were sacrificed and lost, and he was persuaded to do what the interests of those surrounding him, and the views of his supporters in regard to the great interests depending upon his character, led them to advise. I do not believe that this contest is from the promptings, or is the natural result of the noble and generous nature of this defendant. Long ago, if he had been left free from the snares and influences which surrounded him, to act out his better part, the community would have been saved this scandal. It speaks out in every letter, in every word, in every act of Mr. Beecher when he was speaking and acting his own self.

MRS. MORSE'S LETTERS.

I must direct your attention for a moment to another significant piece of evidence:

MR. BEECHER: As you have not seen fit to pay any attention to the request I left at your house, now over two weeks since, I will take this method to inform you of the state of things in Livingston-st. The remark you made to me at your own door was an enigma at the time, and every day adds to the mystery: "Mrs. Beecher has adopted the child!" "What child?" I asked; "Elizabeth."

Well, that *was* something of an enigma. It is not surprising that it should have puzzled Mrs. Morse, her mother.

Now, I ask what earthly sense was there in that remark?

I believe Mr. Porter represents Mrs. Morse as being in a dangerous condition of mind, and as half demented—without any proof; but she shows considerable good sense in this communication:

Neither Mrs. B., yourself, nor I can have done anything to ameliorate her condition. She has been for the last three weeks with one very indifferent girl. T. has sent * * * with the others away, leaving my sick and distracted child to care for all four children night and day, without fire in the furnace, or anything like comfort or nourishment in the house. She has not seen any one. He says, "She is mourning for *her sin*." If this be so, one 24 hours under his shot, I think, is enough to atone for a life-long sin, however heinous.

* * * * * * * *

I don't believe if his honest debts were paid he would have enough to buy their breakfast. This she could endure and thrive under, but the publicity he has given to this recent and most *crushing of all trouble* is what's taking the life out of her.

Why, what had Mr. Tilton given publicity to? It was not improper solicitations alone; it was *the sin of his wife*. He had communicated to Mrs. Morse the charge of adultery, and she says he had communicated it to twelve other persons—a mistake in number, though he had to some. It is with regard to that that Mrs. Morse says:

This recent and most crushing of all troubles is what is taking the life out of her. I know of twelve persons whom he has told, and they in turn have told others. I had thought we had as much as we could live under his neglect and ungovernable temper. But this is a death-blow to us both, and I doubt not Florence has hers.

Why, what means this terrible calamity which had overtaken the daughter of the writer of this letter and the granddaughter of the writer of this letter, which was crushing the life out of them?

Do you know when I hear of you cracking your jokes from Sunday to Sunday, and think of the misery you have brought upon us, I think with the Psalmist, "There is no God?"

"Ah! this sin, this crushing trouble, this devastating misery; when I think of what you have brought upon us, Mr. Beecher, and remember the gayety and frivolity of your jests and jokes in the sacred pulpit, I think there is no God." That is the substance of this communication to Mr. Beecher. How does he answer it?

MY DEAR MADAM: I should be very sorry to have you think I had no interest in your troubles. My course toward you hitherto should satisfy you that I have sympathized with your distress. But Mrs. Beecher and I, after full consideration, are of one mind—that, under present circumstances, the greatest kindness to you and to all will be, in so far as we are concerned, to leave to time the rectification of all the wrongs, whether they prove real or imaginary.

In answer to a communication of the character I have stated to you pointing painfully, tearfully, impressively, the condition of her daughter, mourning for her sin, crushed to the earth by a heart-breaking sorrow, and charging that misery upon Henry Ward Beecher, he, in his *considered* reply, after consultation with his wife, says not one word in answer to the accusation, makes no inquiry of this complaining mother, does not say to her, "Madam, what do you mean by charging the sin of your daughter or the misery under which your daughter and her household are suffering to *me*, and saying to me that *my* ministrations in my pulpit are so revolting and horrid to your conception of my character, that you think there is no God of justice and retribution?" What would Mr. Beecher, innocent, have said? Why, on the instant, not by written word, not by formal writing, but with a hasty foot, he would have speeded to the presence of that woman. He had been to her; he had consulted her about the troubles between Mr. and Mrs. Tilton; he had heard all the tales of her fierce and vindictive animosity toward Mr. Tilton. Why did he not at once go to this lady and demand of her an explanation of language like this addressed to him, pure and upright as he says he was in his conscience, never having done an act, or whispered a word, in the presence of Mrs. Tilton, that should disturb the entire purity of her nature. Why, gentlemen, can these things be so? Can this man be consciously innocent and submit to imputations of this character without a word of remonstrance, without a single flash of indignation? If he can, he belongs not to that nature which you and I inherit.

Well, this lady in October of that year addresses this gentleman another communication. You see in the first she had wondered at the notion of Mr. Beecher that he and Mrs. Beecher had adopted her daughter, but after that, as Mr. Beecher did not deny it, she assumed it, I suppose, to be earnest and sincere, and she at once falls into the new relation. In October she addresses Mr. Beecher as "My dear love." By a mother to a man who is charged with the seduction of her daughter by the husband of that daughter. After the correspondence which I have read to you between them, and the inferences to be drawn from it, she, months after, writing to that same person under the address of "My dear love," and applying to him for help:

Can you help me in any way by the 1st of November? I am still alone, with no prospect of any one, with a rent of $1,500, and an income of $1,000. &c.

Then she depicts the straitened circumstances of her daughter, and says to Mr. Beecher:

Do come and see me. I will promise that the secret of her life, as she calls it, shall not be mentioned.

Why not? Unless Mr. Beecher was very responsibly involved in that secret, unless the mention of it would be a source of inconvenience and irritation to him, why does she think it necessary to say to him the secret of her life shall not be mentioned? "You shall not be disturbed with it. Truly I did reproach you with the misery you had brought upon us; I did tell you that your conduct led me to distrust the mercy and the justice of Providence. I will trouble you with no more of these reproaches. Come and see me."

I will promise that the secret of her life, as she calls it, shall not be mentioned. I know it is hard to bring it up, as you must have suffered intensely, and we all will, I fear, till released by death. Do you pray for me? If not, pray do. I never felt more rebellious than now, more in need of God's and human help. Do you know I think it strange you should ask me to call you son? When I have told, darling, I felt if you could in safety to yourself and all concerned, you would be to me all this endearing name. Am I mistaken?—Mother.

And yet Mr. Beecher, according to his view of his conduct, has never done anything which should either expose him to reproach from Mrs. Tilton, or anybody else, except indulge the exuberance of his nature, and the kindly and generous and attractive faculties which belong to him. He has never done anything which should induce Mrs. Morse to recognize him as her son: he has never had any intimate association with her daughter which identified him with her in the affections and relations of this mother. What does it all mean? Ah! gentlemen, why was not Mrs. Morse put upon that stand to tell us what it all means? There is what she wrote. It was entirely competent for her to have taken this stand, and to have explained every word of those most remarkable communications. Why was it that Mrs. Morse was thought a dangerous woman? Why was it that Tilton and Moulton and Beecher and all are agreed that there was peril in the knowledge that she had acquired? Why were these letters held by Moulton without the slightest explanation in regard to them, and why are they represented here to-day, and Mr. Beecher unable to give you the slightest explanation in regard to them? And why is this mystery left to be covered up in this action without a single explanation? Those letters are intelligent and sensible. There is no evidence of a wandering intellect. My learned friend, Mr. Porter, saw the force of the inquiry which he knew would be put to this

jury: "Why was Mrs. Morse not produced as a witness?" and he seeks to avoid it by the suggestion, without proof, that her sorrows and misfortunes had disturbed her mind. A suggestion, gentlemen, entitled to not the least consideration. A suggestion entirely unfounded. You will apply to this, of course, the legal doctrine which I read to you the other day. It was the duty of these gentlemen to produce that lady if she could have given you any satisfactory explanation of these communications, or any defense of Mr. Beecher for his silence under the accusation which they made.

Mr. Morris, will you refer me to Bowen's statement that he could turn him in 12 days out of his church? However, I will pass it. It is not of much consequence.

THE DEMAND THAT MR. BEECHER RESIGN.

Some consequence, to my mind, is to be attached to the meeting which was held on the 26th of December at Mr. Freeland's house between Mr. Beecher and Mr. Bowen. It was an extraordinary interview, calculated to produce a very profound impression upon the minds of the parties. A bold and audacious demand was made upon Mr. Beecher. It was insolent if it had no foundation. How did Mr. Beecher meet it? Mr. Bowen comes to him with a sealed letter, no intimation that he was aware of the contents of the communication. He delivers it to Mr. Beecher. It is seen to be a demand from Theodore Tilton upon Mr. Beecher to leave the pulpit and quit Brooklyn. What is the first impulse? What does Mr. Beecher do? He puts it is his pocket and says nothing, makes no answer to the impudent demand until Mr. Bowen says to him, "Well, Mr. Beecher, what have you to say about it?" Does Mr. Beecher say to Mr. Bowen in answer, "What have you to say about it, Sir? Do you make yourself a party to this insolent demand upon me? Do you dare to come into my presence and require me, for reasons which I understand, not expressed, to leave my pulpit and leave Brooklyn?" Would not that have been the natural impulse of an outraged minister conscious of no wrong, undaunted and defiant in his innocence? Would he have permitted any living man to come into his house and on behalf of another make such a demand, without calling that messenger to account, asking him if he took the responsibility of the audacious outrage? Oh! no, no. But he sees the necessity; he does not inquire of Mr. Bowen his connection with it, his reasons for associating with it, but with an humble and a timid appeal asks Mr. Bowen if he is his friend. What are the reasons hinted at in this letter? Does he ask "for what reason does this man demand this absurdity of me?" "For reasons which I explicitly understand—what does that mean, Sir? What have you to charge against me, or Theodore Tilton to charge, that justifies such a request?" Would he not have felt some curiosity to know what it was? Was it because Mr. Beecher had won, unsolicited, the love of Mrs. Tilton, that he had advised a separation when no separation followed, that he had not then advised Bowen or influenced Bowen to discharge Tilton? And I am reminded by my friend that at that time he had no suspicion of the love of Mrs. Tilton. What was it, then, that induced this man, instead of resisting this aggression upon his character and his position, instead of inquiring the causes and the foundations of this demand, to act with conscious knowledge, and appeal to the friendship of Bowen? I repeat, gentlemen, he saw the necessity of detaching Bowen from this association with Theodore Tilton. That Bowen had made the revelations upon which Tilton wrote this demand for a resignation is approved by the "Tripartite Agreement," where, in detail, Tilton narrates the whole of the interviews between Bowen and himself, and upbraids in most severe and bitter terms the treachery of the man who, after inciting him to this demand, could at once enter into a league offensive and defensive with Mr. Beecher; and Mr. Beecher took the true course to do it. What were the influences? By what spell Bowen was quieted we know not, but that on that 26th of December he did pledge himself to Theodore Tilton is certain, and that on the same day he did turn his coat and pledge himself to Henry Ward Beecher is equally clear, and Mr. Beecher was satisfied with the result. He had secured a successful ally. He had silenced a dangerous tongue. Was it not dangerous? In the Spring of 1870 there had been a settlement of the difficulties between Mr. Beecher and Mr. Bowen, by which Mr. Bowen acquired some special advantages, according to Mr. Beecher's statement——

Mr. Evarts—That is not in evidence.

Mr. Beach—Yes, Sir, it is in evidence.

Mr. Morris—Yes, that is what he said.

Mr. Shearman—He said January, 1870.

Mr. Evarts—I was only referring to what you alluded to.

Mr. Beach—Yes, that is in evidence, Mr. Evarts.

Mr. Morris—Correct.

Mr. Beach—Now, after stating the adjustment between them, the memorandum of Mr. Beecher proceeds to say:

Then it was that without any provocation he (Mr. Bowen) told Mr. Howard that this reconciliation did not include one matter that he (Bowen) "knew about Mr. Beecher, which, if he should speak it, would drive Mr. Beecher out of Brooklyn." Mr. Howard protested with horror against such a statement, saying, "Mr. Bowen, this is terrible. No man should make such a statement unless he had the most positive evidence." To this Mr. Bowen replied that he had this evidence, and said, pointedly, that he (Howard) might go to Mr. Beecher, and *that Beecher would never* give his consent that he (Bowen) should tell Mr. Howard this secret.

To Mr. Morris—That was the Spring of 1870?

Mr. Morris—Yes.

Mr. Fullerton—Yes.

Mr. Beach—That was in the Spring.

Mr. Shearman—Will you refer me to the page where it is in evidence?

Mr. Beach—I want to be right about this matter. [To Mr. Morris.] Am I wrong?

Mr. Morris—No; you are not wrong. It is correct. It is in evidence. You are right. It is in evidence.

Mr. Evarts [To Mr. Morris]—Will you show it to us, Judge Morris?

Mr. Morris—Yes; I will.

Mr. Beach—If I am wrong I will make a humble and becoming apology, for I did not intend to be wrong.

Mr. Morris—You are right; I put it in myself.

Mr. Beach—I recollect it.

Mr. Evarts—I don't say anything; I only want to be referred to it.

Mr. Beach—I understand you. Now, it was to this man who, on the heel of a friendly settlement of business difficulties, made this declaration to the intimate friend of Mr. Beecher, that he knew a secret in regard to Mr. Beecher which, if told, would drive him from his pulpit and from Brooklyn—it was to this man bringing this demand, after this threat, known and regarded by Mr. Beecher, that Mr. Beecher exhibits this humble, supplicating attitude of a culprit, appealing to him for friendly protection; and yet you are to believe, gentlemen, that this was a pure and spotless character. In 1870 Mr. Beecher knew that Mr. Bowen made this charge to a prominent member of his congregation, and he sat silent under it; made to one to whom he broke the sacrificial bread and poured out the blood of his Redeemer. To him who sat meekly under his ministrations Bowen had made this accusation, and Beecher sits silent, contented, received at the same communion table, and breaks the same emblematical bread to the man who had made this charge against him in the bosom of his church; and to this hour, to this hour, he is an accepted communicant, and has never been called to a responsibility for the foul accusation. What are we to do with these things, gentlemen, as practical men, honest and true to our fellow men? How are we to account for this submission of a great man, stayed and supported by the adoration of a great church, in the face of such a dishonoring charge? Does it not throw upon that transaction, on the 26th of December, such a gleam of light that you can look through it into the heart of Henry Ward Beecher and see how conscious it was of error, how timid it was in the presence of guilt, and how tremblingly that solicitation to Henry C. Bowen to be his friend fell from his lips on that interesting interview? [To Mr. Evarts]—It will be found here on page 194.

Mr. Evarts—The heading connected with the paper is different.

Mr. Beach—Yes, Sir; I was quite certain of it.

Well, you see from the whole of this paper that the way that settlement was made, the difficulty was made, and that was at an interview at Mr. Freeland's house (that is a notable house, that house of Freeland's) "about February, 1870, at a long interview at Mr. Freeland's house, for the purpose of having a full and final reconciliation between Bowen and Beecher, Mr. Bowen stated his grievances, which were *all* either of a business nature, or of my treatment of *him personally*"—"*him personally*" italicized (as per memorandum in his writing). "Well, the terms were, first, that Bowen got the privilege of reporting and publishing the sermons and lecture-room talks of Mr. Beecher." "Second, New edition of Plymouth Collection, and Freeland's interest"—"Freeland's interest"—I don't know what that was. "Third, Explanations to Church;" and, "Fourth, Write me a letter;" and the "Fifth, Retract in every quarter what has been said to my injury." Now, see the peculiar phraseology of that. "Bowen's grievances, which were *all*"—[italicized]—"either of a business nature, or of my treatment of *him personally*," and immediately after it, Bowen saying that he didn't include one matter; that there was one secret he held in regard to Henry Ward Beecher which if revealed would blast him. That is all in the handwriting of Bowen; and of course there is no dispute about it.

The Court here took a recess until 2 o'clock.

THE AFTERNOON SESSION.

The Court met at 2 o'clock pursuant to adjournment.

Mr. Beach—I pass some minor topics, gentlemen, simply making an allusion to the circumstance that in August, 1870, at the request of Mrs. Tilton, Mr. Beecher left his Summer residence at Peekskill and came to this city, had an interview with her upon one day, and an appointment for the next, and on calling to fulfill that appointment Mrs. Tilton declined to see him, sending him a message that it was better that she should not see him; in connection with the fact that from that time until the interview of December, 1870, there was no meeting between Mr. Beecher and Mr. Tilton. This August, you will observe, was one month after the communication was made by Mrs. Tilton to her husband of the relations between herself and Mr. Beecher. Mr. Beecher says in his evidence that Mrs. Tilton was sick, and therefore sent for him. It is hardly consistent, that explanation, with the message and refusal of the next day. If Mrs. Tilton desired to see Mr. Beecher only for spiritual consolation, by reason of her illness, it is inconceivable that after the interview on the first day of his arrival, and an appointment for one upon the succeeding day, she should send him a message of that character, that it was not best for her to see him. It is one of those circumstances lying in the track of this history which combines, coalesces with the theory of the plaintiff, and is in harmony with the assertion that there was some corroding and disturbing secret between Mrs. Tilton and Mr. Beecher that was

operating upon both their lives, and made him the subservient and submissive instrument of any person who held the control of that secret.

MR. BEECHER'S TESTIMONY ABOUT THE BLACKMAIL.

Now, gentlemen, this is the affirmative case on the part of this plaintiff. You will see that it is sustained by three witnesses, testifying positively to a confession on the part of Mr. Beecher of illicit intercourse with Mrs. Tilton. It is sustained by his written declarations—I may with propriety use the term confessions—carrying such a revelation of a smitten conscience and a profound and agonized remorse, that it is impossible to satisfy them by any ordinary, venial, excusable transgression, considering the character of the man and the nature of the language he used, and the circumstances under which it was used, of an accusation, as three witnesses say, of adultery; supported, too, by his tendered resignation, his declaration that he was willing to step down and out of the noble life he had been pursuing; of his tender of himself as a voluntary sacrifice to the good of Mr. Tilton; by his craven fear of a sister's threatened accusation from his pulpit; by the unanswered appeal of Mrs. Bradshaw under the circumstances I have detailed; by the upbraiding of Mrs. Morse; by the declaration to Redpath, and by all this accumulated weight of circumstance, all falling in with the accusation of seduction, and opposed only by the single testimony of Mr. Henry Ward Beecher. I cannot pursue my original purpose of examining in detail the testimony of the numerous witnesses presented on the part of the defense. They relate only to the question of conspiracy and blackmail, and the contradictory declarations which have been sufficiently explained. If the evidence of Mr. Beecher is not sufficient to dispose of the theory of conspiracy and blackmail, no argument of mine can convince the intelligence of this jury. You would not believe though one should rise from the dead. Mr. Beecher says, after relating all the variations of his mind, all the fluctuations from his own unbiased impressions of the integrity, honesty of Mr. Moulton, and fidelity, and his account of the influence which was used over him by his professional advisers—the question is put to him:

Q. Mr. Beecher, your answer to the question that I put to you, whether you now believe that Mr. Moulton intended to levy blackmail upon you, has not been answered satisfactorily to some of my associates, and I put it to you again as to your present belief? A. Well, Sir, if you mean by blackmail that he levied contributions for his own advantage on me, I don't think it, but if you mean——

Mr. Fullerton—That is——

The Witness [continuing]—But if you mean that he levied money upon me, using my generous feelings as the instrument, for the benefit of Mr. Tilton, I think he did.

Now, you perceive that is an entire surrender of the idea that there was any such thing as blackmail through intimidation, through threat. Well, all—I say all—nearly all the witnesses upon the part of the defendant have been sworn to support the theory that Moulton and Tilton were constantly holding over Mr. Beecher the threat of this accusation to extort money from him, or service from him, in some way, in aid of Mr. Tilton and his restoration to prosperity. This is all abandoned by the evidence of Mr. Beecher. His own uneducated, undirected conviction was that there was nothing of the kind; and when aided and instructed by his lawyers, he comes only to the conclusion that the only blackmail used, or influence used, was an appeal by Mr. Moulton to his generous inclinations and kindness toward Mr. Tilton. Well, that of course, gentlemen, is of no importance in this case. When Mr. Beecher concedes that no terror was exerted, that no threat was uttered, that all the benefactions which were secured through Mr. Moulton were by appeals to his generosity and kindness, why then the theory of the defense fails utterly. There is no sin in that; there is no compulsion in that; there is no extortion in that; there is no imagination and manufacture of a false story and an unfounded accusation in that. There is nothing in it which impeaches in any degree the force of the testimony which we offer, or aids to any extent the theory of this defense.

THE TESTIMONY OF THE DEFENSE RAPIDLY REVIEWED.

Now, what need is there, gentlemen, of an examination of this mass of proofs? Take the testimony of Mrs. Ovington, Mr. Ovington, of Mrs. Putnam, of Augusta Moore, of these Winsted witnesses, of Belcher, Wilkeson, Cowley, all of them—what do they amount to; to what point are they directed, except to show that Tilton and Moulton on various occasions represented the offense of Mr. Beecher as impure proposals, as they admit that, and gave a reason for it; and then to support the theory as through Mr. Wilkeson that Mr. Tilton was using this charge, whatever it was, for the purpose of coercing some benefaction of some character out of Mr. Beecher. Well, all that is necessary to be said about it, in my judgment, is that when Mr. Beecher makes the acknowledgment he does, under oath, and when we confess and avoid, or allege contradictory declarations, all the materiality and power of this evidence is lost. Now, I may say in regard to Mr. Wilkeson that when he attributes to Mr. Tilton the declaration on the morning of the 2d, I think—it was the morning, at any rate, of the day of the arbitration—when Mr. Wilkeson attributes to Tilton the declaration that he would publish certain allegations, that he was not going to get his money, and that the suit would have to go on, why, he is plainly mistaken, because at that very moment there was an arbitration agreed upon, and there was no interruption to the purpose of the parties, as all agree, and on the night of that very day, the arbitration was consummated, the

award made, and the money paid. It is perfectly plain, therefore, that Mr. Wilkeson has been betrayed into a misrecollection, and it is not at all surprising that it should be so. And there are criticisms of that character which might be indulged, not only with reference to Mr. Wilkeson, but to every witness on both sides who have been sworn, because undoubtedly a great many, if not all of them, have fallen into involuntary errors of that character.

Well, of what consequence is the evidence of Mr. Edward Eggleston? He was called upon the second occasion to contradict Mr. Bowen; and no contradiction at all. Mr. Bowen says to Eggleston, "Why, Mr. Beecher revealed to me horrible stories against Mr. Tilton," and Mr. Bowen made the same statement, that Mr. Beecher did retail and rehearse to him these imputations communicated to him by Bessie Turner, and perhaps others, in regard to Mr. Tilton. Well, in regard to the original evidence of Mr. Eggleston concerning the conduct of Mr. Tilton with some lady—I don't know whether it was Mrs. Woodhull; some lady at any rate, at his house, upon a certain gathering—it is only necessary to say that it was a little indelicate in Mr. Eggleston accepting the hospitality of Mr. Tilton and leaving it for the purpose of gossiping in regard to his treatment of his lady guests, especially when nobody else but Mr. Eggleston and his wife noticed any such supposed impropriety.

Judge Neilson—Mr. Beach, Mr. Stephen Pearl Andrews stated that lady to be his wife.

Mr. Beach—Yes.

Mr. Shearman—It was another occasion.

Judge Neilson—Was Andrews not present on the occasion that Mr. Eggleston speaks of?

Mr. Shearman—No, Sir; the occasion Mr. Andrews speaks of was in 1873.

Judge Neilson—That was the occasion when Miss Moore was present.

Mr. Shearman—Yes, Sir.

BESSIE TURNER.

Mr. Beach—Well, gentlemen, suppose you accept the whole relation of Bessie Turner as true, what does it affect, so far as the main and material issue in this case is concerned? Why, nothing at all. It does not tend to contradict the idea of impropriety as between Mr. Beecher and Mrs. Tilton. On the contrary, if her story is to be believed, why, Mr. Tilton was vociferously charging adultery with everybody. According to Bessie Turner, Mrs. Tilton, eulogized as she has been by Henry Ward Beecher, and by the oath of her husband—why, Mrs. Tilton was infamous in her debauchery. All this goes to the question of damages, and nothing else. It does not tend to contradict the main allegation, but it shows—if true—it shows this man, the plaintiff, to be of a character not commending him to the favor of a court and jury for a reward for injured sensibilities. Well, as we never have asked damages, and have always waived and disclaimed them, and refused to receive any, it is not very important that evidence directed to that point should be severely contested or considered by us. It is only important with reference to the general impression, opinion, in regard to the character of Mr. Tilton, which may be made by proof of this kind; and therefore it would have been desirable, if I had time, without wearying the patience of the Court and jury, for the defense and vindication of Mr. Tilton, to have examined the testimony of these witnesses. I submit to you, however, that the evidence of Bessie Turner is intrinsically incredible. I will not go through it and read it, but consider for a moment the relation she gives of the conduct of Mr. Tilton in connection with all the manifestations of respect, intimacy, or reverence, as well as love, that gentleman has given not only before the alleged confession of his wife, but after that confession. Suppose it to be true, for one moment, that Tilton was the brute he is represented to be; that he did make these atrocious charges against his wife in the presence of Bessie Turner, and committed all these atrocities imputed to him. In the name of all that is wonderful, what was this man holding this woman to his heart for, and protecting her by every device, and every publication, and every effort within his power? It is utterly impossible that this man could, in the presence of Bessie Turner, charge that his wife, upon the sofa upon which she sat, had again and again, in his sight, been guilty of lewdness with five or six different persons; and then, after that, taking this young girl into a room upon the second story of his dwelling, and rehearsing the same story over again; and not satisfied with that, soon after again calling her to an interview, where he repeated over and over again the infamous vulgarity. Why, what motive could Theodore Tilton have had? If it were true, if it were at all consistent with his general conduct, about which there can be no dispute, why, what motive could he have had, first, in making the charge in the presence of this girl, whom he had treated, as she says, as a child, one of his own children, and then taking her up to the long, double interview, to repeat into the ears of this child the story of his wife's infidelities, and then that this great, tall, and stalwart man, when this young girl interfered between his violence and abuse and his wife, striking this girl until she fell to the floor or against the side of the house; and then, as she represents it, tripping up to her saying, "Why, Bessy, my dear, you stumbled, did n't you?" and she, straightening up her little form in front of this man and threatening dire slaughter if he did not cease his abuse of his wife, exclaiming to him, "Theodore Tilton, are you crazy, or do you think me crazy?" or something of that character. Well, gentlemen, we are not called upon to believe ridiculous travesties of that character. Because Bessie Tur

ner testifies to it we are not bound to accredit it; nor am I disposed to say that that young lady has deliberately falsified. That there may be some foundation for this I can very well believe, in view of the evidence of Mrs. Moulton, because you remember what Mrs. Tilton said to her, that Theodore would not let this matter sleep, that he was continually harping upon it, and it disturbed her, and she could not live with him. I have no doubt about that, gentlemen. However much he may have loved this woman, however tenderly he may generally have treated her, yet I have no doubt that there were times, and many times, when the memory of that offense came up and irritated and festered his feeling; I have no doubt of it at all. But that he was guilty of the vulgar baseness of charging it, or any other offense of like character, upon the woman to-day (however mistakenly) he pronounces pure, is one of those incredible ideas which common sense cannot accept. And then, the story this girl tells of being taken from her bed in the night-time and carried to another room across the hall, sleeping, unconscious, by Theodore Tilton, and Horace Greeley sleeping the next door to her, the next room to her! Why, you ask at once, "What did Theodore Tilton run this risk for?" If he had any impure design would he have chosen the time when this young and virtuous girl was sleeping within ear-shot of Horace Greeley?—when a single cry from her lip would have revealed his base design and called a champion to the side of outraged innocence and girlhood? Well, if he had any such purpose, what was the necessity of carrying the girl away? Why didn't he pursue his design there? Why create all the fuss and disturbance of a movement of this girl from the bed in which she lay where, so far as she could be under these circumstances, she was helplessly at his mercy? Whether he designed mere solicitation and fondling, or whether he contemplated an unmanly outrage attributed to him, whatever the design you please, how can you account rationally for the story that she was, sleeping, carried from one room, one bed, to another? I am corrected by my learned associate in the fact that where she was originally she was further separated from the room of Mr. Greeley than when she was taken to that of Mr. Tilton, which was the next room to Mr. Greeley's. Well, it turns out, gentlemen, that Mr. Greeley was not there then. That would have made her story a little more probable; but it shows an error into which she fell. And there are eight distinct, prominent facts upon which she contradicts the statement she gave before the Examining Committee, and acknowledges the contradiction. She pretends that she was but ten minutes in conference with Mr. Tracy. Mr. Tracy testifies that it was an interview of an hour, and Mr. Moulton enlarges it to two hours. But I don't care to pursue it; and I have been betrayed into a longer comment upon it than I intended. I can well see how a disposition like this young lady, a vivid and creative fancy—and, if my friends will permit me to use their word—a lady who develops so amazingly upon the stand a theatric turn, may in her tendency to exaggerate, in the pruriency of her imagination and descriptive power, describe by words as extravagantly as she does by action. I don't care to impute to her designed misrepresentation. Nor will I willingly do it against anybody. But that she has exaggerated and overdrawn the picture is very apparent, it seems to me, from the extravagance and ridiculousness of her narrative, as well as from her manner and demeanor upon the stand.

But there is one thing, gentlemen, she reveals, which is somewhat important, and that is that, as early as December 14, 1870, Mr. Tilton did make the charge of adultery against his wife, and that on that day, although Bessie Turner denies it, Mrs. Bradshaw swears that Bessie Turner communicated that fact to her. Well, what becomes then of the idea of a conspiracy, our friends saying—Mr. Tracy saying in his opening that the conspiracy dated from the 26th of December, 1870—Mr. Tracy contending that in his intercourse with Tilton and Moulton, and Woodruff, the idea of adultery was never lisped; that it was improper solicitations; but yet Bessie Turner, their own witness, revealing that as early as the 14th of December, before the date of the conspiracy, before the interviews with Tracy, the charge of adultery was made?

Well, I don't care to comment on the evidence of Mr. Southwick. Admit it to be all true, and you cannot perceive any relation—important relation—it has to any issue in this case. Everything may have transpired just as Mr. Southwick relates, and yet Mr. Beecher have committed the offense with which he is charged.

Mr. Schultz also, whose recollection clearly does not accord with that of Mr. Woodruff in two particulars—Mr. Schultz imagines that after Tilton and Woodruff called at his house Mr. Woodruff left—was not present at the interview; whereas Tilton and Woodruff both testify that he was there at the whole interview, and although Mr. Schultz admits that Mr. Tilton said enough to convey to him the possible idea that Mr. Tilton would not accept any benefits or advantages from the hands of Mr. Beecher, yet Mr. Tilton and Mr. Woodruff both testify that Mr. Tilton was outspoken upon that subject, and utterly refused—applying then to Mr. Schultz for aid in regard to *The Golden Age*—utterly refused any coöperation or association upon the part of Mr. Beecher. And so I might run through, gentlemen, this proof. But I will leave it.

MR. BEECHER'S TESTIMONY.

Mr. Beecher remains with his evidence to be examined, and I cannot pass it so lightly. It was a matter of deep interest and speculation when it was obvious that this issue was to be tried. What would be the attitude assumed by Mr. Beecher? What explanation would

he give to these extraordinary productions of his? How would he reconcile his letters consistently with his innocence? To reflecting and especially to legal minds there was but one conclusion. It was a necessity forced upon Mr. Beecher the instant that this issue was pressed to an investigation; it was the necessity of denial. No matter what might be the proof against him—no matter how hard and heavily the circumstances might encompass him until he seemed like Byron's Scorpion, girt with fire, yet there was no alternative for him but denial, a brave and a bold denial, fortified by his character and the supports of his church and congregation. Is it a naked case of perjury? Can it be possible that Henry Ward Beecher not only denies the offense imputed to him, but in a court of justice, and before the world, sustains that denial with a false oath? Now, gentlemen, that is the horror that is pressing upon some of your minds—the difficulty of believing that such a man with such a character, with such noble qualities, no matter how pushed, no matter what may be the catastrophe before him, that such a man can outrage his own consciousness, the law of his God and of his fellowman by committing perjury. That he has done it, in form, in seeming, is just as certain as the force of human evidence. The issue cannot be avoided. The proof on the part of this plaintiff—three witnesses must be convicted of deliberate perjury, not of simple denial, but of inventing and accusation against a pure man, and supporting it by a false oath, or else Mr. Beecher by some means quieted his conscience consistently with the denial upon the form of an oath in this court.

I propose, gentlemen, to suggest to you, if I can, some theory upon which Mr. Beecher has reached that determination, because I find, very much to my own surprise, in looking at the teachings of philosophers and writers of the highest repute, of all denominations. Protestant and Catholic, that there is a singular principle, or doctrine, or casuistry prevailing among these gentlemen, that it is taught and avowed that, under certain circumstances, it is not only the privilege but the duty of a man to lie; that the commandment does not apply to any misstatement or falsehood except that which operates to the injury of others, and that every falsehood innocuous in its effects and tending to the preservation and to the advantage of others is not sinful. I was led to this line of inquiry by a letter received from a gentleman obviously of culture and intelligence, it being however without signature, in which he says to me:

All admit that the code of honor held by men of the world imperatively demands that if a gentleman has committed adultery or fornication with a lady, he is bound to protect her character, by perjury if necessary The colonel of an Austrian regiment had carried on an intrigue with a lady, unmarried, of high rank. This lady married an officer in the colonel's regiment. After the marriage the husband first learned what had been a matter of public notoriety. He went to his colonel and asked him if the story was true. The colonel denied it on his word of honor as an officer and a gentleman. Having thus lied, the colonel called his officers together and told them what he had done. They unanimously justified his action. Among no class of men is the sentiment of honor more rigid and delicate than among the officers of the Austrian service. So much for the sentiment of honor among men of the world. What is the Christian code under similar circumstances? To answer this question we must consult the casuists. The question is not so simple as it may seem at first. The casuists hold that the essence of a lie is malice. When malice is absent, a deviation from the strict truth is not only justifiable in itself, but, moreover, may become a duty. Here comes in the doctrine of probabilities. St. Alphonsus Liguori teaches that a woman who has committed adultery or fornication, and who can, by denying it, save her reputation, that of her family, and the peace of mind of her husband, is justified in denying her guilt; nay, that it is her duty to deny it. St. Alphonsus Liguori is in bad repute as a moralist among Protestants, but is held in the highest esteem among Roman Catholics, and his works are used as a text-book in their seminaries.

And then he proceeds to consider the Protestant writers and refers to Father Newman, or Professor Newman, and I will read an extract or two from the references which he makes. This [the book in hand] you will remember is a work issued in his own defense by Father Newman, who was once a member of the Church of England, but connected himself with the Catholic Church some 20 odd years ago and was very bitterly assailed, very considerable public controversy growing out of his defection from the Church of England, and, among other things, Mr. Kingsley accused him of lying, which led Dr. Newman to examine the teachings of writers upon the subject. After referring to the Catholic teachers he says:

Now, to come to Anglican authorities. *Taylor.* "Whether it can in any case be lawful to tell a lie? To this I answer that the Holy Scriptures of the Old and New Testaments do definitely and severely forbid lying" —referring to Proverbs and Psalms. "Beyond these things nothing can be said in condemnation of lying. But then lying is to be understood to be something said or written to the hurt of our neighbor, which cannot be understood otherwise than to differ from the mind of him that speaks. A lie is petulantly, or from a desire of hurting, to say one thing, or to signify it by gesture, and to think another thing. So Malancthon says: "To lie is to deceive our neighbor to his hurt. For in this sense a lie is naturally or intrinsically evil—that is, to speak a lie to our neighbor is naturally evil, not because it is different from an eternal truth. A lie is an injury to our neighbor. If a lie be unjust, it can never become lawful. But if it can be separate from injustice, then it may be innocent."

And he further quotes from Taylor:

Thus, he says, Milton says, "Veracity is a virtue by which we speak true things to him to whom it is equitable, and concerning what things it is suitable for the good of our neighbor. All dissimulation is not wrong, for it is not necessary for us always openly to bring out the truth. That only is blamed which is malicious. I do not see why that cannot be said of lying which may be said of homicide and other matters which are not weighed so much by the deed as by the object and end of acting." And so he considers Paley, who says, "There are falsehoods which

are not lies; that is, which are not criminal when no one is to be deceived, &c."

And Dr. Johnson is also cited as sustaining the same philosophy, the same doctrine of casuistry that there are circumstances and difficulties where it is admissible for a man to lie, and not only admissible, but where it becomes his imperative duty to do it. He refers also to Bishop Butler as sustaining the same doctrine.

There is another authority: "Perjury, for good reasons is, with advanced thinkers, no sin." It is a very terse, emphatic sentiment; very clear in its declaration. That was written November 5, 1872, by Thomas K. Beecher, the brother of the defendant.

Mr. Shearman—And with reference to Mr. Tilton.

Mr. Beach—I am very glad the gentleman makes that remark. I will show you what it was with reference to.

Mr. Fullerton—You put your foot in it this time, Shearman.

Mr. Beach—

I unseal my letter to inclose print and add: You have no *proof* as yet of any offense on Henry's part. Your testimony would not be allowed in any court. Tilton, wife, Moulton & Co. are witnesses. Even Mrs. Stanton can only declare hearsay. So, if you move, remember that you are standing on uncertain information, and we shall not probably ever get the facts, and I'm glad of it. If Mr. and Mrs. Tilton are brought into court nothing will be revealed. Perjury for good reasons is, with advanced thinkers, no sin. [Applause.]

Now, in the great case which has been the study of my learned friend Shearman, as well as all of us, and in which is abundant subject for the closest study of the best minds, Denman, subsequently Chief-Justice of England, was the counsel for Queen Caroline; and this is an extract from his speech delivered upon the occasion of that trial, explaining the reason why the defense omitted to call Bergami, who was the alleged paramour of the Queen. Mr. Denman said:

From the beginning of the world no instance is to be found where an individual charged with adultery has been called to disprove it. Yet, for the first time we are to be compelled to put him on his oath! The answer is in a word: There is either a case against us, or there is no case. If there is no case, there is no occasion for us to call a witness; and if there be a case, no man would believe the supposed adulterer when he was put forward to deny the fact. On this subject the nicest casuists might, perhaps, dispute with a prospect of success on either side of the proposition; but I firmly believe that the feelings of mankind would partly triumph over the strictness of morality, and that a witness so situated would be held more excusable to deny upon his oath so dear a confidence, than to betray the partner of his guilt. Even perjury would be thought a venial crime compared with the exposure of the victim of his adultery.

Now, this declaration of one of the most eminent lawyers of England at the time the declaration was made, in the face of the assembled learning and wisdom of that nation, and who afterward occupied upon the bench the seat of the Chief-Justice of that country, declaring that to that day there had been no recorded case of an adulterer produced to deny the accusation, and that the sentiment of mankind would uphold him in denying the fact of adultery. Prof. Wilkinson of the Rochester Theological University thus presents the proposition in a very clear and distinct form, and I do not mean by the extract which I read from his long article to represent that gentleman, by any means, as justifying perjury. You will see what the sentiment is from the extract which I shall read. I read it because it places the command of the Decalogue in a light which at once strikes our attention.

Mr. Evarts—What paper do you read from?

Mr. Beach—I read, Sir, from *The Independent* of Sept. 17, 1874:

Now, it is one thing to lie *against* another, and a quite different thing to lie *for* him. This distinction is plainly enough implied in the form of the command forbidding falsehood in the Decalogue. It is remarkable that the command is not simply and comprehensively, "Thou shalt not lie;" it is, instead, "Thou shalt not bear false witness against thy neighbor."

Moulton's scheme of conduct did not contemplate any transgression of this command. He did not propose to himself to lie against anybody.

His falsehood, his prevarication, if he foresaw the pregnant necessity for it in the first choice of his course, was all to be practiced in *favor* of people, &c. To be sure, there is a large, a real sense, in which all untruth is ultimately to the disadvantage of the whole universe of souls; but except in this somewhat transcendental sense, Mr. Moulton's deception was likely, all of it, to be exercised to the apparent advantage of others. Everybody concerned was to be benefited by concealment. Almost all casuists concede that there are justifiable cases of falsehood. It is not incredible, nor altogether condemnable, that a self-confessed "heathen" should imagine that there was such a case.

You perceive that this article was directed to the consideration of the attitude of Moulton, and was directed entirely to the discussion of a simple lie, without the sanction of an oath and a court of justice, and it is proper for me to say that a subsequent article upon this subject in the same paper, explanatory somewhat of the personal views of Prof. Wilkinson upon that subject, was published. [To Mr. Morris.] Mr. Morris, can you refer me to that confession of Mr. Beecher?

Mr. Evarts—Is that article signed by any one? How does it come to be known?

Mr. Beach—"The Ethics of Mutual Friendship, by Prof. William C. Wilkinson."

Mr. Evarts—It is avowed in the paper?

Mr. Beach—Yes, Sir; I have no objection to your looking at it.

Mr. Evarts—I have not the least desire to see it.

Mr. Beach—I was speaking to Mr. Shearman, who has some curiosity.

MR. BEECHER ON CONFESSION.

In a sermon on the nobility of confession, delivered on the 4th of October, 1863, a rather interesting period for the consideration of such a question—

"Nor," says Mr. Beecher, "are we commanded to confess every act before men. So little has there been taught in this matter, and so little discrimination has resulted from reflection or from conduct in this matter, that consciences which in the first place lay dormant through years and years, not noting sin, not holding back their possessors from transgression, when at last they become tremendously stimulated are very apt to go to the other extreme. And having slept when they should have watched, they bark immensely when they should be silent. Conscience, therefore, frequently leads men to make injudicious confessions, and to make them to the most injudicious persons. I do not think we are bound to confess crimes in such a way that they will overtake us, and fill us with dismay and confusion and destruction—and not only us, but those who are socially connected with us. If your conscience is aroused, and you have committed a crime, your first step is to cleanse your hands and feet from all participation in any wrong. And before confessing the act itself you should take counsel, and find out wise counsel."

It means Shearman and Tracy. [Laughter.]

It is often better that past crimes should slumber, so far as the community is concerned. And that which is true of crimes is equally true of vices. There may be many things that are great sins, and grievous and wounding, which having been committed, the conscience of the actor leads him to feel that there is a kind of expatriation, or, at any rate, a justice which requires that he should with open mouth confess that which has hitherto been secret. Forsake, surely; to God confess; but it does not follow, especially when your confession would entail misery and suffering upon all that are connected with you, that you should make confession merely for the sake of relieving your conscience.

Well, this is the teaching of Mr. Beecher himself. The question is whether he has acted upon his own theory; whether, under the circumstances in which he is placed, and considering all the elements of sacrifice and sorrow which would proceed from a frank and truthful revelation of his offense, he has confessed his own mind and conscience that this is a case where the great interests involved demand that he should commit what, under other circumstances, would be a grievous and unpardonable sin, and whether there are any means by which he has satisfied his conscience that he can escape all the terrors of the law and all the retribution of his Maker if he tells a deliberate and well-conned falsehood. If he exerts all the ingenuity and power of his great mind to devise some sophistry which, in connection with that power of his assertion, will deceive the intelligence of the world, surely no man was ever placed in a situation where he was pressed with a direr necessity. If we are to believe all that my learned friends predict, if the consequences which are anticipated from the fall of Henry Ward Beecher are rational and probable, then no man was ever impelled by stronger motives of self-interest, of philanthropy, of devotion to the interests of the church and society, to conceal his wrong-doing. Am I mistaken in this, gentlemen? Can you conceive any exigency which could more clearly and forcibly appeal to the duty and the honor of a man than that occupied by Mr. Beecher, or a position where there was a more forcible appeal upon the ground of public morality and public advantage than this case presents to his mind? Mr. Beecher, upon various occasions, has presented the tendencies which beset men to lie. Thus he says:

The most miserable pettifogging in the world is that of a man in the court of his own conscience. He will lie to himself. He will deceive his conscience. He will pettifog with his conscience.

Well, we all of us speak somewhat from our experience when we utter moral teachings of this character, and it is very possible that that teaching could be verified by the experience of most of us

Great lies are less hurtful than little ones. Men think that a great black lie is very horrible. I suppose it is, but, after all, these little lies are more dangerous. The habit of employing them wears the character more than the great, rousing lie told six times a year would do.

Well, he understands, then, the difference between the different degrees and grades of lying, and of course knows how to tell a rousing lie if ever he should feel himself justified in doing so.

This great fact of the generic sinfulness in which all men are alike, the confession of which does not separate one man from another, men confess freely. But the particular actions which spring up under this universal sinfulness, the infidelity to honor, violation of truth, the soil and stain of illicit pleasure, all these men steadily refuse to confess. They are far more likely to deny them. If pressed with the evidence of their existence, they cast up intrenchments and defend themselves as against an enemy. There are not anywhere else so many ways of trickery, so many false lights, so many vails, so many guises, so many illicit deceits as are practiced in every man's conscience, in respect to his own motives, his own thoughts and feelings, his own conduct, and, for that matter, his own character. The exaggerations, the overcoloring, the misrepresentation, the lies, for we all lie continually when we are speaking about ourselves, what must be their influence upon the world? I do not marvel that there is so much falsity; I only marvel that there is so little of it.

Well, these are the teachings of Mr. Beecher, fortifying by the tendencies of our nature thus portrayed graphically and in various forms by him the possibility that when placed under circumstances forcing him either to ruin or to falsehood, that Mr. Beecher chose the latter. This is not dependent upon mere reasoning from the character of the man, or from the language of his public works, because we are called upon, if we can, to ascertain where lies the truth as between the mass of evidence to which I have alluded and the verity or wickedness of Henry Ward Beecher.

MR. BEECHER'S ORTHODOXY.

It may not be unprofitable, gentlemen, to refer to some other productions and teachings of Mr. Beecher, to see what is the general character of the instructions and teachings which he communicates to the world, and how true he is to the orthodox creed and faith, who assumes to stigmatize his adversary with heresy and heterodoxy; to see if we can find something of the general character of the man, something which will enlighten us in our search after the truth as between him and the witnesses opposed to him, because he stands upon his character, he stands upon his prestige as a great minister and a profound and philanthropic teacher. Before reading the extracts which I propose to submit, if your Honor please, I will direct your attention to the case of "Stuyvesant agt. Boran" in 3 Abbott's Practice Reports, where the question in regard to the probability or improbabilty of a man confessing or denying a charge of this nature is considered by Mr. Justice Van Vorst. It was on a motion to reduce the bail, under an order of arrest, in an action of *crim con.* like this; and after referring to the particular allegations of the affidavits the Court says:

The counsel for the defendant earnestly claim that there is not sufficient proof contained in the affidavits produced by plaintiff, of the commission of the offense by the defendant, and that the positive denial of the defendant should avail to overcome the effect of the affidavit of Sullivan; that the statements of Sullivan are so improbable that the defendant's denial, in connection with other circumstances, entitles him to be discharged from arrest, or, in any event, to have an order reducing the amount of bail. Offenses of the character charged in the complaint are always difficult to be established by complete and overwhelming proof. Still there should always be such evidence adduced as to satisfy the court that the defendant is guilty. The evidence, while it points out the offense, should be credible. That the circumstances are improbable, however, is no answer to a sworn statement of an occurrence, made by a person claiming to be an eye-witness, whose testimony is unimpeached. Many improbable things do actually occur in life within the experience of all, and the force of testimony is not to be avoided by an argument based only on the seeming improbability of the statements. Nor can much weight be given to a mere denial of the charge made by the defendant. If capable of committing this offense, and that, too, under the roof of the brother of his own deceased wife, he would be quite likely to deny it.

Well, Mr. Beecher seems to be conscious that among theologians there exists some doubt in regard to his orthodoxy, because he says that other churches seem to regard him as a "speckled devil," to use his own language.

In a sermon preached on the 22d of June, 1873, speaking of the qualifications of church membership, Mr. Beecher says:

If one says to me, suppose a man does not believe in the inspiration of the Bible, I reply, that word is a fog. There are twenty inspirations, almost, or theories in regard to it; which of them do you mean? Suppose that a man says that the Bible is just like any other book, would you take him into the Church? That would depend very much on whether I thought God had received him into his personal confidence. But suppose a man does not believe in the Trinity; would you receive him into the fellowship of the Church? It would depend upon whether he gave evidence of being a Christian or not.

Something has been said about Mr. Tilton and Mr. Moulton in regard to their belief in the inspiration of the Scriptures, but nothing has been drawn from them which hints quite so strongly as this sermon of Mr. Beecher's does, at a disregard upon the question of orthodoxy, of the point of belief either in the divinity of Christ or in the inspiration of the Scriptures.

Christians generally, I believe, attach considerable importance to the doctrine of the atonement. If there is one feature of Christianity which exhibits more intensely the anger of God at sin, or appeals more affectionately and tenderly to the sentiments of our nature, it is the scheme of the atonement. The idea of the suffering of a God for the redemption of a world; the idea that Christ, sinless, one of the God-head, should have descended to earth and become like unto us, tempted and tried as we are, and at last submitting to the ignominy and the sufferings of Calvary, is an idea which always and everywhere has melted human nature and broken it into contrition and repentance.

Well, Mr. Beecher says:

I know that many persons are converted witthout feeling the need of the blood of atonement. Thousands of men feel the need of Christ who do not feel the need of blood. I do not feel the need of it.

In a sermon on Jehovah and His mercy, he says:

This does away in a moment with the old reasoning that God, the Father, could not forgive until some plan of atonement was arranged, and that He gave His Son to come and die in order that He might forgive. It takes away all that machinery of false philosophy.

Then the Bible theory of the atonement is false philosophy. Then the account of original sin coming through the fall of man, and the necessity of a Savior's sufferings, is all a sham and a myth! What becomes of the Divinity of Christ? What becomes of the Bible history of His sufferings? What becomes of the tomb, the resurrection, the miraculous ascension, in the face of the teaching of Henry Ward Beecher that no atonement was necessary, that all the Bible teaching upon that subject is false philosophy, and that men need not the blood of Christ? "I do not need it!" says Henry Ward Beecher. The inspiration of the Scriptures! Henry Ward Beecher believe in that, and teach that, when he strikes out the fundamental corner-stone of the whole edifice of Christian truth and man's redemption and salvation, which the Scriptures teach! Says Saint Paul:

We have redemption through His blood.

Having made peace through the blood of His Cross.

Having therefore, brethren, boldness to enter into the holiest by the blood of Jesus.

The blood of Jesus Christ His Son cleanseth us from all sin.

Unto Him that hath loved us and washed us from our sins in His own blood, to Him be glory and dominion forever and ever.

Running through to Revelations, all teaching that salvation is reached by fallen humanity through the atonement of Christ's blood. And this is, in so many words, denounced by Mr. Beecher as a "false philosophy," and he rejects the cleansing touch of the blood of his Redeemer; and yet we are to be told, in the language of that opening of Tracy's, that Moulton is a heathen and a disbeliever, and Tilton a reprobate, unworthy of countenance in this court, and, more than all, that they are both unworthy of credit when they testify upon the Gospels of the God in whom they profess to believe; and Henry Ward Beecher is advanced as the leading and unassailable man of the age, as the pure and perfect Christian character, whom it is impious for the world to assail or for a jury to condemn! "Rock of Ages"—how often has Mr. Beecher given out this hymn—

Rock of Ages, cleft for me,
Let me hide myself in Thee.
Let the water and the blood
From Thy riven side which flowed
Be of sin the double cure—
Cleanse me, Lord, and keep me pure.

Well, having rejected the blood of the atonement and called that doctrine a false philosophy, he denies that the Christian Church has a divine foundation.

I do not believe, he says, there is any pattern whatsoever laid down in the New Testament according to which churches should be organized. I believe that churches stand on the same ground that common schools and literary institutions do. In the Apostolic writings, nowhere do I find a specific command to organize a church, nor any command as to how it is to be organized, nor one single hint that there is an external legal obligation on that subject. In regard to churches, ordinances, and governments, I take the broadest ground, and say they are useful, but there is no one of them that is obligatory as having any warrant in Scripture.

Churches, ordinances, governments may be useful, but they have no warrant in Scripture. Mr. Beecher has succeeded in setting aside the blood of Christ, the atonement. He now disposes of the Church. That is a mere institution of policy. I had supposed that Christ taught that the earthly Church was His Bride; that His Spirit attended it; that the promise was, "Where two or three are gathered together in My name, there am I in the midst of them;" that it was not merely a question of policy, of social government, but that the Church was a divine institution, divine in its origin, divine in its influence, saving in its operation upon the world.

And the ordinances of baptism and the Lord's Supper, there is no obligation, says Mr. Beecher, to practice them; they have no warrant in Scripture; all useful, to be used as instrumentalities; but, as evidence of our devotion to God, as saving ordinances by which we sanctify and hold ourselves; there is no warrant in Scripture for them, no obligation in regard to them.

I say that the Lord's Supper is not obligatory in the same sense that High Church people think it is.

And when Henry Ward Beecher, in Plymouth Church, gives out the invitation to brother religionists to partake of the communion, this is the form of it: "Socinians, Shakers, Mormons, Baptists, and Ana-Baptists, you are all invited to sit down with the Plymouth Church brethren at their table."

Mr. Shearman—Do you mean to say that any such language was ever used.

Mr. Beach—Yes, Sir.

Mr. Shearman—I would like to know where it was used to have a reference to the place.

Mr. Beach—On Sunday, March 9, 1873. You will find it published.

Mr. Shearman—Ah! published; but I would like to have a reference to the book.

Mr. Morris—We could not quote it here if it had not been published.

Mr. Evarts—Taken out of a newspaper.

Mr. Shearman—I was there that morning——

Mr. Beach—Well, Sir?

Mr. Fullerton—We will give you a reference to every extract that we read here.

Mr. Shearman—Well, I would like to have it, but I do not want to interrupt the counsel.

Mr. Beach—Mr. Beecher used the ceremony of baptism, but he says in regard to it:

I use it not because it is commanded, but because of the value I see in it. I use it not because of any authority which makes it binding, but because it is a help to men in their religious life.

The Head of the Church said:

He that believeth and is baptized shall be saved.

Then Peter said unto them, Repent and be baptized, every one of you, in the name of Jesus Christ.

Here baptism is put upon the same footing with repentance. When Saul, on his way to Damascus, was struck blind, the command given to him was, "Arise! and be baptized." It is made obligatory by the command of the New Testament, the command of the Master. Yet Mr. Beecher says there is no obligation in it. He uses it because it is a help and a strength to the converted soul. Well, it would naturally follow that when Mr. Beecher takes away from the Church of God its divine character, and robs it of the promised presence of His spirit, he should reduce the character of the ministry and bring it to the same level of worldly relation and worldly preparation.

There is no more virtue required of a man who becomes a life-long preacher of the Gospel than of a man who becomes a lawyer, a physician, a teacher, an engineer.

Indeed! Now, in a general sense, God requires no more virtue of one man than of another, but I had supposed that when a man was chosen to the holy ministry, dedicated himself to the service of his God, to the teaching of his fellow-men, erected himself as a light set upon

a hill to be seen of all men—I had thought that there was more of purity, more of devotion, more of virtue, demanded of that man than of a lawyer or engineer; that there was some obligation arising out of the position and its responsibilities and duties. No more virtue required of a minister than of a lawyer or an engineer, and a minister permitted to act before the world as a lawyer might act or as an engineer might act! In one sense this teaching of Mr. Beecher may be wholly excusable and just, but yet it is the common sense of the world that something more of virtue and propriety is demanded of a lawyer or an engineer. Well, with this looseness of sentiment, this attack upon the teachings of the Scriptures and the sacraments ordained by God, it is not surprising that his Sabbath day should be a little undervalued by this minister.

Almost every mention of the Sabbath day in which Christ expresses any opinion respecting it, was seemingly adverse to its sacredness.

And I believe if my recollection serves me rightly that Mr. Beecher has advocated the practice of freedom to theaters upon Sunday, and that although such actors as Lester Wallack and Dion Boucicault have protested against the opening of theaters upon Sunday. Well, I had supposed that there was a command which rested upon Henry Ward Beecher as well as on the rest of us: "Remember the Sabbath Day to keep it holy!" and why does this preacher say that Christ scarcely ever mentioned the Holy Day without detracting from its sacredness? The orthodox view of the creation of our first parents I have always supposed was that they were made perfect in the image of God, vitalized by the breath of His spirit; and that, perfect and pure, they were placed in what is called a Paradise—the Garden of Eden. Whether that is merely typical and figurative is not for me to say; but they were placed in a holy condition. The orthodox teaching is that they sinned and fell, and through their fall guilt is inherited and imputed to all. But the theory of Mr. Beecher is that our first parents were of the lowest order of creation. He says:

The world was never so low as at the creation. God created man at the lowest point.

Well, if that be so, Mr. Beecher must believe in Darwinism, that man has grown up from the lowest order of nature—grown up from brutes, monkeys, and tadpoles.

Judge Neilson—Would it be convenient to suspend your argument at this point, Mr. Beach?

Mr. Beach—Certainly, Sir, at any time.

The Court thereupon adjourned until 11 o'clock on Wednesday morning.

109TH DAY'S PROCEEDINGS.

CONCLUSION OF THE SUMMING-UP.

NUMEROUS REQUESTS TO CHARGE BY THE DEFENDANT'S COUNSEL—OBJECTIONS FROM MR. TILTON'S LAWYERS—NO REQUESTS TO CHARGE ON BEHALF OF THE PLAINTIFF—MR. BEACH MAKES AN APPLICATION TO REOPEN THE CASE TO INTRODUCE NEWLY-DISCOVERED EVIDENCE—JUDGE NEILSON ASSIGNS THE HEARING ON THE APPLICATION TO CHAMBERS—FINAL WORDS OF THE SUMMING-UP—EXTRACTS FROM MR. BEECHER'S SERMONS—MR. BEECHER ACCUSED OF HETERODOXY—HIS OPINIONS ON MIRACLES AND THE LORD'S SUPPER TAKEN UP—HE IS DECLARED TO BE NOT TOO GOOD NOR TOO GREAT TO SIN—MR. TRACY'S COURSE CENSURED—MR. BEACH'S RESPECTFUL REGRET AT PARTING WITH THE JURY—TRIBUTES TO JUDGE NEILSON AND TO MR. BEECHER.

WEDNESDAY, June 23, 1875

At no time in the whole history of the scandal suit was more interest manifested than during the proceedings of to-day. The court-room was crowded almost to suffocation by the great number of persons who managed to pass the scrutiny of the officers on duty at the entrances.

There were some spirited scenes in court and some laughable episodes also. When Mr. Shearman dissented from Mr. Beach's statement as to the laughter and applause excited by one of Mr. Beecher's sermons, Mr. Beach replied in a matter of fact way, "Oh yes, you were there and were the loudest clapper in the congregation." At another time a quotation from a Hartford journal, supposed to have been referred to by Mr. Beach, provoked Mr. Shearman's wrath, and he inveighed in rathers strong terms against permitting such a citation as an authority. Mr. Beach retorted in a cool manner, and for several minutes the counsel stood less than a foot apart in very vehement discussion. The absurdity of the scene seemed to strike all present, and caused much merriment, in which Mr. Beach joined. During the scene a woman in the court-room interjected the remark: "He ought to be——" Just at this point, when she had succeeded in drawing attention to herself, she was silenced by one of the court officers.

Great opposition was made on the part of the defendant's counsel to the course adopted by Mr. Beach in reading selections from sermons by Mr. Beecher which had not been put in evidence, and the assertion was made that Mr. Beach had not read

the selections correctly. Mr. Beach himself voluntarily corrected one of the statements he had attributed to Mr. Beecher in inviting non-communicants of his church to share in the Lord's Supper.

Judge Neilson ruled that the counsel could read the selections, but not as evidence. They were to be used merely as an argument or as illustrations. The counsel for the defendant were finally content with having an exception noted in their favor as to the reading of each of the selections.

The audience were in rather excitable mood yesterday, and gave way to manifestations of applause very frequently, in spite of the numerous injunctions of the Court. Mr. Beach's manner of speaking during the day was very effective. His changes of voice, gesture and tone were frequent and impressive, and his own manifestations of sympathy were marked, especially when speaking of the associations clustered around the trial and the character of the defendant.

On concluding his argument, Mr. Beach was greatly applauded, and shortly after was warmly congratulated by Mr. Evarts. Mr. and Mrs. Beecher were present during the day, both listening with interest to the efforts of the orator. The speaker's references to Mr. Beecher's pulpit utterances caused a smile to flit across the defendant's countenance on several occasions.

Mr. Beach in resuming his argument continued his discussion of Mr. Beecher's alleged want of orthodoxy in belief. Extracts were read from a sermon on the Lord's Supper, in which the idea was advanced that a man could administer the sacrament to himself. This, in the speaker's opinion, "deprives it of all its holy and sacramental character and influence," and "is a desecration of that sacrament." Concerning Mr. Beecher's belief and that of his church, Mr. Beach thought it sufficient to say that "Oliver Johnson with all his moods and tenses of belief is yet considered a satisfactory communicant of Plymouth Church."

Mr. Beecher's expressed opinion of the miracles was then considered. According to the view of the orator, Mr. Beecher had cast discredit on their probability, and he asked, "Why not strike out the Lord's Prayer, the Sermon on the Mount, the Transfiguration, and the Apocalypse on Patmos, as well as the miracles?" Again, he thought that Mr. Beecher had some singular notions about a future life; that he had put a purgatory "between the death-bed and the bosom of the Father;" and that he had "substantially abolished hell." Another point taken up was Mr. Beecher's alleged declaration in regard to the Saybrook platform as being a "production immortally infamous."

The defendant's alleged leaning toward Darwinism and disregard for "rich and orthodox churches," as well as the "quaint and extravagant expressions in his sermons," were also touched upon. After recapitulating Mr. Beecher's alleged departures from orthodoxy, Mr. Beach said it was a mistake to suppose that he had recited these instances for the purpose of misrepresenting Mr. Beecher's character, or of scandalizing his motives, or of operating on public sentiment to Mr. Beecher's detriment. He combated the "doctrine that Mr. Beecher was too great and too good to sin." "Looking at the tendencies of Mr. Beecher's thought and sentiment, considering the impulses of his nature, is he deserving of the high encomiums he has received?" asked the speaker.

Mr. Beecher's continuance in the performance of his arduous duties during the perplexities of the past three years was declared to be due to his excellent organization of mind, heart, and body, which enabled him to do his work when men less strong would have failed. He was to be judged as other men are by the judgment of the practical worldly common sense, on the circumstances of the case and the elements of his character.

The counsel then glanced hastily over the main features of the case, arguing the impossibility of the defendant's theory.

Mr. Beach then dwelt upon the course of Mr. Tracy, whom he severely condemned for his alleged improprieties, both as counsel and as a man of honor. The speaker, however, disclaimed all personal feeling in the matter, and said that he was not inspired by any animosity or unfriendliness toward Mr. Tracy. He read citations of authorities to show that it was an unprofessional thing for a lawyer to appear as a witness in the case for either party where he himself was an advocate of one. The consideration of Mr. Tracy's conduct concluded the argument, and Mr. Beach then went on to speak of the interests at stake and the importance of a verdict in the case. He referred to his own weakness as compared with the keenness and strength of his adversaries, but said that "weakness is strong in the energy of truth." He parted with the jury, he said, with respectful regret. His intercourse with them had impressed him with sympathy for them. The struggle was between the laws and a great character and a great church, and

"woe unto him who calls evil good and good evil." A hearty tribute to Judge Neilson and to the speaker's associates followed, after which Mr. Beach gave a generous meed of praise to Mr. Beecher's character. Macaulay's reference to Lord Bacon's character and a selection from Whittier's "Ichabod" were read at this point. The address was concluded with the reading of an extract from Daniel Webster's works.

At the conclusion of Mr. Beach's argument, Mr. Abbott of counsel for the defendant rose, and, after discovering that the plaintiff's counsel had no requests to charge, proceeded to offer a large number on behalf of the defendant. Prior to this, however, he read from several authorities, showing that in this State an attorney is allowed to testify in certain cases where through necessity it may be even an imperative duty. More than 40 requests to charge were read by Mr. Abbott, and about 200 cases cited in support of them. Mr. Beach protested against the reading, claiming that the defendant's counsel were in this way endeavoring to reargue the case under cover of the requests to charge. Concerning most of the cases cited, Judge Neilson said that they were divorce cases, and that he had examined them.

As soon as the requests had been read, Mr. Beach said he desired to bring to the attention of the Court another subject. This was in regard to the newly discovered evidence which the plaintiff's lawyers proposed to offer. He made application for a reopening of the case so far as to admit the evidence.

Judge Neilson said that the counsel would have to present their affidavits at Chambers. The counsel for the plaintiff, after a short discussion, handed up affidavits to Judge Neilson in regard to this evidence, and said that they would make the application for the reopening of the case on the affidavits thus submitted.

THE PROCEEDINGS—VERBATIM.

MR. BEACH RESUMES HIS ARGUMENT.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts—If your Honor please, in pursuance of your Honor's suggestions made yesterday in regard to the requests to charge, we have revised the list that we had prepared, and though we shall find it necessary, as we think, to present some to your Honor before your Honor's charge is given, we shall reserve all matters that we think can thus be suitably reserved, and very likely may not have to present them to your Honor at last.

Judge Neilson—Do not let what I said restrain you.

Mr. Evarts—And your Honor is aware that our learned friend very properly has presented some authorities, and we may present one or two. Mr. Abbott will present them to your Honor, and with as little delay and consumption of time as possible.

Mr. Beach—You will see, gentlemen, from the protracted length of this case and the multitude of matters that were to be examined, the propriety of my relying, in the various quotations I have made from the published works of Mr. Beecher, upon extracts furnished, at my desire, by others to whom I have applied. It has not been possible for me personally to verify all of them, although very many of them I have examined. The statement I made in regard to the invitation which was extended by Mr. Beecher to other persons to unite with Plymouth Church in commemoration of the Lord's Supper was given to you from a memorandum furnished to me by an orthodox clergyman, whose name it is not necessary to mention, in which he specified some of the invitations usual as given by Mr. Beecher, and then generalized or paraphrased those invitations in the language which I gave to you, and inadvertently, I suppose, attached to that paraphrase quotation marks, and I was led, therefore, to suppose that that was the precise language used by Mr. Beecher. It appears on a closer examination that the actual invitation given by Mr. Beecher was at the close of a sermon to be found in the sixth series of his published works, at page 365, in the following words:

All those who love the Lord Jesus Christ in sincerity and truth, whether they belong to any church or not, are invited to tarry.

And, at the close of a sermon in the 10th series, at page 17, the invitation is qualified with the addition,

Without regard to their church connections or special beliefs.

And therefore the gentleman who furnished me the statement from which I spoke, giving what he supposed was the essence and conclusion to be derived from those invitations, used the expression, "Socinians, Quakers, Mormons, Baptized and Unbaptized," &c. The invitation from Mr. Beecher was in principle just what my informant concluded it to be. It was an invitation to all who professed to love the Lord Jesus Christ, without regard to their church connections; that is, whether they were members or not of any church organization, and without regard to their special beliefs, no matter what might be the character of those beliefs. All that they had to do, to entitle themselves to communion and fellowship with Plymouth Church, was to profess love for the Lord Jesus Christ. Now, you are aware that it is the custom of all, or nearly all, churches and ministers to invite all members of other churches—I have very frequently heard the addition, "in good standing with other churches"—to partake in the communion. Mr. Beecher's habit, on the contrary, is to invite all, without regard to

their church connections or their special belief. But I was in a formal error, and perhaps you may think it a substantial error (quite an unconscions one) in attributing to Mr. Beecher the precise language I did.

MR. BEACH'S QUOTATIONS FROM SERMONS DECLARED INCORRECT.

Mr. Shearman—If your Honor please, I desire at this point to say a few words. I informed my learned friend that I desired to call the attention of the court to this error, and to some other errors.

Mr. Beach—That will not do, Sir.

Mr. Shearman—And now, your Honor, I rise for the purpose of objecting to any quotations from alleged sermons or speeches of Mr. Beecher, upon the ground that these sermons have not been put in evidence; that we, upon our part, have quoted nothing against Mr. Tilton on the summing up which was not put in evidence; and that, as all my associates are of the opinion, it is entirely out of order, and not permissible in a court of justice to quote in the summing up any language of a party which has not been regularly put in evidence. My learned friend expressed, and indeed insisted upon his right to make an explanation of his error in language, but I must respectfully submit that he has not sufficiently covered the ground, and I have a right to state the objection in order to enforce the short argument which I make against his continuance in this line of quotation.

Judge Neilson—That you can do after Mr. Beach closes, and perhaps he is through with those quotations.

Mr. Beach—I am not through, Sir.

Judge Neilson—I think the counsel in argument can, as mere argument, use any paper.

Mr. Shearman—And impute it to the defendant?

Judge Neilson—Well, that is a question.

Mr. Shearman—Well, I should think it was, Sir. I should think it was the most extraordinary proposition that I ever heard advanced. I don't think that the counsel will advance it.

Judge Neilson—No one says it is evidence.

Mr. Evarts—Your Honor will remember that in regard to certain writings of Mr. Tilton's, about which I have nothing further to say than that we put them in evidence, and his counsel very properly examined him under your Honor's authority and permission and the rules of law, which made it very proper as to what he meant by this, that, or the other thing. Now, if the writings of parties who have had the vocation of writers or preachers or speakers can be brought in as evidence of their own acts, without being brought in in the shape that permits the act to be scrutinized and qualified, or explained, as may be, why, it is very plain that parties are very much exposed—very much, indeed. Now, no doubt Mr. Beecher's public sermons are in a certain sense literature, accessible; but, nevertheless, where the party—the writer—is himself a party to the litigation, and the matters adduced are supposed to have weight—and the learned counsel of course would not bring them unless he thought they had weight—there seems to be some little awkwardness in confounding the evidence in a cause with the argument in a cause.

Mr. Beach—Both of my learned friends, Sir, indulged very great license in their reference to matters outside of the evidence, and, in one or two instances, used writings, print, declarations of others which were not in evidence; but your Honor will remember that during the whole of the addresses of my learned friends, principles, motives, sentiments were attributed to Mr. Beecher of which no evidence was given in this case, and which could not be founded upon anything but the assumed knowledge of my learned friends of the public life and ministerial character of Mr. Beecher; and I supposed that in answer to that line of argument, that assumption of special character and quality in favor of their client, justifies me in examining, as a matter of literature and Church and ministerial history, the publications authorized by that gentleman, of his own views and declarations from the pulpit; and I make them, Sir, these quotations, not as evidence in this case, but as argumentative illustrations of the contrary theory which is presented upon the part of the plaintiff.

Mr. Shearman—Well, if your Honor please, I respectfully insist upon our objection to this course. I have taken pains to examine these citations, so far as any opportunity was given by reference in the learned counsel's speech, and in every instance I have found these quotations to be incorrect. I found——

Mr. Beach—One moment, Sir. I object to the gentleman's interrupting me with a statement of that kind.

Mr. Shearman—I am raising a question of law.

Mr. Beach—That is not a question of law.

Judge Neilson—I will be happy to hear you after the counsel is through.

Mr. Shearman—But, your Honor, I am objecting to anything further in this line; and I object to it on the ground that the statements already are so entirely incorrect as to justify the strict enforcement of that rule, which otherwise we might have waived; and we respectfully object to any further reading or statement purporting to be correct, upon the ground that the law does not permit it, and upon the practical ground that thus far they are entirely incorrect, or unfounded.

Judge Neilson—Of course the paper, whatever it may be, book, newspaper, or letter, can only be read by way of illustration, and as helping an argument. If it is the paper, or book, or publication of a party to the suit, there is great danger that the jury may confound the illustration with the actual evidence.

Mr. Morris—They object to their own medicine; that is all.

Mr. Beach—Why, the gentleman assumes to say that the quotations I have made from the sermons of Mr. Beecher are in every instance incorrect.

Mr. Shearman—So far as I have noticed.

Mr. Beach—And upon what authority he assumes to say it I am unable to conceive.

Mr. Evarts—Every instance which he has examined.

Mr. Beach—Every instance he has examined! I don't know how far he has examined, Sir. There is, Sir, the printed extracts from my argument [exhibiting some papers] giving the several quotations given by me, and the reference to the sermon, or book, and the page from which each is taken, and I challenge the gentleman to show any error in either of the quotations.

Mr. Shearman—Very good, your Honor.

Mr. Beach—And this is at his service, if he wishes it.

Mr. Shearman—I accept the challenge so far as any references have thus far been given.

Mr. Beach—Well, go on.

Mr. Shearman—The first one is this invitation to the communion, which in justice ought to be read in full.

Mr. Beach—That, Sir, I have explained, and I object to the gentleman reading the quotation in full. My argument is not to be interrupted, Sir, by this sort of injection of a speech on the part of the defendant.

Judge Neilson—Will the audience please keep silent?

Mr. Fullerton—Point out the mistakes.

Judge Neilson—The learned counsel, I suppose, misunderstood you, Mr. Beach. I have suggested that they have this opportunity after your argument is closed, and you made an observation which would be understood as indicating that he might do it now.

Mr. Beach—He may point out any error now that I have fallen into, and any misquotation. But all else I object to.

Mr. Shearman—If the gentleman allows me, then I propose to go on.

Mr. Beach—I propose that the gentleman shall do it properly and in order, Sir; that he shall not read long extracts from the sermons of Mr. Beecher which I did not read or pretend to read. The question is whether I read anything from the sermons of Mr. Beecher inaccurately or falsely.

Judge Neilson—After you are through he will have a free opportunity to correct any error you fall into. It would not be quite proper to allow him to extend a quotation, introducing a new sentence.

Mr. Shearman—What I desire to know, your Honor, is whether the gentleman extends his challenge to me now, or whether he prefers that I should wait until after he is through.

Judge Neilson—I think the appropriate time is after he is through.

Mr. Shearman—Does the gentleman withdraw the challenge to do it now? [Laughter.] If he does not, I propose to go on.

Mr. Beach—I am not so terrified about it, Sir. I think I shall stick to my challenge.

Mr. Shearman—What does your Honor decide? Will you allow me to accept the challenge, or will you not?

Judge Neilson—I think the proper time is after he is through.

Mr. Shearman—Very good. I submit to your Honor's ruling. The gentleman will excuse me if I interrupt at any other occasion, because we shall make this the point of an exception if the gentleman goes on reading quotations that are not in evidence.

Mr. Fullerton—So did you read quotations.

Mr. Shearman—We have not read anything that is not in evidence.

Mr. Fullerton—They read from Mr. Kinsella's paper an editorial which was not in evidence.

Mr. Shearman—It was in evidence.

Mr. Fullerton—It was not.

Mr. Shearman—Your Honor knows it was in evidence, and it was marked in evidence, in full.

Mr. Morris—Your Honor knows it was not in evidence.

Judge Neilson—It was not; unless it was written by the plaintiff I could not receive it in evidence.

Mr. Shearman—The learned gentlemen did not object to its being received in evidence, and we did not give it in evidence. It is too late for them to strike it out.

Mr. Beach—That is not so.

Judge Neilson—Will you proceed with your argument?

Mr. Beach—Yes, Sir; after I have asked your Honor kindly to consider whether the intimation which you have given that Mr. Shearman, or any other gentleman upon the part of the defense, may at the proper time be heard for the purpose of correcting any errors in fact, will justify a renewed argument upon the part of the defense.

Judge Neilson—Oh, no, Sir; not any further quotation even.

Mr. Shearman—Well, I wish your Honor to consider before you state that, because the correct quotations must be given to correct the incorrect ones, I suppose.

Mr. Beach—Not additional quotations, I suppose, Sir.

Judge Neilson—Oh, yes; that is what I mean—not additional.

MR. BEECHER ON THE LORD'S SUPPER.

Mr. Beach—Upon this question as to the sacredness and solemnity attached by Mr. Beecher to the institution of the Lord's Supper, I read an extract from sermons called the "Second Series," from page 169.

Mr. Shearman—Your Honor will please note that we object to the reading of this extract, as not in evidence, and entirely incompetent, and intended to influence the jury without being put in evidence, and giving the opportunity of explanation.

Judge Neilson—It will be noted that in each instance

where he reads anything, Mr. Shearman, you have an exception

Mr. Evarts—Yes, Sir.

Judge Neilson—At the same time it is understood it is not evidence; it is a mere illustration.

Mr. Shearman—Your Honor will please note an exception in each instance.

Judge Neilson—In each instance; yes, Sir.

Mr. Beach—[Reading]—

The Lord's Supper, if it be administered by a Pope, is good enough; if it be administered by a Cardinal, it is good enough; if it be administered by a priest or minister, it is good enough; if it be administered by the father in the family, it is good enough; and if there is no one else to administer it, and you administer it to yourself, it is just as good.

I understand this Sacrament of the Communion to be in commemoration of the Last Supper between Christ and his Disciples, at which he broke bread and presented it to them, saying, "This is my body;" and poured out the wine, saying, "This is my blood;" that it symbolized the sacrifice of Christ's body and his blood, offered for the redemption of mankind; and that it derives all its holiness, and whatever of saving character or strengthening character it may possess, from the fact that it was administered by God Himself, and in latter days was administered by His Apostles, and by those who succeeded them, whether in direct and apostolic succession or not, in the ministry of the Gospel. And this idea that a man may administer the Lord's Supper to himself, deprives it of all its holy and sacramental character and influence. You have but to sit down at your breakfast table of a morning and bless the food before you, and declare it Christ's body and blood, and you are in sacramental communion at once with Christ, eating the symbols of his body and blood. That is not the orthodox idea of that sacrament. It is a desecration of that sacrament. But enough upon that subject. As an illustration perhaps, practically, of the course of worship and communion in Plymouth Church, it might be sufficient to say that Oliver Johnson, in all the moods and tenses of his belief and life, was yet considered a satisfactory communicant at Plymouth Church.

MR. BEECHER ON THE MIRACLES.

Mr. Beecher speaking of the miracles of Christ when on earth 1800 years ago, deprives them of all continuous, living influence upon the character and morals of succeeding generations. He says:

There are many parts of the New Testament which have grown old. The miracles have. They are meant to be local and temporal. Their power was substantially expended on the day they were performed.

That extract is to be found in volume I., page 403, of Mr. Harper's edition of his sermons. Now if you can strike out, as perennial and constant influence upon the faith and the worship of men, the miracles of Christ, why can you not strike out any other sublime evidences of his God-head and majesty? Why not strike out the Lord's Prayer, the Sermon on the Mount, the Transfiguration, the Apocalypse on Patmos? Christian believers, I had supposed, were accustomed to regard Christ in his double character, as the man, participating in their sorrows and acquainted with their griefs, and from the sympathy of humanity associating with all their afflictions; and in the other character of the mighty God, evincing his majesty and power by the miracles he wrought, touching the eye of the blind that they saw and opening the ears of the deaf, making the lame to walk, casting out devils, bursting the cerements of the grave and leading death captive. Do you not as a Christian believer in the divinity of Christ—do you not cherish these wondrous works of His as He passed through His short but eventful life upon the earth? And when scoffers and sneerers doubt the authenticity of the Bible and the Divine character of Christ, do you not with a Christian's triumph point to the miracles He wrought; and are they a dead letter in the Scriptures? Nay, is the declaration true that any part of the New Testament has become old? Ah, gentlemen, that is its wonderful character, that in every age, and in every clime, to every heart, cultivated or humble, in every emergency of life, in sorrow and in joy, in life and in death, the Scriptures come to the hearts and souls of men with a fresh, living, inspiring energy, and he who blots out a word of the holy inspiration, insults his God.

MR. BEECHER ON THE FUTURE LIFE.

Mr. Beecher has some singular notions in regard to a future life, and the condition of men in that futurity.

Mr. Shearman. [*Sotto voce.* To the stenographer]—Note an exception, please.

Mr. Fullerton. [*Sotto voce.* To the stenographer]—Mr. Shearman excepts to a future life.

Mr. Beach. [Continuing]—On that memorable 1st of June, 1873, and I speak not now from any published sermons of Mr. Beecher, for I have not been able to obtain the production to which I refer, but from general recollection of my own and from information derived from others, Mr. Beecher on that day published a sermon in which he substantially abolished hell. He said in it:

If one sinner is admitted [that is, to Heaven, I suppose] why not the second, who is lower in attainment? If the second, why not the third? And so on until the last? Why not the bottom one of all? I do not believe that there is a living soul on the earth to-day upon whom the face of the gospel has shone, in whom there is some indication that God's grace has not entirely died out, who will not by the grace of God find an entrance, and that that soul will find itself transplanted there.

Well, that points pretty decisively to the idea of a universal salvation. If the Christian, redeemed according to the Bible's scheme of salvation, is admitted to Heaven, and then the man, the soul a little lower in its attain-

ments, you keep traveling down in the degree of attainment until you reach the bottom one of all, there is universal salvation. And in a commentary made in a leading and friendly paper it was said that the spiritualists claim that Mr. Beecher's theory of future punishment, future ultimate salvation, was akin to their own; and this sermon, I remember, excited very extensive comment and criticism throughout the Christian and secular press of the country. It was considered as a denial of the Scriptural doctrine of that place or condition of future punishment which in the Bible is denominated hell. Well, Mr. Beecher, speaking of a sermon delivered by Jonathan Edwards upon the text, "Sinners in the hands of an angry God," says:

I could never read that sermon at one sitting. I think a person of moral sensibility, alone, at midnight, reading that awful discourse, would well nigh go crazy.

Well, it would be intrusive and disrespectful for me to intimate how far I might agree with or dissent from the doctrines of Mr. Beecher. I am endeavoring to show that the man who arraigns Mr. Tilton and others for heresy and heterodoxy should look well to his own doctrine and position before he opens the assault. This last paragraph I read was from the work "Eyes and Ears," page 111. Well, as to Heaven, Mr. Beecher says:

It does not seem to me, as I look at men in the whole round of their condition, and stage of their development, that on dying they can be expected to enter upon a perfected state.

Well, what becomes of the emancipated spirit at death? Is there an intermediate state and condition? Is there a new probation, a new state of discipline between the death-bed and the bosom of the Father, and is that the teaching of the Scriptures? Must the hope of the Christian, sustaining him when the eye grows dim and the breath falters and fails, be a delusion and a mockery? Can the dying saint no longer chant the song, "Oh, death, where is thy sting; Oh, grave, where is thy victory!" and must he look forward to another state of existence, to a purgatory and a new expiation? Have the blood of Christ and the sacrifice of Calvary lost their efficiency? Is the scheme of scriptural redemption all false, and may not he who dies believing, who dies in the hope and the faith of a Christian, anticipate that when the agonies of death are past and the last convulsion of that mysterious separation of the spirit and the body, that he is transplanted at once to the Heaven of his hope and promise? And what will you do, if this be the doctrine, with that announced in the Westminster collection, where it is said that "the souls of Christian believers set free on earth do pass immediately into glory?" A standard authority of Christian belief and doctrine. Ah, what will you do, gentlemen, with that cheering assurance given by Christ to the thief on the cross, "This day shalt thou be with Me in Paradise?" These doctrines and declarations are dispensed with and discarded by Mr. Beecher. He calls the Saybrook Platform immortally infamous. [To Mr. Shearman.] It is the Eighth Series, page 105. I have no notions of my own to advance upon the subject of election, foreordination, and future punishment, and it may very well be that many gentlemen of intelligence and thought will quite agree with the sentiments of Mr. Beecher. He says:

What could be thought of the sovereign who organized pain, not as a sanction of government, but who created beings for infinite pain in order to bring out some quality of himself called, by what eternal transmutation of words I know not, justice and glory? If the astounding views of God prevail that are contained in this immortally infamous chapter [referring to a chapter from the Saybrook Platform], and which deeply color the preaching of those that would give them the kindliest significance, then we must believe that the world is continued in existence to pour an incessant flood of souls into that eternal anguish for which they were expressly foreordained.

And in words of masterly force and imagination he paints the consequences of that doctrine which seems to him so horrid and repulsive; yet it is an imputation upon the orthodoxy of the church to which he belongs, to which his forefathers belonged, to which his own honored father belonged.

In a pamphlet edition of a sermon of Mr. Beecher's, preached on the 7th of June, 1874, I find this teaching:

The parable of the Garden of Eden, of the Fall of Man, and the Universal Sinfulness of Men, as derived from their involuntary connection with the great unknown head, strangely enough has formed the basis of the most enduring and the most universal theory, a theory, however, which is also the most oppressive, and the most inconsistent with every one of those feelings which spring up under a religious education in the ethical principles of the Gospel.

MR. BEECHER ON THE ORIGIN OF MAN.

And on page 299 I find:

The modern school of astronomers do not admit that there were six literal days of creation. When the geologists of England first began to develop the fact of the ages of creation, as indicated in that other book, that revelation which men had tramped on and had n't read, another theory was set on foot, and by and by the force of facts, as developed in scientific schools, compelled men of reason to admit that time and the world were right in the way of the theory of the absolute creation in six days of 24 hours each. Here and there you will find a man yet who holds that the world was created in six days, by a direct fiat of the Divine will. Such a man is twin brother of the oldest mummy in the tombs of Egypt, and I think the mummy is the better of the two. But then it was said that the Scriptures taught it, and the difficulty was evaded by saying again that the Scriptures were designed to teach, not how the world came into existence, but how men were to get out of it, and be saved. In the same way the whole Levitical system was necessarily dropped out of Christian ecclesiasticism, because it was not adapted to modern times and ways. Then, more lately, have come the psychological and ethnological investigations, inquiries into the history of the race, by which is to be determined how men came into this world; and it looks as though it were going to be shown that men did not come according to the literal statements concerning the Garden

of Eden—that they did not come from the loins of the one man, Adam. All the facts disclosed by scientific investigation point to the development of man from the lowest forms of savage life by continuous gradations, running through all ages.

Darwinism, very clearly.

But, say men, if you take that view you will destroy the Bible. And they have said that at every single step in which science has set forth the facts of God, as they are revealed in the immutable testimony of nature. First, the priest has run his head against it, and the fact has not been destroyed in any case.

Of course it was the priest that was destroyed.

Now, if it be determined by the analogy of nature, by the study of customs and of governments, by tracing the peculiarities of judicial systems, by examining into ethnic ideas; the history of law being studied, and the history of schools being studied, and the history of the moral sense of mankind being studied—if it be determined as a fact that these things all converge toward one central teaching of the past; the time is coming when you will do in this case what you did in the case of geology and astronomy and the Levitical system, admit the fact as incontrovertible; and you must see to it, if the fact is universal, and belongs to the divine economy, and is a part of the structure of God's creation, and is a revelation of God, that it is reconciled with the other divine revelation. It is assumed that the revelation of the letter on paper is superior to a revelation of fact in nature. I shall not discuss that question. I only say this, that the revelation of fact exterior to the Bible, invariably carries the day, and will, must, ought to.

Now, as a logician and man of the world, I cannot say that I dissent from that system of reasoning. Not having a Christian's faith in the origin and the revelations of the Scriptures, accepting them speculatively as God's inspiration, if Mr. Beecher tells me that there is a fact in nature, that that is a practical revelation from God, and that it must be believed when it contradicts the inspired word of God, why, of course, I must accept his teaching; I cannot controvert it. He says again:

It seems to me that all thinking men who have taken the trouble to inform themselves about these facts [that is, the facts of nature] believe in the theory of evolution.

Which is the Darwinian theory. That is from the sixth series of his sermons, at page 184. In the same sermon he says:

If all the theories of Mr. Darwin, or half of them, shall be found true, will it not ratify the steadfast testimony of the whole Word of God as respects the essentially animal, secular, worldly nature of man?

In the seventh series, page 201, he says:

I do not care if one man came from monkeys, another from alligators, another from lizards, and another from anything you please.

Well, that is clearly a direct avowal of admissible disbelief in the Scriptural representation of the origin and descent of man, but it necessarily destroys our sinful connection with the error of our first parents.

MR. BEECHER ON ORTHODOX CHURCHES.

And Mr. Beecher has not a very high regard for the orthodox churches of the land. In his "Life Thoughts" he says:

The most dangerous infidelity of the day is the infidelity of rich and orthodox churches.

Well, we have a great many of that description in our vicinity, and perhaps some might imagine that the denunciation of the infidelity of rich and orthodox churches—barring the orthodoxy—might possibly apply to Plymouth Church. But in this mode Mr. Beecher denounces, as filled with practical infidelity, the churches in which you are accustomed to worship in this neighborhood—Dr. Storrs's, Dr. Talmage's, Dr. Cuyler's, Dr. Van Dyke's, Dr. Budington's, Dr. Duryea's, and the great churches in the City of New-York. They are rich and orthodox; and the most dangerous infidelity of the day and the largest amount of it, according to Mr. Beecher, is to be found in those orthodox churches. It may possibly be the effect of their pure and strict orthodoxy.

Upon the subject of the thoughts and doctrines which belong to a Christian church, and the style of teaching and discipline appropriate to their sacred and solemn character and object, Mr. Beecher has very free and liberal notions. He says, in the first volume of his "Sermons," at page 406:

It has been said that the pulpit ought not to be turned into a lyceum for the discussion of customs and policies and such like topics. Anything that is right to talk about at all, it is right to talk about in the pulpit.

Well, the church is not, then, a holy and sacred temple, isolated from the practices and the thoughts and the discussions of the world, dedicated to the worship of the Master, to holy reflection, to serious thought, to self-examination and discipline. It is a place where every worldly topic may be considered, and treated appropriately to the nature of the subject. It is not Christ, God, man's sinfulness, man's repentance, faith, redemption, that are to be taught there; no: it is all the vast variety of selfish and mercenary and temporary topics which agitate society, and which may properly be introduced into the pulpit and discussed by the anointed minister of God. And I may be permitted to say without offense, that the practice of Mr. Beecher has very fully accorded with his theory; and the result which you would expect to follow the desecration of God's sanctuary *has* followed in Plymouth Church. It is not an orderly, spirit-broken, prayerful worship; it is not a service which holds up Christ and Him crucified; but it is a performance which exhibits Beecher and him glorified. Throughout all his sermons are scattered minutes of noisy applause and laughter. During this month I noticed (June 14) a report of Mr. Beecher's sermon in which there were eighteen notices of laughter during the delivery of his sermon.

Mr. Fullerton—Laughter and applause.

Mr. Beach—Yes; laughter and applause.

Mr. Shearman—There was no any applause.

Mr. Beach—What?

Mr. Fullerton—Brother Shearman was asleep probably, and didn't hear it. [Laughter.]

Mr. Shearman—I was there.

Mr. Beach—Of course my friend Shearman was there, and he was the loudest clapper in the congregation. [Laughter.]

Mr. Shearman—That is perfectly true.

Mr. Beach—Well, I know it is true; or I would not say it.

Mr. Shearman—Because I didn't do anything of that kind, nor did anybody else.

Mr. Beach—Now, gentlemen, it is the easiest thing in the world for Mr. Beecher to excite any passion or emotion of our nature, no matter what it is. He may make himself the feeling, impressive teacher of the great doctrines and truths of our religion; he may make himself the most perfect humorist, wit, and comedian. All the varieties of human nature are open to his touch, and he guides them with a masterly hand. But it is a matter of somewhat serious consideration, whether this exhibition of the various characteristics of a great man, inducing to amusement and frivolity in the church of God, rather than to the cultivation of that reverence and worship which belong to that sacred place, is appropriate to a character so great and magnificent as his is represented to be.

MR. BEECHER'S CURIOUS EXPRESSIONS.

Well, I have been furnished with a few of the quaint and extravagant expressions of Mr. Beecher, perhaps not worth particular notice, yet one or two of them may not be uninteresting. In his "Life Thoughts"—the particular occasion is not given to me—he says, at page 178:

I could have killed old Jeremiah, if I could have got at his ribs. [Laughter.]

Then, in his "Talks," page 133, he says he thinks "that men overeat their prayers." So do I. That is in the "Seventh Series" of his "Sermons," page 160. This is from the "Talks," page 133:

I pray on the principle that wine knocks the cork out of the bottle.

Well, it is a good principle, it is praying from the heart; the wine of the spirit starting the cork and opening the mouth. [Laughter.] In his "Life Thoughts," page 241. he says he thinks "the elect are whosoever will, and the non-elect whosoever won't." Rather too much flippancy, rather too frivolous, for the consideration of that great and interesting topic of Election. Some of his forefathers believed in that doctrine, I fancy. Some of the great lights of Christianity believe in it. Of course, I am not competent to enter into a theological discussion upon that subject; but I remember, in my younger and better days, to have heard that doctrine taught by many who were revered as the chosen leaders and teachers of Christianity. I have copied from the print a very interesting and forcible extract from a sermon by Mr. Beecher on the Prodigal Son. He says:

There are thousands of bad men who, like him [the Prodigal Son], have good aspirations and honorable instincts. They are longing to ascend by the path that has led them down to ruin. Every man has an equator. All below that line is animal, and all above it is himself. Many a man lives entirely in his lower nature until, through wild indulgence of it, the door is opened to that which is above.

Well, that is a new idea, to me at least, that the good and the evil in our natures are separated by an equatorial line, and are unmingled and distinct. I had thought that our emotions, our passions, our inclinations, proceeded from the same attributes and organs; that we were a mingled mass of good and evil between the two equalities a close and continual conflict forever waging; that we did not live entirely bad, "below the equator," altogether in our animal passions; nor ever live wholly in the higher atmosphere above it, in our best spiritual nature.

Trouble brought the prodigal son to himself. He was alone and starving. He had time, among his grunting charge, to repent. He did not say, "I will go to my father" and "state the circumstances." He called it sin. He attempted no excuse or palliation. The man whose soul evinces higher aspirations has partly reformed already. He knows how to go down and how to go up. The son returned with a good orthodox confession——

Yes. It is a pity other prodigal sons do not return with a like confession.

—and found himself embraced and forgiven. Our Father in heaven, art thou meaner than the fathers of earth? There was another son. He heard the singing and the dancing, and he was angry and would not go in. His father came out and entreated him. Now, I had rather have been the prodigal son than his brother.

That is, I had rather have been the erring and the sinning child of God than the obedient, loving, faithful son of the father! And why? Mr. Beecher gives us the reason for his preference.

He [speaking of the other son, not the prodigal], was too stingy to get drunk [laughter]; he was too cautious, too unsympathetic to sin lasciviously.

Ah! I would rather be such a man—I would rather be the liberal, generous fellow who does not hesitate to get drunk; I would rather be the free, the incautious, the sympathizing soul who can sin lasciviously!

"He was lean, and mean, and stiff, and proper."

Ah! you rigid Christian, you true model believer, you are lean, and mean, and stiff, and proper; you don't mingle with the jollities of life; you don't get drunk; you are not lascivious; you don't live a generous and a free life; you are stingy and mean; you are too good!

A HOT DISPUTE OVER MR. BEACH'S QUOTATIONS.

Mr. Porter—May I ask from what print you copied that, Mr. Beach?

Mr. Beach [to Mr. Morris]—Have we got it here?

Mr. Fullerton—That is copied from a paper.

Mr. Shearman—Most of it is your own, I believe.

Mr. Beach—Most of what?

Mr. Fullerton—No, Sir.

Mr. Beach—What?

Mr. Shearman—What you have been saying?

[Mr. Morris here passed a newspaper slip to Mr. Shearman.]

Mr. Beach—Why, every word that I have been reading, as quotation, is Mr. Beecher's.

Mr. Porter—It is from a newspaper.

Mr. Beach—Certainly. Well, Mr. Beecher's sermons are reported in the newspapers, by a regular hired reporter.

Judge Neilson—We do not know that.

Mr. Shearman—I respectfully protest against this as an outrage.

Mr. Beach—Why, they have said it, Sir; they have said it in this case.

Mr. Shearman [referring to the slip handed to him]—This is taken from an anonymous newspaper; not even a newspaper in New-York. I take it to be from a Hartford paper. It is absolutely incorrect; and the learned gentleman did add a great many of his own remarks, without making any distinction between them and Mr. Beecher's words.

Judge Neilson—We have no assurance that it is a correct report.

Mr. Beach—Well, Sir, if this Court and jury are so unintelligent that when I read from a paper, and then comment upon what I read, they cannot distinguish between the two, why I will recommend Mr. Shearman to them as an interpreter.

Judge Neilson—The jury can distinguish.

Mr. Shearman—It is impossible for me to distinguish, your Honor, utterly impossible to distinguish the quotations from the comments; and I do not find that one-third of what he has put in is here at all.

Judge Neilson—Well, distinguish or not, it is a mere matter of illustration—a mere matter of illustration.

Mr. Shearman—Well, if your Honor please, I submit that it is utterly unprecedented to allow counsel, by way of illustration, to make alleged quotations from a defendant's speeches, intended to prejudice him with the jury and to scandalize him before the public, for it is perfectly obvious that this is all for the outside public; and I respectfully except.

Judge Neilson—If the counsel thought proper to read, by way of illustration, I think it is allowable.

Mr. Beach—Well, Sir, when Mr. Beecher was eulogized as the great preacher of the time, as the great orthodox teacher in the pulpit, and held up as pure and true and sinless, I suppose that, too, was all addressed to the outside public—to that outside jury to which my friend, Mr. Porter, referred. [Laughter.]

Mr. Shearman—If your Honor will permit me one word, Mr. Evarts, in the examination of Mr. Beecher, inquired fully into the course of his life, and no one will find, either in the speech of Mr. Porter or of Mr. Evarts, one word—I will not say one word, but I will undertake to say that no one will find one entire sentence which is founded on the assumption of any fact not stated in the evidence, and upon which they had not perfect liberty and opportunity to cross-examine. But here we are loaded down with extracts, some of them coming from utterly untrustworthy sources, utterly incorrect——

Mr. Beach—That is not true.

Mr. Shearman—It is true. It is true in this case.

Mr. Beach—No, it is not.

Mr. Shearman—It is true in this case; and I have undertaken to say on my professional responsibility that there are at least three cases, one of which he has acknowledged, where the gentleman has made entire perversion of Mr. Beecher's statements. We have had here, through these two days, language imputed to Mr. Beecher which he never did utter; we have had misquotations and perversions of his language; we have had partial quotations, no more giving a correct idea of what Mr. Beecher did say than if I were to say that the Apostle Paul said: "God be thanked for that ye were the servants of sin." Is it justice to the Apostle to quote that and leave it to stand as a quotation from him without the context? It is no more justice to Mr. Beecher to treat him in this way.

Judge Neilson—We have no assurance, of course, that these reports are correct. We do not know that; we have no more assurance of it in this case than if it were copied from any other paper. Still, I have no doubt myself that if counsel thought it expedient they could, by way of illustration—not an argument, read from a newspaper, or from a book, something there stated better than they could state it; whether that book was Mr. Beecher's or Mr. Smith's or anybody's else. But still it is not evidence, nor to be received as such. The jury are to view it as simply an illustration, which at the bottom may be correct or may not be.

Mr. Beach—We had the announcement from the gentleman upon the other side that Mr. Beecher's sermons were gathered up weekly and reported in all the leading presses in the country; and it is a fact that we know, independent of their declaration. It will be an astonishment to a great many, Sir, when our learned friends have declared that the weekly publications, thoughts and teachings of Mr. Beecher which, in their blessed influence, are spread all over the world—it will be an astonishment to many to know that they are not correct representations of his thoughts and teachings, and it will be

a gratification to many, Sir, to believe that the denial true.

Judge Neilson—Mr. Beach, you have observed, by experience in this trial, that you are not always correctly reported yourself.

Mr. Beach—Yes, Sir.

Judge Neilson—And yet you are remarkably clear and distinct in your utterance.

Mr. Beach—Yes, Sir.

Judge Neilson—There have been instances where you have not been correctly reported, and I have no doubt that your thoughts, in a mangled form, are now traveling throughout the world.

Mr. Beach—Yes, Sir.

Judge Neilson—It is but an illustration, after all.

Mr. Porter—Very differently reported in different newspapers.

Judge Neilson—Yes.

Mr. Beach—That is the consequence, Sir, of the natural imperfection of things. I have got to be judged by the manner in which I am reported; and when the reports of Mr. Beecher's utterance come out in this authorized form [holding up a bound volume of Mr. Beecher's sermons], and are circulated as his sermons—we are to suppose under the ordinary correction of the author—and when he himself has sworn that he has published thirty volumes of sermons, or what not, I think I am justified, Sir, in making extracts from that authentic and authorized publication of Mr. Henry Ward Beecher.

Judge Neilson—Coming from that source, there would be a presumption that the quotation would be correct, no doubt.

Mr. Beach—Yes. Well, almost every quotation I have made has been from these books.

Judge Neilson—But coming from the newspapers, that presumption fades out very much. And when you get down as far as Hartford, I am reminded of the fact that I have received anonymous letters with extracts from—

Mr. Beach—I have made no quotation from any paper at Hartford, Sir.

Mr. Shearman—I beg the gentleman's pardon. He has—

Mr. Fullerton—He has not read a word from it.

Mr. Beach—No, Sir, I have not.

Mr. Shearman—[excitedly]—Why, you are—[laughter]—you read that very passage; you said you copied it from that.

Mr. Beach—No, Sir, I did not.

Mr. Shearman—Then what did the gentleman mean by handing me that as his authority.

Mr. Beach—I have not handed you anything as my authority.

Mr. Morris—That is a comment upon it.

Mr. Shearman—Am I responsible for the gentleman's blunders? We have had ten thousand of them, and more. A gentleman that cannot quote correctly—a gentleman is who quotes so incorrectly that when a clergyman invites "those who believe in the Lord Jesus" to the communion table, he must quote it as "Socinians, Shakers, Mormons," &c.—is it for him to reproach me for relying upon his quotations?

Mr. Beach [good humoredly]—I have not reproached you, my irascible friend. [Laughter.]

Mr. Shearman—Well, then, don't. This is the paper that the gentleman handed.

Mr. Beach—I did not hand that.

Mr. Shearman—Then I challenge——

Mr. Beach—Well, now, do subside. [Great laughter.]

Mr. Shearman—I will; I will. [Laughter.]

Judge Neilson—Proceed with your argument, Mr. Beach.

Mr. Beach—Yes, Sir, as soon as I can get an opportunity.

Mr. Shearman—I ask now for a proper reference to what the gentleman was just reading.

Mr. Beach [addressing the Court]—Now, Sir, a publication—a slip—containing every word that I quoted from the sermon on the Prodigal Son, was handed to me by a gentleman, who said that he wanted to preserve it, and I copied it. It was not this slip.

Judge Neilson—I recollect that sermon very well. Your statement of the Prodigal Son sermon was correct. My wife takes *The Christian Union*, and I read it in that. [Laughter.]

Mr. Shearman—Part of it was correct.

Judge Neilson—I recollect very well that I adopted the notion that the repentant son was the better of the two [Laughter.]

Mr. Porter—I beg leave to except to this statement by your Honor; and, at the same time, I beg leave to ask if your Honor says that in a sermon published by Mr Beecher——

Judge Neilson—I do not say so.

Mr. Porter [continuing]—The language was used in relation to lasciviousness, which the gentleman has quoted.

Judge Neilson—I do not say that.

Mr. Shearman [excitedly]—That is the very point, your Honor. [Laughter.]

Judge Neilson—I spoke as to the general fact.

Mr. Shearman—Well, I beg to say that the gentleman has undertaken to attribute to Mr. Beecher language which Mr. Beecher never uttered.

Judge Neilson—Very well, Mr. Shearman; you have the right reserved to make corrections.

Mr. Shearman—Corrections, your Honor! Are we to put in evidence again? Is the case to be reopened, and are we to make corrections?

Mr. Beach—Ah! there will be no "corrections" made.

Mr. Shearman—Well, then, I denounce this whole thing as a perfect outrage upon justice, and as making a farce of a court of justice by introducing evidence at the close

without giving us an opportunity to meet it and to correct it.

Judge Neilson—I have said, Mr. Shearman, again and again, that this is not evidence.

Mr. Shearman—It cannot but have the effect upon the jury——

Judge Neilson—I have said again and again that this is not evidence, but merely illustration.

Mr. Shearman—Except that I don't believe that it will have any effect at all. [Laughter.]

Mr. Morris—It seems to affect you considerably. [Renewed laughter.]

Judge Neilson—This conversation is not proper, gentlemen, and it does not become counsel to say that proceedings here at the instance of a counsel of very large learning and great experience are an outrage upon justice. Mr. Beach, you will proceed in order as far as you can possibly.

Mr. Shearman—Ah, that is asking too much.

Mr. Beach—I will, Sir. In regard to this quotation from the sermon on the Prodigal Son, I will endeavor to obtain during the recess the number of Mr. Beecher's paper containing it, and will submit it to your Honor.

Judge Neilson—I recollect the general fact in regard to that sermon; but I do not remember the exact words.

Mr. Shearman—Except that he did not have the language the gentleman has used.

Mr. Beach, [to the Court]—I profess, Sir, to be a very good-natured gentleman and desirous of being corrected when I am in error, but it seems to me that my friend, Mr. Shearman, is getting too much excited upon this subject, and is breaking in too largely upon the order of my argument.

Judge Neilson—Well, I don't wonder at Mr. Shearman being very earnest about it; I appreciate that.

Mr. Beach—Nor I either, Sir. I think I should be earnest if I was in his place.

THE ARGUMENT RESUMED.

Mr Beach--But——

Judge Neilson--Be quiet, gentlemen.

Mr. Beach—Well, gentlemen, in a quiet way, let us, by way of recapitulation, see what is the attitude of Mr. Beecher as a preacher of the Gospel, and how well he deserves the encomium that he is the greatest man in the world, as pronounced by Mr. Wilkeson, or is the leading pulpit orator of the age, as represented by his counsel. And what great principle, what fundamental doctrine of orthodoxy has not Mr. Beecher in some way assailed—either impeached and discarded or modified and changed in its influence and character? He has denied, in the first place, the condition of our first parents, the integrity and purity of their original creation. He has placed them at the lowest point of animal existence, abolishing the whole idea of original sin and the fall of man, and substitutes the Darwinian doctrine of evolution. He has denied the blood of the atonement, in defiance of the declaration of the Scriptures that, without the shedding of blood, there is no remission. He has secularized the Christian Church. Instead of a Divine institution, where Christ meets His children and exerts the influence of His Holy Spirit through its ministrations, it is a mere institution of the world, a mere corporate institution, secular in its character, useful in its office, but bearing about it none of the odors of sanctity. It is like your theaters, your railroads, your committee-rooms, or any of the other of the gatherings of men in the ordinary pursuits of their life. And he has degraded the highest and most exalted office in life—the ministry of the Church—by declaring that no qualification is necessary to it more than belongs to a lawyer or an engineer. No delegation of authority from Christ, no embassadorship from Heaven, no anointing grace, spiritual or otherwise, from the Father, but every man moved by the impulse may assume the sacred character and dignity of a teacher of the Gospel. He treats with derision the ordinances, the sacraments of religion, baptism, and the Lord's Supper. He rejects the teachings of all the great leaders of the orthodox faith in all past time, and the honored creed of his own denomination he denounces as wicked and flagitious. He practically does away with the wrath to come, with the threatened hell, with that denounced vengeance of God upon the sinner. He detracts from the heinousness of sin, rejecting the atonement, the sacrifice of Christ. He then maintains that by some process of God's mercy man ultimately will be universally redeemed and saved. And I think, with a practically equal injurious influence upon the world, he has desecrated the temple of his God; he has made it the scene of his witticisms, and jests, and humor, and buffoonery, which has made it more like to a theater than to a church.

I pass some other topics, gentlemen. If anybody supposes that I have made these references from any sentiment of disrespect to Mr. Beecher, for the purpose of misrepresenting or scandalizing his character, he greatly misjudges my motive. And if the gentleman supposes that I have done this thing with a view to operate upon public sentiment to the disadvantage of Mr. Beecher, forgetting my professional duty as the representative of a party in a court of justice, he equally misjudges my motive. Mr. Beecher has been represented in language almost as imaginative and glowing and forcible as his own by his counsel, as the great and leading divine in the Christianity of this age. He has been represented as a pure, orthodox teacher of the inspired religion of the Scriptures. He has been incased in the bright and shining armor of unsullied purity and virtue. It has been the fundamental, the central argument of my learned friends, and it bears to-day upon the sentiments of this jury with imperative force. The doctrine was that he was too great and too good to sin, and upon that, assum-

ing his virtue, they have reasoned the impossibility of error. I have presented all these indications of the essential and inward character and doctrines of this man in opposition to that theory. It is a logical and professional answer to the argument, and I have not demeaned myself in any allusion to this gentleman, in any attempted revelations of his character, from my true professional standard of confining myself to the issues before this jury, and presenting only those arguments which were properly directed to them, and I am not willing to part with this court and jury under the imputation that I have perverted my professional position for the purpose of reflecting upon a man who, with all his faults and failings, whatever they may be, I admire and reverence.

MR. BEECHER'S SERENITY WHILE UNDER FIRE.

And now gentlemen, considering what I think the rather erratic and extravagant career of Mr. Beecher as a teacher, looking at the tendencies of his thought and sentiments as delineated in his spoken words, considering the impulses of his nature, as we read them through his utterances, is he deserving of the high encomiums he has received, and is he a man who, when he stands confronted by evidence against which no other human being could stand for an instant—is he, by the simple authority of his character and his word to overturn the power of demonstrative proof? Has he, through the moods of his counsel, the right to arrogate to himself this supreme position, this infallibility of character, and to laud it over his fellows as the leading divine of the age? That is a question which is to be sincerely and deliberately answered by this jury—answered under those solemnities which pertain to a court of justice, and governed by those principles which, according to the oaths of a juror, or jurors, are to be received from the instructions of the court. It has been a marvel to the Christian world; it is one of the most astonishing developments of the character and the power of Mr. Beecher, that even while this trial was progressing he should yet be competent to pursue the duties of his ministerial office apparently unaffected, sermonizing and praying with all the intelligence, and the power, and the unction of his earlier life; that through these four years of prostrating sorrow and agony, tortured daily and nightly by the anxiety and fear of discovery, and the remorse of guilt, that nevertheless this man in his majesty and greatness has stood up, the admired of all observers. Gentlemen, you do not comprehend the greatness of this man's character. He is not only great in mind, great in learning, a great teacher, a great scholar, but he has that wonderful combination which makes man in all his marvelous greatness. He has the brain, he has the heart, he has the physical conformation in one harmonious and powerful combination, giving to human nature its highest dignity and its greatest strength; and he himself, in one of his memorable letters, exhibits the qualities by which he is thus enabled to trample upon adversity, to resist all the passions which stir the sinner's conscience, and, in the face of the world and in the face of his God, exhibits only those attractive and grand qualities which make him a great preacher and teacher. See how he depicts himself: "To say that I have a church on my hands is simple enough, but to have the hundreds and thousands of men watching me, each one with his own suspicions or anxieties or zeal; to see tendencies which, if not stopped, would break out into ruinous defense of me; to stop them without seeming to do it; to prevent any one questioning me; to meet and allay prejudices against Tilton which had their beginnings years before this; to keep serene as if I was not alarmed or disturbed; to be cheerful at home and among friends, when I was suffering the tortures of the damned; to pass sleepless nights even, and yet to come up fresh and full for Sunday—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearing and grinding on the nervous system." And then, in a previous portion of the same letter, he says: "If I had not gone through these great years of sorrow I would not have believed that any one could pass through my experience and be alive or sane." And this is the picture not only of Mr. Beecher's sufferings and trials and agonies, but it is the picture of his great and iron will which sustained him through all, and through all the perplexities and discouragements of this trial has sustained him. True, it was a necessity; and, true again, he was addressing himself in his church not to an angry and hostile audience, but to a congregation of sympathizing and loving souls. It is not wonderful when we consider the character of the man. Discarding, gentlemen, for one moment, all the evidence in this case, except Mr. Beecher's, with our knowledge of his character, and divesting that evidence of all its figures and descriptions, by a close and rigid analysis reducing it to its elements, and judging from that of the probability of his offense, what would be the conclusion of practical, worldly common sense? His representation, his theory of this whole case is that upon a certain day he was approached by an inmate of Mr. Tilton's house, Bessie Turner, who made foul revelations to him concerning the personal character of Mr. Tilton, who made distressing communications to him in regard to the condition of Mr. Tilton's household. These representations concerned a man who had been a life-long friend of Mr. Beecher, a man whom in his boyhood Mr. Beecher loved, and in whom in those early years he detected the elements of that intellectual and moral character which he saw would raise him to the moral and intellectual elevation he afterward obtained, and from that time onward these

two men had lived in the closest bonds of friendship and intimacy. They resided in the same city, day by day they saw each other, and yet Henry Ward Beecher tells you that when these discrediting stories came to his ears, without any consultation with the friend who was accused, without appealing to him whom he had loved and trusted for years, as to the truth of the accusation, without any effort at kindly remonstrance, if on inquiry there was foundation; forgetting all the duties of friendship and manhood, Henry Ward Beecher at once advised, as he says, a separation. Then after an interval comes a charge made by this same friend against Mr. Beecher—a charge of unchristian, inhuman treatment of the wife of that friend. Mr. Beecher learns, as he says, and believes, that that charge was extorted from the wife by the importunity and the scheming violence of the husband, and yet Mr. Beecher, in a public card in his paper, eulogizes this conspirator and ruffian against his wife's honor and peace. For three years he praised him. In his written words he commends him for his kind and generous treatment. This man who, as Mr. Beecher affects to believe, had committed, not this wrong against him by an audacious charge, but had made his wife the accomplice of the outrage, and then through the entreaties and persuasive explanations of Mr. Moulton alone, he comes to the conclusion that he had done all wrong, that he ought not to have advised separation, or have advised Bowen. He suddenly makes up his mind that he has won, unconsciously, the affections of Mrs. Tilton, and for three long years he is surrounded by this horror of a great darkness, and lives upon the ragged edge of despair and remorse, and during it all he never makes a single inquiry to learn whether it be true or not that he has won these affections of the wife, or that he has thereby introduced dissension and discord and unhappiness into the household of his friend. In constant communication with the parties, free to learn from Mrs. Tilton whether or not his suspicions and belief were true, he yet lingers in these protracted agonies for these three years——

Judge Neilson [to Mr. Beach]—Will you suspend your argument now, Mr. Beach?

Mr. Beach—If your Honor will pardon me but a single word, which will conclude what I have to say, somewhat breaking in upon it; but take that story even in its imperfect outline, as I have given it, and is it credible—does it conform to the ordinary rules of human action, to the instincts of our nature? If we should judge this man as we would judge ourselves, or our fellow men generally, by the probability of his theory and the statements of his defense, are they acceptable to the intelligence of this jury? I submit to you that in themselves they are intrinsically faulty and incredible. It is upon this theory alone that Mr. Beecher founds his defense, and if it fails he falls, and if you bring to the test of it your ordinary reason and judgment, it seems to me you cannot fail to detect its fallacy and sophistry, and see in it the necessitous creation of a great and ingenious mind driven to desperation and despair.

The Court here took a recess until 2 o'clock.

GEN. TRACY CRITICISED.

After recess the proceedings were continued as follows:

Mr. Beach—If your Honor please, I have requested the policeman several times to keep those blinds closed, and he disregards my request. I cannot stand here and speak in this draught.

Judge Neilson—The officer will arrange them to suit you.

A Juror—I asked him to open them.

Mr. Beach [to the officer who was about closing them.]—No, Sir; never mind, let it be. When I get a little warmer I shall pass it over. Let it be, if you please.

Judge Neilson—I am sorry that the jury should not agree with the counsel.

Mr. Beach—Well, I hope we will come to a better understanding, Sir, before we part, though that parting is very close, gentlemen, for I have but one more duty to perform in this case, and it is not the least of the many disagreeable obligations my position has imposed upon me. I am to speak of a professional brother, and there is no service which a lawyer renders in the discharge of the obligations of his profession more repulsive and unpleasant than that. The profession of the law, I think, is peculiar in some of its features of association, and, I think, superior to all other classes of men and professions. There is none of the mean spirit of envy and jealousy; there is none of the carping and backbiting which too often disfigure the character of other professions. We acknowledge the attainments and the merits of our fellows. We cheerfully accord to the great leaders of our profession their well-earned and deserved position. Nobody disputes the well-founded and meritorious claims of my learned adversaries. No man feels any humiliation when he witnesses a great professional effort, but every lawyer rather feels pride, and cheerfully accords the deserved approbation. All of us with cheerful accord acknowledge, for illustration, Mr. Charles O'Conor as the leader of our profession, its great master and exemplar; nor does any other of his distinguished fellows ever honor himself by a great display of legal learning and genius, or by a great and successful effort in some holy cause, without directing to himself at once the admiring and grateful reverence of his professional brethren.

And it comes to be, therefore, quite uncommon that there should happen any such occasion as public animadversion of the professional conduct of a respected brother. For Mr. Benjamin F. Tracy I have no feeling but that of the utmost kindness, and I speak nothing in

regard to his attitude and connections in and with this case from any unfriendliness, from any desire to injure his feelings, and if Mr. Tracy had been content with the simple advocacy of the cause of his present client, I should not have deemed it within the line of my duty to advert at all to his position, because it was not necessary to the proper and fearless discussion of the cause I represent. It was without the line of the evidence, and whatever his professional taste or principle may have led him to do with reference to his double obligation to the parties in this case was immaterial to the determination of its actual merits. But when Mr. Tracy chooses to place himself upon the witness stand and assail the witnesses who have been produced on behalf of my client, and to contradict unequivocally and unavoidably three of those witnesses, I have no choice — I must examine his pretensions as a witness, and, in that connection, his attitude to this case as a lawyer. I beg leave further to premise, gentlemen, that the relations between that gentleman and myself have been entirely cordial, and nothing that has happened or shall happen, in this case, will interrupt on my part that friendliness of sentiment. I think he has erred; I think he has committed a professional and personal error, but I know that he has done it against my sanction, and it certainly will not diminish the feeling that I have hitherto entertained for that gentleman. And I trust that nothing I shall say will embitter the sentiment of that gentleman toward myself, because he must know that my utterances are extorted by my position. I repeat that Mr. Tracy offers himself as a witness in this case in direct and unwarrantable contradiction upon a material issue in the case to three witnesses—namely, Mr. Tilton, Mr. Moulton, and Franklin Woodruff. Whatever you may say or think in regard to Mr. Tilton or Mr. Moulton, I think I may point to the character and reputation of Franklin Woodruff as entirely unassailable and estimable—occupying a position in this community as one of those honorable and enterprising merchants so highly lauded by my friend Mr. Porter, as a gentleman of public spirit, of personal purity and morality, of respectability of station, and of conduct which exalts him above all unkindly criticism. Mr. Tracy, after those three witnesses had testified that Theodore Tilton in the interview with him did charge the offense of adultery against Mr. Beecher—after those three witnesses had deliberately and directly testified that Mr. Tracy had counseled under the circumstances a policy of silence and falsehood, chooses to become a witness in contradiction of their statements. The connection of Mr. Tracy with all this transaction in its irregular beginnings, and in its more methodized litigation, is not, it seems to me, very complimentary. He has a facile and versatile character, peforming several parts in this drama, and performing all of them with equal zeal and abandonment. He is, first, the chosen friend and counselor, through Mr. Moulton, of Theodore Tilton. He meets the two in company with their friend Woodruff as adviser upon a question of very great importance to Mr. Tilton, and he receives from them a full and a free communication of all their secrets relating to that particular transaction. There was some scruple about the confidence which was thus bestowed upon Mr. Tracy. Theodore Tilton was unwilling that the facts affecting the character of his wife and his family, and disclosing the full nature of the association between Mr. Beecher and them, should be communicated to a third party—to Mr. Tracy. And with that prudence which generally characterized Mr. Tilton in regard to his relations concerning this affair, he exacted from Mr. Tracy his pledge of word and honor that he would not, under any circumstances, thereafter become the counsel of Henry Ward Beecher in antagonism to Theodore Tilton. Mr. Tracy does not deny the pledge, either in spirit or in terms. And yet we see him next, after having possessed himself of the secrets of Mr. Tilton, and received his views and his declarations in regard to this lamentable affair, under this pledge, in close consultation with Mr. Beecher and his other advisers in regard to the organization of a committee which is to judge as between Henry Ward Beecher and Theodore Tilton. And, after organizing that committee, he appears as the counsel opposed to the interests of Mr. Tilton before that body, and as the leading and controlling spirit of those proceedings. And then he appears in this action, active, indefatigable, malignant, engaging in the cross-examination of witnesses, bearing his full part and responsibility in the discharge of professional duty; and then as the deliberate sponsor of the opening address for the defense in this case, full of animosity, of denunciation, of untruth, representing his former friends and confidants in the most odious of all lights, and in the most severe and reprehensible language. And, not content with this, when his master is overborne by three witnesses, by all the evidence to which I have, from time to time, alluded in this case, when the stress of this controversy bears apparently with crushing power upon this defense, Mr. Tracy leaps in the breach, or rather into the gulf, and sacrifices himself for the defense of his client. The question is whether this position in its professional and moral aspects justifies the hope which could alone have prompted the action, that the word of Mr. Tracy, like the word of Henry Ward Beecher, is to overbear the honor and oath and testimony of three men equally as credible as themselves, and to whom honor and reputation and fame are as dear as to Mr. Tracy or Mr. Beecher. My learned friends announced that it was under their suggestion and with their approval that this course was pursued by Mr. Tracy. Both these gentlemen know that in the ranks of professional or social life there are no two gentlemen to whom my respectful affection is more freely and liberally tendered than to them. But I

differ with them. I differ with them in regard to the question of professional propriety and of personal honor and manliness. And it is to me a matter of great pain and surprise that they should have approved or counseled such an exhibition of what I conceive professional treachery and personal dishonor. [Applause.]

Judge Neilson—One moment; Mr. Rogers, spread your officers about this court-room and arrest the first person you see making a noise. I will submit to no such treatment from any person.

Mr. Beach—I should not have ventured to disagree with gentlemen so eminent and respected upon my own ideas of right. But I had been instructed for long years that the life and the honor of our profession consisted in its fidelity to its cause and its client. I had been taught to believe that the pledge of a man and a gentleman was to be redeemed under all conceivable circumstances, and I had been taught by the elements as well as by the judicature of our profession that no lawyer who, under the privilege attaching to the relation of attorney and client, had received a communication of the secrets of that client could, in law, or in justice, anywhere, without the permission of that client, make a disclosure of them; that the power of the law, which overreaches and treads down mere sentiments and sympathies, and looks only to the administration of justice according to its known principle that the law could not extract from the honor of the profession the secrets of the client.

If your Honor please, the principles and the privilege to which I allude have the approbation of the earliest authorities and sentiments of our profession. Justinian declared in his Digest of the Roman Law, *Mandatis caviatur ut præsides, ne patroni in causa cui patrocinium præstiterunt testimonium dicant*"—as rendered, "It is prescribed in the rules that the presiding justices are to see to it that advocates do not bear testimony in any case in which they are engaged." The most distinguished French jurist of the last century, M. Pothier, commenting upon this in his incomparable work on Obligations says:

Upon the same foundation, of a suspicion of falsehood, the evidence of the procurer of either party ought not to be admitted. Their testimony would be liable to the suspicion of partiality if they were witnesses in favor of their parties, and there would be an indecency in admitting them as witnesses as against them.

And our own standard author, Prof. Greenleaf, states in his work on evidence:

It has in England been held a very objectionable proceeding on the part of an attorney to give evidence when acting as advocate in the cause, and a sufficient ground for a new trial. But in the United States no case has been found to proceed to that extent, and the fact is hardly ever known to occur. But, on grounds of public policy, and for the purer administration of justice, the relation of lawyer and client is so far regarded by the rules of practice in some courts, as that the lawyer is not permitted to be both advocate and witness for his client in the same cause. Thus, the 23d of the *Regulæ Generales* of the Supreme Court of Judicature of the State of New-Hampshire is, "No attorney or counsel shall be permitted to take any part in the conduct of any cause before a jury after he shall have testified for his client in the same cause."

And some authorities are referred to. In Stone agt. Byron, to be found in Dowlings and Lowndes's Practice Cases at page 393, and decided in 1846, the plaintiff's counsel made a speech in reply, and then proposed to call himself as a witness to contradict the defense set up. This was objected to by the defendant's counsel, but overruled by the Under-Sheriff and the evidence was received. The counsel for the defendant declined to cross-examine him. Upon the argument after the rule to set aside the verdict, it was contended that, however improper and inconvenient such a course might be, it was no sufficient ground, alone, for the Court to grant a new trial, since the Court would never grant a new trial where the result would be the same which it would be here, as, upon a new trial, the plaintiff's attorney might become competent as a witness by ceasing to act as advocate. In support of the rule it was successfully argued it would be a practice attended with the most mischievous consequences if an attorney, or any other person, acting as the advocate of a party, could afterward present himself before the jury as a witness in support of those statements he had been making in the course of his speech. The characters of an advocate and a witness should be sedulously kept apart. The one was a person zealously and warmly espousing the interests of his client; the other a person sworn faithfully and impartially, without bias or favor to either party, to tell the truth of what he had witnessed or heard. The jury might have considerable difficulty in separating those statements which they had heard from a person as advocate, from those which they had heard from the same person as witness. Patterson, Justice, pronouncing the opinion, said:

Here the attorney for the plaintiff makes a speech and conducts the cause as his advocate, and examines the witnesses and addresses the jury in reply to the defendant's counsel, and afterward calls himself as a witness. I must say that I do not think such a course of proceeding is proper or consistent with the due administration of justice. It seems to me, therefore, that his evidence ought not to have been received, and, having been received, that there ought to be a new trial.

In Dunn agt. Packwood, to be found in the 11th Jurist at 242, the verdict given after the attorney of the plaintiff had given evidence in the case was set aside, without counsel being called upon to support the rule *nisi*. Earle, Justice, said:

I must make the rule absolute for a new trial on the first ground. I think it a very objectionable proceeding on the part of an attorney to give evidence when acting as advocate in the cause, and a rule absolute for a new trial was granted.

In Cobbett agt. Hudson, in Ellis and Blackburn, Mr.

Chief-Justice Campbell delivering the judgment of the Court of Queen's Bench, Campbell, Coleridge, Whiteman, and Earle, being associate justices, Campbell, Chief-Justice, expressed the strong disapprobation of such a practice, as permitting a party to act alternately as advocate and witness, and further said:

We may hope that without any positive rule against a party addressing the jury and being examined as a witness on oath, on his own behalf, a practice so objectionable is not likely to spring up for it is not only contrary to good taste and good feeling, but, as it must be revolting to the minds of the jury, it will generally be injurious to those who attempt it. In such a case as the present there is not the smallest color for resorting to it, for the plaintiff suing *in forma pauperis* had counsel assigned to him who must be supposed to have been ready to support at the trial the certificate he had given that the plaintiff had a good cause of action.

But, your Honor, in those States where the law does not extend to the limit of the English practice, so far as to grant new trials for an impropriety of that character, the practice is most seriously condemned; and I think there is no precedent to be found in the books where a lawyer has ever testified in the cause in which he was employed, to a material question at issue, and has continued after his evidence, connected with the case, has ever met the approval of a court; though some of the decisions do recognize a possible emergency in which a lawyer may properly be called to testify for his client, but in such case uniformly recommend and require that he should at once sever his connection as counsel with the particular cause.

In Potter agt. Ware, in 1st Cushing's Reports, Mass., Metcalf, Justice, said:

In most cases counsel cannot testify for their clients without subjecting themselves to just reprehension. But there may be cases in which they can do it, not only without dishonor, but in which it is their duty to do it. Such cases, however, are rare, and whenever they occur they necessarily cause great pain to counsel of the right spirit.

In Reid agt. Calcock, 1st Nott & McCord, Johnson, Justice, says:

It is a matter of much delicacy, and one which the profession ought, and do, much to their credit, usually avoid when it is not indispensably necessary.

In The State agt. Woodside, 9th Iredell, Nash says that it was the practice to receive such testimony in the courts of North Carolina, but added:

It is a practice not to be encouraged, and in most cases has, we believe, been accompanied by a surrender on the part of the attorney of his brief in the case.

In Little agt. McKeon, 1st Sandford, of our own courts, Sandford, Justice, delivering the opinion of the Court, animadverted strongly upon "the degradation of the character of the bar, and the probable injury to the cause of truth and justice, * * * * * by means of attorneys and counselors testifying in the suits which they were conducting," and he said:

We think the evil will work its own cure. Attorneys as well as counselors of standing and character will never, except in extreme cases, present themselves before a jury as witnesses in their own causes, on litigated questions, and in such cases only because of some unforeseen necessity. Those gentlemen who habitually suffer themselves to be used as witnesses for their clients soon become marked both by their associates and by the courts, and forfeit in character more than ever will be compensated to them by success in such clients' controversies.

* * * * * * * * * * *

Moreover, testimony by an attorney, of such admissions made to him by the opposite party, are always regarded with extreme suspicion and distrust by both courts and juries.

The same learned judge, in the same case, referred approvingly to an article in the "Penn. Law Journal," sixth volume, page 405, entitled "Lawyers no witnesses in their own cases." I have read so much from this, Sir, that I omit quotations from this article in the "Penn. Journal," only a portion of which I intended to read, as it is very lengthy and exhaustive upon the subject, in the review both of authorities and the discussion of principle. And I beg leave, also, to refer your Honor to the case of Tell agt. Treadwell, to be found at 5th Wendell, 676. That is the judgment of the courts upon the propriety of such an exhibition as we have had from Mr. Tracy. But there is another element in that position which did not appear in the cases in which these learned judges expressed their opinions, and the judgment of the law upon it. Mr. Tracy was not simply the advocate of Mr. Beecher, and a witness on his behalf, but he had given a pledge under the circumstances to which I have referred, that he would occupy no such position. The circumstances are intensified and more deeply characterized by the circumstance that Mr. Tracy was appearing in opposition to that pledge, to the assurance under which he had received from Mr. Tilton his confidence. Now, remember, gentlemen, that Mr. Tracy testified upon the stand that he was still connected professionally with this cause, and with Mr. Beecher, that he had not thought it due to the delicacy of his position that he should retire and relieve himself from this double and suspicious character, and he has appeared in the subsequent stages of the case, following his evidence, actively in that character. What is the excuse given for it? Why, Mr. Tracy says, "Mr. Tilton, you changed your ground; you altered your complaint; and therefore I am relieved and discharged from my personal and professional obligation to you. You charged"—this, in substance, he says—"you charged to me that there was no offense on the part of Mr. Beecher except a base solicitation to your wife to impurity, and now you have changed that accusation to adultery." Suppose that to be true, did that justify Mr. Tracy in revealing and swearing to the transactions and declarations made by Mr. Moulton to him, under the influence of his pledge to secrecy? Mr. Tracy might have said, per-

haps, with entire propriety, "Mr. Tilton, you have changed your accusation against Mr. Beecher, I can no longer serve you; you must employ other counsel." But could he take a single step beyond that consistently with propriety and honorable obligation, and reveal to Mr. Beecher, or anybody else, the secrets extorted from Tilton by the relation and the pledge in which he stood, and which he voluntarily gave to him, and which Mr. Tilton refused to confide to him until he had given the pledge? Will any gentleman of right principle, of true spirit and manliness, justify that revelation? He may approve the action of Mr. Tracy in separating himself from a cause which he believed to be dishonest and unfair, if he did so believe; from a cause which was changing its aspect according to the necessities of circumstances; but will any gentleman of sound manly principle uphold a lawyer in revealing the secrets of the cause which he deserts, obtained under not an implied but an expressed and positive pledge of fidelity to the cause. But, gentlemen, is it true that Mr. Tilton did change his ground? I do not stop to refer to the evidence of either Tilton or Moulton, or Mr. Woodruff, except perhaps a word or two from the testimony of Mr. Woodruff upon that proposition. It is sufficient for me to say, and if questioned we will refer to the record, that these three witnesses all affirm that the charge made by Mr. Tilton was in express terms criminal intimacy, or adultery, in unmistakable language.

ANOTHER DISPUTE.

Mr. Shearman—We do question that, Mr. Beach.

Mr. Beach—In what particular?

Mr. Shearman—We deny that Mr. Tilton ever alleged so in the evidence, and we deny that Mr. Moulton has ever so alleged, except that Mr. Moulton says he told Mr. Beecher so; but Mr. Moulton has never taken the responsibility of swearing that he told Mr. Tracy so in direct terms. Mr. Tilton's evidence——

Mr. Morris—You need n't argue it.

Mr. Shearman—I am answering Mr. Beach.

Mr. Morris—No, you are not answering him; you are arguing.

Mr. Shearman—Mr. Tilton's evidence does not cover the point at all, either the direct or rebuttal.

Mr. Beach—I cannot refer to Tilton. Mr. Moulton swears—

I said to Mr. Beecher, "I told Mr. Tracy the truth of the matter. I told him the fact in the case as it was, that you had been guilty of sexual intercourse with Mrs. Elizabeth Tilton, and he said, in the presence of my partner, that if that was true it must be concealed at all hazards."

And then follows a general relation of the interview.

I also informed Mr. Beecher afterward, and said to him that we had a consultation at our house—at my house, in my study, between Gen. Tracy, Mr. Woodruff, and myself, and between Gen. Tracy, Mr. Woodruff, and Mr. Tilton and myself, and that at that interview I told Mr Tracy again the truth.

Mr. Shearman—Will you permit me to say a word?

Mr. Beach—What?

Mr. Shearman—Will you permit me to say a word?

Mr. Beach—Certainly.

Mr. Shearman—With Mr. Beach's permission I would call his attention to the fact that although Mr. Moulton on his original examination-in-chief was not permitted to testify what was the actual fact of the conversation between himself and Mr. Tracy, but was required to confine himself to the conversation between himself and Mr. Beecher, yet Mr. Tracy being called after Mr. Woodruff had been called, Mr. Woodruff testifying to what the conversation was, and Mr. Tracy contradicting that, Mr. Moulton and Mr. Tilton were both recalled and neither of them undertook to contradict Gen. Tracy upon that vital point, and neither Mr. Moulton nor Mr. Tilton has affirmatively sworn that Mr. Tilton on that occasion told Mr. Tracy that the charge was adultery.

Mr. Beach—Moulton and Tilton and Woodruff were not reëxamined upon those points, because your Honor said where there was irreconcilable conflict between the former evidence of these parties and that given by Mr. Tracy, or any other person, it was utterly unnecessary and inadmissible to recall those witnesses.

Mr. Shearman—One moment, with your permission. One word—Mr. Beach kindly permits me to say a word. The point of it is this, your Honor, that Mr. Moulton and Mr. Tilton had neither of them sworn on their direct original evidence-in-chief that the charge made to Mr. Tracy was adultery; therefore Mr. Tracy was not contradicting Mr. Moulton and Mr. Tilton, and when they were recalled they would have contradicted Mr. Tracy upon that new issue as to them, which they did not do.

Mr. Morris—Mr. Beecher contradicted Mr. Moulton.

Mr. Beach—I have read, Sir, the evidence of Mr. Moulton, and if that is not a clear affirmance of a communication to Mr. Tracy of the charge of adultery, why I am unable to understand its force and effect; and if by any sophistry or equivocation my learned friends can avoid the force of that proof, we will refer for a moment—no, I will not, gentlemen—to the evidence of Mr. Woodruff, because it is conceded, you remember, that he swore that before the communication between the three, at Moulton's house, in a private interview between Mr. Tracy and Mr. Woodruff, Mr. Woodruff then informed Mr. Tracy that the charge was adultery.

Mr. Shearman—That Mr. Woodruff did, but Mr. Woodruff does not swear that Mr. Tilton did; no one has sworn that.

Mr. Beach—Well, is it necessary, my friend, to repeat what you have said so emphatically several times? [Laughter.] Any reasonable interruption I am willing to submit to. But is this theory of professional conduct, and of a client's privilege, upon which the excuse of Mr. Tracy

is founded, commendable or admissible? If Mr. Tracy is employed by a man who is accused of manslaughter, and his client reveals to him all the circumstances of the transaction upon which the indictment rests, and it happens (as it has frequently happened) that that indictment is withdrawn, and a new one for homicide presented, would Mr. Tracy feel himself at liberty to testify against his client and reveal what had been communicated to him while he was defending him for the lesser offense? And so, if you reverse the proposition, and if a client (as very often happens to be the case) misrepresents the facts of his cause to his lawyer, they turn out to be different, if he has any consciousness of weakness and wrong, and conceals the truth of his case, and the lawyer discovers it, can he abandon his client's cause and testify to what his client told him while the relation of attorney and client exists?

Mr. Shearman—Well, Mr. Beach——

Mr. Beach—Well, in the name of heaven, talk until you get tired!

Mr. Shearman—Well, if your Honor please, it is a matter in which I am sure Mr. Beach will bear with me on account of the relations involved. I think my learned friend is entirely mistaken in assuming for a moment that the relation of attorney and client was even claimed to exist between Mr. Tilton and Mr. Tracy.

Mr. Beach—I did not assume it, and I have not discussed it upon that ground.

Mr. Shearman—I was going to say one thing more.

Mr. Beach—Well.

Mr. Shearman—That the decision of your Honor admitting the evidence of Mr. Woodruff—[confusion in the audience] I should like to know, your Honor, whether the gentlemen upon the other side are to be allowed to speak and your Honor is not to be allowed to hear me. The audience seem to think that they are the best judges of when you should hear the counsel and when not. I was going to say, your Honor, that you were asked to decide that the evidence of Mr. Woodruff was admissible upon the express ground that in this interview Mr. Tracy represented Mr. Beecher, and came there as Mr. Beecher's representative and attorney; and on that ground the evidence was admitted, and that alone.

Mr. Morris—Are you through, now?

Mr. Shearman—Therefore Mr. Tracy was, from the beginning, Mr. Beecher's representative and attorney, and not Mr. Tilton's.

Mr. Morris—Are you through now?

Mr. Shearman—I am through.

Mr. Beach—I have not argued, Sir—I think I have too much good sense to argue that this evidence shows any such relation as that of attorney and client between Mr. Tracy and Mr. Tilton. But, does Mr. Tracy place himself upon that narrow and fine distinction? Does the lawyer who comes into the presence of an adversary party and pledges to that party his word and honor that he will not be engaged in any future litigation between the contesting parties against the one with whom he consults—can he receive the communication of the secrets of that opposite party, and afterward disclose them, without a depth of personal disgrace and professional infamy against which the highest in the land could not stand, against an indignant and outraged profession? [Applause.]

Judge Neilson—Gentlemen, you must be quiet.

THE ARGUMENT AGAIN RESUMED.

Mr. Beach—That pledge was given. The principle, the sentiment which lies at the foundation of the privilege which shelters the client from the treachery of his counsel is involved in the actual and precise relation existing between Tracy and Tilton. That sentiment which makes a man a gentleman is involved in that relation. Mr. Tracy, or his advocates, may skulk behind the distinction that he was not technically an attorney when he, appealed to, upon the ground of professional relation and duty, assumed to place it and his obligation and his pledge upon that relation. Do you forget that Mr. Tilton said to him: "Why, I do not understand the etiquette of your profession; but I wish to know, if I make communications to you here and now, whether you can hereafter appear in antagonism to me." Do you forget the answer of Tracy: "No matter, Mr. Tilton, about the etiquette of our profession; but the communications you make to me will be sacred."

Mr. Tracy must meet this question upon its principle, unhidden by any technicalities. He has challenged the position and the discussion. My learned friends have done it; and it is a question which must be decided in the judgment of the profession and the community, or else the idea of privilege as between attorney and client is a legal mockery; it is a legal pitfall. And if the profession will countenance, under these circumstances, a treacherous revelation of facts thus obtained, the profession will become, and it ought to become, a by-word and a scorn. At the end of Ram on "Facts" is a collection of 50 resolutions in regard to professional deportment, taken from Hoffman's course of legal study—an authority upon the question of professional deportment that I think will scarcely be questioned by any. The eighth of those resolutions adopted by that distinguished gentleman is this:

If I have ever had any connection with a cause, I never will permit myself, when that connection is for any reason severed, to be engaged on the side of my former antagonist; nor shall any change in the formal aspect of the cause induce me to regard it as a ground of exception. It is a poor apology for being found on the opposite side that the present is but the ghost of the former case.

I will not pursue, gentlemen, this line of remark. I have said all that I think my duty to my cause requires, and I leave that subject with a regret that I was compelled to say anything. The subject will pass to the judg-

ment of others, and that judgment I have no doubt will be discreet and wise, and so emphatic that there will be little doubt hereafter in regard to the proprieties which we have been discussing.

MR. BEACH'S PERORATION.

My argument now, gentlemen, is finished. All these disagreeable topics have passed, and I am rejoiced that I am relieved, I hope forever, from them; but please suffer me a few words in conclusion. We have communed together a long time upon great themes, lifting us above the littleness of common controversy. They are associated with the highest interests of humanity. They affect the civilization of the age. Truth, morality, religion, divine and human law, all the great topics which stir the enthusiasm of our nature, have mingled with our deliberations. It is impossible that we should not feel something of their purifying inspiration. The selfish and petty struggles of ordinary life often trammel and debase our thought, chaining our souls to mercenary calculation and sordid desire.

If anything can exalt us to a higher spirituality, to a nobler conception of truth and duty, it is a scene like this, so full of dignified interest and weighty responsibility. We must rise to this great occasion or we belittle ourselves and dishonor our own nature. Most sensibly have I felt my inability worthily to meet the duty of my position, and struggle with the perplexities of this wide debate, in the face of adversaries so cunning of defense, so powerful and skilled as my eminent friends. But the race is not always to the swift nor the battle to the strong. The sling of the shepherd very often vanquishes the might of the giant. Weakness is strong in the energy of truth. I have no faith in my own skill, but I have abiding hope in the supreme justice which governs the world, marking the sparrow as it falls. On the great seal of your city is engraved the noble motto, "Right makes might," and on any day of public celebration it shines upon the flag which is flung out from the dome of your City Hall. It is the sentiment which encourages and strengthens weakness in its contests with arrogant strength. It is the sentiment which has sustained my client in all the difficulties and discouragements of this contest, and it will sustain and eventually, I trust, redeem him, because it bears the promise of Him whose words shall never fail. Wearied and worn with this trial, gentlemen, I shall part from you with respectful regret. Our long association, bringing us into daily intimacy, impresses me with kindly sympathies and interest for each of you. We have stood together before this community animated by a common object, seeking after the right in honest sincerity. The distempered plea of turbulent passions has been against the altar at which we serve. The boisterous interests and sympathies of an interested people have tried the firm foundation of this temple, but the spirit of justice sees nothing of the tumult, hears nothing of the uproar. Calm and confident, she leans trustingly upon a juror's oath. Your consciences uphold the shaking temple and the tottering altar. If they weaken and fail, if *the* strong pillars of honesty and truth give way, temple and altar and God sink to a common ruin. The struggle this day is between the law and a great character and a great church. If the latter triumph, and the law is trodden down, woe unto him who calls evil good, and good evil.

May it please your Honor, it needs not that I should express the common sentiment of my associates and myself, as we recall the intelligent dignity and fearless learning with which you have guided us through the tangled mazes of this trial. You can receive no nobler tribute than that offered by our adversaries. Contesting every position with animated zeal, and sprinkling this record with objections, they acknowledge with inimitable candor the entire accuracy of your numerous decisions. Your Honor, therefore, has the gratification to know that you have worked no injustice to this defendant. Sir, I indulge the hope that the friendly regard with which you have honored me, like my own warm respect for yourself, will be deepened by the remembrance of those toilsome but pleasant days.

I cannot part, Sir, with this occasion without acknowledging my obligations to my noble and tried associates. If any merit has attended my efforts it is due to their sagacity and wise promptings. Posting me in the front of this battle, they have yet stood its true leaders and champions. It has been a regret and a loss that unavoidable circumstances have withdrawn my very learned and accomplished friend, Mr. Pryor, so much from our side. If he has not struck so many blows in the field, he has nevertheless been the wisdom of our cabinet. Deeply are we all indebted, and especially myself, to his ready and large learning and judicious counsel.

You will credit me, Sir, when I again declare that the duty I have performed has been most unwelcome and painful. I have not spoken aught in malice. I leave this case without the slightest asperity of feeling toward any, filled with unaffected admiration for the transcendent qualities and generous courtesies of my distinguished antagonists. No man venerates more profoundly than myself the magnificent genius of this defendant. His large contributions to the literature of the times excite the sentiment of which Macaulay spoke in his essay on the Life of Bacon. Rich as he is in mental endowments, prodigal as his labors have been, they can shelter no offense against the law.

Genius as lofty, learning more rare and profound, could not save Bacon. He sinned and fell. Upon his memory history has written the epitaph, "The greatest and the meanest of mankind." Toward great men in

disgrace, like those who fall, Whittier, New-England's gifted poet, writes in his poem entitled "Ichabod:"

So fallen! so lost! the light withdrawn
Which once he wore!
The glory from his gray hairs gone
Forevermore!

Revile him not—the Tempter hath
A snare for all,
And pitying tears, not scorn and wrath,
Befit his fall!

O, dumb be passion's stormy rage,
When he who might
Have lifted up and led his age
Falls back in night.

Scorn! would the angels laugh to mark
A bright soul driven,
Fiend-goaded, down the endless dark,
From hope and heaven!

Let not the land once proud of him
Insult him now,
Nor brand with deeper shame his dim,
Dishonored brow.

But let its humbled sons instead,
From sea to lake,
A long lament, as for the dead,
In sadness make.

Of all we loved and honored, naught
Save power remains—
A fallen angel's pride of thought,
Still strong in chains.

All else is gone; from those great eyes
The soul has fled:
When faith is lost, when honor dies,
The man is dead!

Then, pay the reverence of old days
To his dead fame;
Walk backward, with averted gaze,
And hide the shame!

Gentlemen, I commit this case to you in the sublime language of the great orator who speaks to you from his grave at Marshfield:

With conscience satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from but the consciousness of duty disregarded. A sense of duty pursues us ever. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning and dwell in the uttermost parts of the earth, duty performed or duty violated is still with us for our happiness or misery, and if we say darkness shall cover us, in darkness as in the light our obligations are yet with us. We cannot escape their power nor fly from their presence. They are with us in this life, will be with us at its close, and in that sense inconceivable solemnity which lies yet further onward we shall still find ourselves surrounded by the consciousness of duty to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it. [Applause.]

REQUESTS TO CHARGE BY THE DEFENSE.

Mr. Abbott—If your Honor please, as intimated, we desire to present some requests to charge on behalf of the defendant. Perhaps our learned friends may have some which they desire to submit, and, if that be the case, after they have had an opportunity to do so, we should like a like opportunity.

Mr. Beach—We have no requests to make.

Judge Neilson—I will hear you now, Mr. Abbott, if it suits you.

Mr. Abbott—Before proceeding, I think my learned friend will bear with me in saying, in regard to the authorities which he has quoted in reference to the propriety of counsel testifying in their own cause, that the authorities which he has read recognize that wherever (as is the case in most of the States of the Union) an attorney or counselor is competent as witness in the case in which he represents a party, there may be a necessity which makes it an imperative duty; and I refer your Honor to Robinson agt. Dauchy in the 3d Bar, as well as the case of Little agt. McKeon, which our friends mentioned as settling the question that in this State the counsel is competent, and I have only to add that, in our judgment, the testimony given in behalf of the plaintiff and the challenge interposed during the opening, made a clear case of that necessity which the law regards as imposing the duty upon the counsel.

The first proposition which I wish to submit to your Honor is that:

I. Irrespective of the question whether defendant ever committed adultery with plaintiff's wife, and without the jury's passing upon that disputed question of fact, defendant is entitled to their verdict upon each of the following grounds:

Mr. Morris—I understood, of course, if your Honor please, that the requests would be handed to your Honor and that your Honor would pass upon them without argument.

Judge Neilson—There is to be no argument. I said to Mr. Abbott I would hear him now. It wont take long.

Mr. Abbott:

1. There is no evidence in support of plaintiff's allegation that by reason of any such adultery the plaintiff ever lost the comfort, society, aid or assistance of his wife.

2. He continued to cohabit with his wife for years after the time of the alleged communication to him of the charge.

3. After such alleged communication, upon consideration of satisfactory explanations as to the alleged injury, and of protection of his wife, his children, and himself from a public contestation in respect of the same, the plaintiff and defendant concurred in the purpose of reconciliation and in the surrender of further controversy, and such settlement was an accord and satisfaction and compromise between the parties, and the plaintiff is thereby estopped from maintaining this action in repudiation of such settlement.

The second proposition to which I shall call your Honor's attention is that:

II. Upon the whole evidence upon the principal issues in the cause there is not sufficient proof to sustain a verdict for the plaintiff, and it is the duty of the jury to render a verdict for the defendant.

If your Honor, in the exercise of the judgment and discretion which by the law is vested in you, should see fit to decline these two requests, we shall scarcely regret it. At the same time, we unanimously feel that the law would entitle us and does entitle us to these directions, and we desire distinctly to make the requests.

The next proposition which we would submit is that:

III. The defendant is not required to prove his innocence; he is to be presumed innocent until his guilt is affirmatively established by a clear preponderence of evidence.

On this point I would refer your Honor to the case of Bentley agt. Bentley, 7 Cow., 701, which holds that:

This principle is equally applicable in civil and criminal cases; and it makes no difference that the fact alleged is a matter peculiarly within defendant's knowledge.

Even a negative allegation, if it involves a charge of *tort*, or of criminal conduct or neglect, must be clearly proved by the plaintiff. [People ex rel. Smith agt. Pease, 27 N. Y., 45; aff'g 30 Barb., 588.]

And the principle is peculiarly applicable to a charge of adultery. The defendant "is entitled to rest on the defect of proof, and is not bound to disprove the case." [King agt. King, 4 Scotch Sess. Cas., 2d Series, 582. Opin. by Ld. Moncrieff.]

THE READING OF AUTHORITIES FOR REQUESTS OBJECTED TO.

Mr. Morris—One moment. This is entirely out of order. I understand your Honor has permitted counsel to have the right to submit their simple requests, not to argue and cite your Honor to authorities and submit an argument. That is certainly out of order. It is not proper. If your Honor permits this, I submit, instead of handing up, as was agreed upon, their propositions in open court, in this way, in the presence of the jury, we submit that they have no right to make an argument and cite authorities in respect to the propositions they submit to the Court.

Mr. Abbott—I would not be out of order.

Judge Neilson—Mr. Morris, take the case that we had in respect to the steamboat case, where Mr. Beach was counsel as opposed to you, and where on Mr. Beach's part 64 requests were handed up. After my charge I had occasion to read them one by one to the jury; it amounted to the same thing as this. Thus far I am prepared to answer the requests, and want to do so. I think it will come to the same conclusion.

Mr. Morris—Yes, Sir, but in that case your Honor will recollect where there were 36 requests handed up there was no argument presented in the presence of the jury, nor were citations from authorities made. The counsel is proceeding now to make a legal argument.

Judge Neilson—I hardly think he intends to argue these cited cases.

Mr. Morris—I submit this is not permissible in submitting the requests to your Honor to charge.

Judge Neilson—It will do no harm. I am familiar with the cases. We will soon be through with it. I think he can go on.

Mr. Abbott—I have simply quoted the language of one or two cases in support of the propositions. I submit, that your Honor may see the significance of the authorities:

The defendant is entitled to rest on the defect of proof, and is not bound to disprove the case. [King agt. King, 4 Scotch Sess., Cas., 2d Series, 582. Opin. by Ld. Moncrieff.] And even when the defendant in an action of *crim. con.* does not testify in his own behalf, the omission does not raise any inference against him. [Lowe agt. Massey, 62 Illinois, Freem. 47.]

As stated by Merrick, J., in Dalton agt. Dalton (Supreme Court of Massachusetts, 1857): It is not necessary that you should affirm the innocence of the respondent in order to entitle her to a verdict. It is not necessary that you should find affirmatively, upon the evidence that has been submitted to you, that she is not guilty, that she did not commit the act, so that you can affirm it as a truth proved; it is not necessary to go to that extent to entitle her to a verdict; but if, upon the whole evidence in the case, the state of your minds is this—a good deal of evidence to show that she might have been guilty, a good deal of probability that she might have been guilty, but an uncertainty whether she was guilty or not—then the libel is not proved; and though you cannot say, on the contrary, that you are fully satisfied and clear in your own minds that she is innocent, she is entitled to your verdict; that is, if the libellant has not proved that which it is essential for him to prove to entitle him to your verdict, then you must find for the respondent."

Mr. Beach—If your Honor please, I must protest against this reading of authorities. If your Honor takes a citation of authorities, well and good; I have no objection to it in connection with the requests to charge. But that now, without any notice to us or reference of authorities to us, they should be permitted to read those authorities, and through them present an argument to the Court and the jury, it seems to me a perversion of the right of making requests to charge in open court.

Judge Neilson—Mr. Abbott, won't it answer your purpose to state your requests?

Mr. Evarts—If your Honor please, I think my learned friend who has just addressed you has overlooked the fact—as well as the ordinary occurrence at the close of the summing up—overlooked the fact that in his final argument (and very properly and as part of it), he included the presentation of authorities which were new to us then, and are now for the first time to be considered by us, and we present authorities upon the points concerning which he has presented them. We would limit ourselves to that, not wishing to impose on the case in point of argument.

THE SUBMISSION OF REQUESTS RESUMED.

Mr. Abbott—The fourth proposition is:

The plaintiff cannot recover unless the jury are satisfied, by affirmative evidence, that defendant actually had carnal connection with plaintiff's wife.

NOTE.—Winsmore agt. Greenbank, Willes, 577, 581.

The language of the case is:

The Court must be satisfied that there has been a sur-

render not only of the mind, but of the person. (Hamerton agt. Hamerton, 2 Hagg. Ecc., 8; Robinson agt. Robinson, 1 Swabey & Tr., 362; Davidson agt. Davidson, 1 Deane, Eng. Ecc., 132; Hunt agt. Hunt, 1 Id., 121, 129; Simmons agt. Simmons, 1 Robertson, Eng. Ecc., 566; S. C., more fully reported 5 Notes of Cas. 324, affirmed in 6 Notes of Cas. 578; Caton agt. Caton, 7 Notes of Cas., 16; and see Wilson agt. Wilson, 1 Wright, Ch. (Ohio) 128.

Mr. Beach—That is a citation of a number of authorities to a proposition which never has been discussed in this case, to which I certainly submitted no authorities.

Judge Neilson—Very well.

Mr. Abbott—"V. The jury must find——"

Mr. Beach—I insist this right shall be strictly and properly pursued.

Judge Neilson—Very well.

Mr. Abbott—[Reading]:

V. The jury must find for the defendant unless convinced, by the proofs, of the actual adultery, beyond all reasonable doubt.

NOTE.—In Berckmans agt. Berckmans (Court of Error and Appeals, 1864, opinion by Van Dyke, J., 17 N. J. Eq. (2 C. E. Green), 453; affirming, 16 id., 122), the rule was laid down as follows: "The complainant is under the necessity, not only of placing a decided preponderance of testimony in favor of the charge, but of proving it to the satisfaction of the Court, beyond a reasonable doubt. I do not mean to say that it must be done by such an amount of overwhelming and unmistakable evidence as to render it impossible to be otherwise, but the evidence must be such as to satisfy the human mind, and leave the careful and guarded judgment of the Court free from any conscientious and perplexing doubts as to whether the charge be proved or not."

If after a careful examination of all the competent testimony such doubts remain immovable, it is clearly our duty to give the defendant the benefit of such doubt.

Followed in Freeman agt. Freeman, 31 Wisc. 235.

In both these cases the decree or verdict was set aside for violation of this rule.

To the same effect, Anonymous, 17 Abb. Pr., 48; and see Green agt. Green, 26 Mich. 437.

Dillon agt. Dillon, 1. Notes of Ecc. and Mar. Cases, 415, 442. (Consistory Ct. 1842, Dr. Lushington.) Suit against wife for divorce by r ason of adultery. Held, that this is as concerns the wife, not a civil, but *in effect a criminal proceeding;* if there be any doubt, she is entitled to the benefit of it. Even if the evidence in support of the charge preponderates, yet if the Court cannot say that the proof is free from reasonable doubt the charge is not sustained.

Stone agt. Stone, 3 Notes of Ecc. and Mar. Cases, 278, 304. (Consistory, Coun., 1844, Dr. Lushington.) Suit for divorce for adultery. The Court say: "I must remember that I am considering not whether adultery did take place, for the absolute truth cannot be known to a human judge, but whether the evidence with ordinary certainty establishes the fact. I must not give way to suspicion or surmise; I must be governed by the legitimate results of legal evidence."

Dr. Lushington in Faussett agt. Faussett, 7 Notes of Cas. 94, says the question of adultery is a question of guilty or not guilty of a crime.

An action of crim. con. is properly subject to the rules as to strictness of proof which are applied on an indictment for crime. Morris vs. Miller, 4 Burr. 2,057. (Ld. Mansfield, 1,767). S. P. in a civil action for an assault with attempt to ravish. Crossman vs. Bradley, 53 Barb. 125.

Judge Neilson—I would rather you would give me the points without the authorities. Consider them cited.

Mr. Abbott—If your Honor please, I conceive that it is a matter of right on the behalf of the defendant, within such limit of brevity as your Honor's discretion may impose, and which I shall not transcend, to give you, with the propositions which we desire to have your Honor consider, the authorities upon which they are sustained.

Mr. Beach—I submit to your Honor it is unprecedented to have a discussion of this character at the close of the argument. While I concede the propriety and the right of counsel to make requests in open court to charge and to cite your Honor to authorities if he please, I do insist that that shall not be made the cover of a reargument of the case on the part of the defendant.

Mr. Evarts—That we agree to.

Mr. Abbott—That we agree to.

Mr. Beach—That they don't agree to at all, in practice.

Mr. Evarts—Yes, we do.

Mr. Beach—That is a matter about which we differ, that is all. I think they do not, and I think your Honor should protect us in this right.

Mr. Abbott [Reading]:

VI. The verdict must be for the defendant, unless the result of the whole evidence on both sides be such as to produce in the deliberate conclusion of the jury a legal certainty of guilt.

NOTE.—In Caton agt. Caton, 7 Notes of Cas., 16, 21, Dr. Lushington says: "I must have adequate legal proof * * * Many cases have occurred, and must occur, in which moral opinion may be one way, but judicial decision another."

In Clare agt. Clare, 19 N. J. Eq. (4 C. E. Green) 37, Chancellor Zabriskie says that proof of adultery must not only be clear and direct, but it must be entitled to, and command, belief.

Cooper agt. Cooper, 10 La. (O. S.) 249 (Supreme Ct.. opin. by Bullard, J.: Held, that in an action for divorce on the ground of adultery, the fact of adultery must be fully proved. It will not be sufficient that the circumstances are extremely suspicious.

VII. The charge of adultery is one that not merely involves a pecuniary claim against the defendant, but criminates the plaintiff's wife, and tends to disgrace her children, and threatens the marriage relation itself; and it is proper for the jury to consider these ordinary and natural consequences of a conviction, in scrutinizing the evidence, and exacting adequate proof to establish an accusation involving such grave, permanent and remediless consequences to others.

VIII. If, on weighing the evidence on both sides, there remains in the mind of the jury doubt or perplexity as to the actual adultery, they must find for the defendant.

NOTE.—Berckmans agt. Berckmans, 17 N. J. Eq. (2 C. E. Green), 453, aff'g 16 id., 122; Freeman agt. Freeman, 31 Wisc., 235, above cited.

IX. The higher the crime, or the graver the wrong sought to be established, the more stringently the rules of evidence should be enforced; and a charge of criminal conversation is not to be fixed upon a person but by the highest evidence.

NOTE.—Blackburn agt. Beall, 21 Md., 203. Purcell agt. Purcell, 4 Henn. & M., 511.

X. If there were any evidence in the case pointing to adultery at any specific time and place, the defendant might have some means of supporting, by other witnesses, his own testimony to his innocence; but upon the evidence adduced by the plaintiff, the defendant is the only witness who has any actual knowledge of what the relations between himself and Mrs. Tilton were; and is the only person whom the law permits to speak as a witness as to those relations.

Mr. Beach—Now, I submit, your Honor, that that is more argument.

Judge Neilson—Certainly.

Mr. Abbott—That is a request.

Mr. Beach—And I protest against it.

Mr. Evarts—It is a request to charge.

Mr. Beach—It is not a request.

Mr. Evarts—We will see.

Mr. Beach—Well, Sir, I submit that the counsel has no right under color of a request, to submit an argument of this character.

Judge Neilson—That is an argumentative proposition, undoubtedly.

Mr. Abbott—The next proposition is:

XI. Circumstantial evidence to establish guilt must be such as to exclude to a moral certainty every hypothesis but that of guilt; in other words, the facts proved, must not only all be consistent with and point to guilt, but they must be *inconsistent with innocence.*

NOTE.—In People agt. Bennett, 49 N. Y., 137, 144, the Court in an opinion by Church, Ch. J., say: "In determining a question of fact from circumstantial evidence, there are two general rules to be observed.

Mr. Beach—That, Sir, is in a criminal case.

Mr. Evarts—You have a right to make your request,

Mr. Beach—I have a right to make a remark, too.

Mr. Evarts—Oh, no.

Mr Abbott—[reading]:

1. The hypothesis of delinquency or guilt should flow naturally from the facts proved, and be consistent with them all.
2. The evidence must be such as to exclude to a moral certainty, every hypothesis but that of guilt of the offense imputed; or, in other words, the facts proved must *all* be consistent with, and point to, guilt, not only, but they must be inconsistent with innocence.

This rule is applicable to the charge of adultery. (Charge of Merrick, J., in Dalton agt. Dalton, above cited.)

XIII. The law does not dispense with direct proof of the sexual act, and accept circumstantial evidence in lieu thereof, unless there is actual proof of conduct of the parties deviating from open and honorable adherence to the proprieties of chaste society, and showing a lustful disposition and purpose on their part, and the opportunity, by their resort to seclusion and security.

Mr. Morris—They are arguing, and I submit that your Honor has ruled that that is not permitted.

Judge Neilson—[To Mr. Abbott.] Have you a copy of those requests that I could take?

Mr. Abbott—Yes, Sir.

Judge Neilson—Have you an extra copy, I mean?

Mr. Abbott—Yes, Sir.

Mr. Beach—I submit, Sir, that you should require that the copy should be handed up and submitted to your Honor.

Judge Neilson—I wish to answer each one in turn. Have you got a copy, gentlemen, that you can hand me now, that I may look at the requests as you read?

Mr. Evarts—We will hand one to your Honor as soon as we can get it ready.

Judge Neilson—I would like to answer each one as we go along, and not have to go over the whole ground again.

Mr. Abbott [reading]:

NOTE.—In cases of this class, the law, in calling for proof of familiarities, requires such familiarities as disclose a sensual and lustful purpose; and, in calling for proof of opportunity, it requires such seclusion and security as indicate design to indulge the lustful purpose.

In Stone agt. Stone, 3 Notes of Ecc. & Mar. Cas., 278, 304 (Consistory Ct., 1844, Dr. Lushington, suit for divorce for adultery), the Court says: "I have not lost sight of the consideration that in the conduct and conversation of Mr. Stone there are matters deposed to which tend to throw suspicion upon him; but more is necessary than I find here, even with that cause for suspicion. There is an entire absence of that which would have converted all other doubtful circumstances into proof of the fact; there is not one act of indecent familiarity clearly and distinctly proved. Had a criminal intercourse subsisted between the parties for this long period of time, I remain convinced that there must, in all human probability, have been more direct evidence of it, and I must, under these circumstances, pronounce that this charge of adultery is not proved."

In this same case, where the meetings relied upon as opportunity, viz.—the alleged paramour coming into the ante-room of the bed-room of the person accused—held, that as they might have occurred for purposes consistent with perfect innocence, the Court could not infer guilt.

The following cases fairly illustrate these rules:

Great intimacy, and opportunity without proof of *indecent* familiarities—held not proof. (Fausett agt. Faussett, 7 Notes of Ecc. & Mar. Cas., 88.)

Clandestinity and opportunity, without indecent familiarity—not proof. (Stone agt. Stone, 3 id. 278, 304.)

Kissing, the possession of letters, and opportunity—not proof. (Hamerton agt. Hamerton, 2 Hagg., Ecc., 8.)

Intimacy, indecorous freedom, without indecent familiarities, but with opportunity—not proof. (Caton agt. Caton, 7 Notes of Ecc. & Mar. Cas., 16.)

Willing receipt of letters of solicitation; suspicious intimacy, and opportunity—not proof. Hamerton agt. Hamerton (above cited.)

Evidence of criminal disposition, and attempt to gain opportunity—not proof. Caton agt. Caton (above cited).

Opportunity alone not proof. Hammerton agt. Hammerton (above cited); Simmons agt. Simmons, 1 Robt. Ecc., 566, s. c. more fully reported in 5 Notes of Cas., 324.

Opportunity unconnected with proof of design—not proof. Mayer agt. Mayer, 21 N. J. Eq. (6 C. E. Green), 246.

Indecent familiarities; clandestine interviews; love-letters expressing desire; followed by opportunity—held proof. Grant agt. Grant, 2 Curt. Ecc. Ct., 16.

Indecent familiarities; the receipt and keeping of love-letters of a gross kind; and opportunity—consisting of remaining at night at the same inn—held proof. Bramwell agt. Bramwell, 3 Hagg., Ecc., 618.

XIV. The circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion of actual guilt. For it is not to lead a harsh and intemperate judgment, moving upon appearances that are equally capable of two interpretations; neither is it to be a matter of artificial reasoning, judging upon such things differently from what would strike the careful and cautious consideration of a discreet man.

Ferguson agt. Ferguson, 3 Sandf. 307; Loveden agt. Loveden, 2 Hagg. Consist., 1; Thayer agt. Thayer, 101 Mass., 111.

Mr. Beach—The very authority that I read to the Court and jury.

[The counsel for the defense here handed a printed copy of requests to Judge Neilson.]

Judge Neilson [to Mr. Abbott]—What number are you at?

Mr. Shearman—Request No. 15, on page 16.

Mr. Abbott—Your Honor will see that these are not in strict order, as I have made a selection, and do not propose to submit them all. [Reading:]

XV. The proximate acts relied on must lead, by a fair inference, to a conclusion so far inevitable as that the supposition of innocence cannot by any just course of reasoning be reconciled with it.

NOTE.—Anonymous, 17 Abb. Pr., 48, 53, and cases cited.

Circumstances susceptible of a reasonable interpretation consistent with innocence, and which do not lead to guilt by a fair inference as a necessary conclusion, are insufficient to justify the inference that adultery was committed. Moser agt. Moser (29 Ala., 313); Inskeep agt. Inskeep 5 Clarke (Iowa); Ferguson agt. Ferguson (3 Sandf. 307).

XVI. Mere proof of opportunity to commit adultery is no evidence whatever of guilt; there must be coupled with it evidence of circumstances at the same time, which cannot reasonably be explained except by criminal disposition and design.

NOTE.—Mayer agt. Mayer, 21 N. J. Eq. (6 C. E. Green) 246 (cases in Chancery, 1870, opinion by Zabriskie, Chan.) Where there was proof that the affections of the defendant (the wife) were estranged from her husband during the last part of the time they lived together, and that at the same time she was on good and intimate terms with the alleged paramour, but only in a way in which they might be so in their relative situations without criminality, and there were no doubt occasions when they could have committed adultery—held, that it is not sufficient to convict parties who may be supposed willing to commit adultery, to prove that they were in a position that it was possible to commit it. It must be shown that they were together under suspicious circumstances, which cannot be easily accounted for unless they had that design, or which could not well be explained without it. Bill dismissed.

See also Stone agt. Stone, cited above. 3 Notes of Ecc. & Mo. Cas., 278.

XVIII. When, in addition to the open relation of intimate friendship, there is superadded the pastoral rela-

tion, no intendment against the chastity or propriety of that intercourse can be drawn, except upon proof of actual lustful deviations from the intercourse of society appropriate to such relations.

NOTE.—Visits by a clergyman at suitable times and conducted with the decency to be expected, especially of one recommended to her by her husband, may not, however private, afford any ground to infer illicit intercourse, even in the case of a wife living alone with a servant in the absence of her husband. (King agt. King, 4 Scotch Sess. Cas., 2d series, 583.)

Where the parties sustain the relation of clergyman and parishioner, a carnal intercourse will be less readily inferred. (2 Bishop, Marr & D., 631.)

XXI. No charge or confession on the part of the plaintiff's wife is evidence against the defendant.

NOTE.—Baker agt. Morley, Buller N. P., 28. McVey agt. Blair, 17 Ind., 590. Montgomery agt. Montgomery, 3 Barber Ch., 133, Jinkings agt. Jinkings, L. R., 1 Pr. & D., 330; s. c., 36 Law Jour., Mat. Cas., 48. Robinson agt. Robinson, 1 Swabey & Tr., 562.

XXIV. None of the letters and writings of Mrs. Tilton put in evidence, upon their face, as matter of law, import a confession of adultery or sexual indelicacy, or furnish any proof of either by themselves.

XXX. Where a party has destroyed a paper material to his case and the contents of the paper are disputed, the presumption arises that, if it had been produced, it would have been against his interest, or in some essential particular unfavorable to his representation of its contents.

Count Joannes agt. Bennett, 5 Allen (Mass.), 169. Dalnot agt. Cotesworth, 1 P. Williams, 731.

XXXII. If the jury believe that the "True Story," as it is called, substantially as put in evidence, is the work of this plaintiff, they must find a verdict for the defendant.

NOTE.—In the absence of full and satisfactory explanation, the plaintiff's written statement is conclusive against him. Boyd agt. Colt, 20 How. Pr., 384. No explanation of this True Story has been given by the plaintiff, although he has been on the stand since it was put in evidence.

[At this point an attendant brought in a pile of printed sheets and laid them down beside Mr. Abbott.] Mr. Morris—I suggest to your Honor that we had better adjourn and fix a day. It is evident from the volume that the counsel has here that it will take at least a day to present his requests.

Mr. Evarts—What is the proposition?

Mr. Abbott—To adjourn?

Mr. Morris—I think it would facilitate the court if your Honor should adjourn and look over the requests in the mean time.

Mr. Abbott—I am near the end, your Honor, but I will submit to your Honor's wish in the matter.

Mr. Morris—I was judging from the pile of manuscript that the counsel has by him.

Mr. Beach—If we can finish within reasonable time I think it would be desirable to do so.

Mr. Evarts—Certainly, unless it would be inconvenient to the jury.

Mr. Morris—If he has that pile to go through it will take some time.

Mr. Beach—I take his statement that he is nearly at the end.

Mr. Abbott [reading]:

XXXIII. The letters of Mrs. Tilton to the defendant, which have been put in evidence, do not as matter of law upon their face bear any indecent or illicit signification; and the fact that defendant, instead of destroying or secreting these letters of Mrs. Tilton, voluntarily disclosed them, and handed them over to Mr. Moulton, is a cogent confirmation of the defendant's testimony that he did not understand them in any indecent or illicit sense.

Mr. Morris—Is that a proposition of law?

Mr. Abbott [continuing]:

NOTE.—Caton agt. Caton, 7 Notes of Case, 16 (Consistory Ct., 1849, Dr. Lushington). The fact that the wife and the alleged paramour lent their aid to the husband in getting possession from the Post-office of a letter which it had been discovered she had written to the paramour—Held, a circumstance rather in the wife's favor on the construction of the letter; for, if it had contained, according to her or his apprehension, an admission of adultery, they would not so readily have consented to it being given up.

XXXIV. No letters or writings of any other person than the defendant, although communicated to him, are any evidence whatever against him, except of the fact that their contents were brought to his notice.

Judge Neilson—That has been ruled several times during the progress of the case.

XXXV. The letters and oral statements that have been adduced, as in the nature of confessions, are to be considered in their entirety, and as together covering a long period of years; and the jury are to consider whether it is credible that the defendant could have made such oral statements of guilt as are attributed to him and denied by him, and whether it is credible that such letters could have been written by him with reference to guilt of adultery.

NOTE.—Testimony of witnesses to confessions that, if real, would be gross and monstrous, may be discredited on that ground alone. (Lyon agt. Lyon, 62 Barb., 138.)

XXXVI. The expressions of compunction and remorse in the defendant's writings and alleged conversations belong to the class of merely moral evidence, and neither tend to support, nor are capable of supporting, any legal certainty as to the fact, nature or degree of imputed culpability.

XXXVII. Testimony of witnesses that a party charged in conversation admitted his guilt of adultery is the weakest and most dangerous evidence that is received by the law.

NOTE.—Greenleaf on Evid., by Redf., 229, Sec. 200, approved in Dreher agt. Town of Fitchburg, 22 Wisc., 675; Malin agt. Malin, 1 Wend., 625, 652; Law agt. Merrills, 6 Wend., 268, rev'g 9 Cow., 65; Earle agt. Picken, 5 Carr. & P. 542, n; Meyers agt. Baker, Hardin, 544; Stone agt. Ramsey, 4 Monroe (Ky.), 237; Cain agt. State, 18 Tex., 387; Horner agt. Speed, 2 Patt. & H. 616.

XXXVIII. The testimony of witnesses (even if fully credited) that the defendant in conversation admitted that he had committed adultery, being met by his sworn denial upon the trial, is not sufficient proof of his guilt, unless the alleged confessions are corroborated by other satisfactory and consistent testimony.

NOTE.—It is a settled rule in this State that while the confessions of the party are admissible on a charge of adultery, if supported by other proof; yet unless corroborated by other evidence and circumstances, they are not sufficient grounds for a decree. So clear a circumstance as defendant's having been seen once or twice in a house of ill-fame (not, however, staying long, nor being seen alone with any woman, &c.), was held too slight to serve as corroboration, even where there was evidence of two distinct confessions. Betts agt. Betts, 1 Johns, Ch., 197 (1814, Kent, Chan.), approved in Sawyer agt. Sawyer, Walk. Ch., 52. To the same effect Baxter agt. Baxter, 1 Mass., 346.

To the same effect is a dictum in Corbin agt. Jackson, 14 Wend., 621.

The following cases substantiate the rule that, to prove adultery, a confession, not connected with other proof, is not even competent, and cannot be admitted.

Doe agt. Roe, 1 Johns. Cas., 25 (Supreme Ct., 1799, opinion by Radcliff, J., Kent and Benson, J. J., concurring; and the other judges holding that, even with corroboration, the confession was not admissible).

Searle agt. Price, 2 Hagg. Consist., 189; Sheffield agt. Sheffield, 3 Tex., 79. Evans agt. Evans, 41 Cal., 103, holds the confessions competent, independent of corroboration, but not sufficient.

It is the settled law in this State that a confession alone, made, not in open court, nor on examination before a magistrate, but to an individual, and uncorroborated by circumstances, will not justify a conviction. There must be some in-

dependent evidence that the crime was committed, though, when that is shown, a confession out of court may be enough to connect the prisoner with it. People agt. Hennessy, 15 Wend., 174 (Supreme Ct., 1836, opin. by Savage, C. J.); People agt. Badgley, 16 Id., 53 (Supreme Ct., 1836, opin. by Nelson, C. J.)

The dictum in People agt. Bennett, 37 N. Y., 117, 134; S. C., 4 Abb. Pr., N. S., 89, is not sanctioned by other authorities in this State.

The rule in criminal cases is to be applied in an action of crim. con. Morris agt. Miller, 4 Burr., 2,057.

[Unnumbered.] The corroborating evidence which the law requires in aid of proof of confessions of adultery is evidence directly tending to prove the alleged adultery.

NOTE.—Lyon agt. Lyon, 62 Barb., 138.

I will cite also, as authorities upon that proposition, Winscomb agt. Winscomb and Billings agt. Billings, the case cited by our learned friends, where the corroboration was that the accused had four or five children by another woman than his wife.

Mr. Morris [ironically]—I take it your Honor will examine all these authorities this evening.

Judge Neilson—All those are divorce cases. I am perfectly familiar with them, and the principle upon which they are read. They are all divorce cases, every one of them.

Mr. Morris—He might as well attach the Law Library to his points.

Mr. Evarts—He won't argue it.

Mr. Abbott—The next proposition is:

XXXIX. Where a person is charged with immoral conduct, under such circumstances that he has no legal direct evidence of his innocence other than his own oath, the fact that he endeavored to prevent publicity or to avoid public controversy is no evidence of guilt.

XL. In considering whether the testimony of the alleged verbal admissions is corroborated, the jury must look at the whole course of conduct of the plaintiff and his witnesses, in their intercourse with the defendant since the charge was first made, and consider whether it is possible or probable that this conduct and social intercourse could have taken place, if the defendant was charged or believed by them to be an adulterer.

NOTE.—There is "a practical inconsistency" between the testimony of a husband to the paramour's guilt, and his continued cohabitation with his wife, which tends to throw discredit on his testimony. State agt. Marvin, 35 N. H. 22. To the same effect is Harris agt. Rupel, 14 Ind., 209. So the testimony of a mutual friend to confessions is discredited by his admission of social intercourse with the alleged guilty party. Geils agt. Geils, 6 Notes of Ecc. & Mar. Cas., 97, 161.

Mr. Morris—You didn't cite the authorities on the last point.

Mr. Abbott—No. The next proposition is:

XLI. The plaintiff's written statement, that the imputed offense of the defendant was the making of improper proposals, and that defendant denied the charge, might be overthrown by direct proof of the act of adultery, but it cannot be overthrown by oral testimony of a different oral charge and admission.

XLII. As matter of law, the paper of January 1, 1871, called the Apology or Letter of Contrition (Exhibit No. 2), does not on its face import any act of adultery or of sexual indelicacy, and is no proof of either.

Note.—See Grant agt. Grant, 2 Curteis' Ecc. 16. Grover agt. Grover, 5 Notes of Cas., 263.

Mr. Beach—Mr. Abbott, I wish to be informed candidly how long a time you are going to occupy. I don't want to stay here until dark.

Mr. Abbott—I think I have about four or six more. [Reading]:

XLIII. None of the defendant's letters and writings put in evidence, upon their face as matter of law, import adultery or sexual indelicacy, or furnish any proof of either, by themselves. The fact of either must be supplied by other legitimate proof, before the law allows the inference that such fact prompted the expressions of the letters and writings.

I have not cited the authorities, but they are to the effect that—

Mr. Morris—Never mind the argument, Mr. Abbott.

Mr. Abbott [continuing]—"Condonation" does not necessarily imply adultery, being oftener used of other matters; and that "fault" is a word never used in the books, of adultery. [Reading.]

XLIV. None of the defendant's letters or writings put in evidence ascertain or declare the fact of adultery. They only declare and express the emotions of the defendant, of commiseration and self-reproach at the broken fortunes of the plaintiff and domestic unhappiness of his family, as presented to the defendant's appreciation and detailed by himself.

XLV. If the jury find that the plaintiff's wife left him in December, 1870, on account of his treatment and conduct, and with a view to separating from him, and that the defendant in December, 1870, gave information of the facts to his wife and to an officer of his church, and to the plaintiff's employer, and advised a separation of the wife from her husband, these facts must be considered by the jury as corroborating the defendant's testimony, and discrediting that of the plaintiff on the main issue.

XLVI. The fact that the plaintiff continued to cohabit with his wife, after her alleged communication to him of the charge, and up to July, 1874, is cogent evidence against the truth of the present charge.

NOTE.—State agt. Marvin, 35 N. H., 22; Harris agt. Rupel, 14 Ind., 209; Dillon agt. Dillon, 1 Notes of Cases, 415, 439; Houliston agt. Smyth, 3 Bing., 127.

XLVII. The silence of the plaintiff toward the defendant for nearly six months after he says he was in possession of the fact that adultery had been committed, is cogent evidence against the truth of the present charge.

NOTE.—Delay to sue shows either insincerity in the charge or acquiescence or condonation. Dillon agt. Dillon, 1 Notes of Cases, 415; Mortimer agt. Mortimer, 2 Hagg. Consist. 313. Boulting agt. Boulting, 3 Swabey & Tr., 336; Cummings agt. Cummings, 15 N. J. Eq. (2 McCarter), 138.

It is in the last degree important that courts of justice should look with the utmost suspicion on the conduct of parties who intentionally keep secret matters at a time when they might be explained, in order to divulge them only when lapse of years may have made contradiction or explanation impossible. Per Lord Cranworth, Campbell agt. Campbell. L. R. 1 Sc. & D., Ap., 182 (1867). S. P. in case of adultery, B——n agt. B——n, 1 Spinks, 248, 251; s. c., 2 Robt. Eng. Ecc., 580, 586.

XLVIII. The testimony of the plaintiff that he first disclosed any charge against the defendant, to his own employer, in connection with business arrangements, and united with him in an effort to drive defendant from Brooklyn, and that he made no disclosure of the charge to the defendant until this effort failed, is cogent evidence against the truth of the present charge.

XLIX. The facts that after making the charge, and learning that it was retracted by his wife, the plaintiff became reconciled with the defendant, and restored the social relations of himself and wife with him, is cogent evidence against the truth of the present charge.

NOTE.—Reconciliation raises a presumption of belief in innocence of adulfery. Caton agt. Caton, 7 Notes of Cas., 16. S. P Geils agt. Geils, 6 Notes of Ecc. and Mar. Cases, 97-161 Arches Ct., 1848, Sir H. J. Fust.

L. The four years' delay of the plaintiff in making any open charge of adultery against the defendant, and the bringing of such open charge only in consequence of irritations and resentments proceeding from other causes, are cogent evidence against the truthfulness and good faith of the present charge.

NOTE.—During doubt, forbearance is laudable. But when a husband holds in his hands what he claims to be proof of his wife's adultery, his delay to file a bill is strong evidence in his wife's favor. Berckmans agt. Berckmans, 1 C. E. Green, 16 N. J. Eq., 122; affi'd in 17 id., 435 (Ct. of Err. and App., 1864, Opin. by Van Dyke, J.)

In Mortimer agt. Mortimer (2 Consist., 313, in 1820), Sir Wm. Scott says the first thing which the Court looks to "when a charge of adultery is preferred, is the date of the charge relatively to the date of the criminal fact and knowledge of it by the party; because if the interval be very long between the date and knowledge of the facts and the exhibition of them to this Court, it will be indisposed to relieve a party who appears to have slumbered in sufficient comfort over them, and it will be inclined to infer either an insincerity in the complaint or an acquiescence in the injury, whether real or supposed, or a condonation of it. It therefore demands a full and satisfactory explanation of this delay in order to take it out of the reach of such interpretations."

To which the Judge Ordinary adds, in quoting this, in Boulting agt. Boulting, 3 Sw. & Tr., 336 (in 1863): "Thus, though delay of itself goes for little, the conclusion to which it may give rise may go to the full length of barring the remedy."

In Cummings agt. Cummings, 15 N. J. Eq. (2 McCarter), 138 (1862, Greene, Chan.), the rule laid down by Sir William Scott, in Mortimer agt. Mortimer, as to delay, was approved and applied against the husband; and it was remarked that the excuse for delay by reason of hope of reconciliation, or from natural aversion to publicity or involving children, is available to the wife but not to the husband. Citing 1 Hagg, Consist., 130.

LI. Where, on a material question of fact, the plaintiff swears one way and the defendant directly adverse, and the defendant puts in evidence a written statement made by the plaintiff before the action was commenced, and flatly contradicting his testimony, the jury are bound to consider his testimony on the point as conclusively discredited.

That is substantially the language of Boyd agt. Colt, 20 How, Pr. 384.

Mr. Beach—A very different case.

LII. The unequivocal admissions of the plaintiff himself and of Mr. Moulton, that they have deliberately and systematically represented the facts involved in this present charge in a manner wholly inconsistent with the present charge, and, in maintenance of the defendant's and Mrs. Tilton's innocence, discredits their testimony to the contrary now given, and requires its rejection by the jury as wholly untrustworthy.

LIII. If the jury believe that the plaintiff or any other witness of his has willfully sworn falsely on a material point, they should disregard the whole testimony of such witness.

NOTE.—People agt. Evans, 40 N. Y., 1 (1869, opinion by Mason, J.; Grover, Woodruff, Murray, and Daniels, JJ., concurring). The general rule that the question of the credibility of a witness belongs to the jury cannot exist in every case consistent with another rule of evidence which has become a maxim of the law of evidence, viz., that if the jury find that the witness has sworn corruptly false in one material thing, they shall pronounce him false in his whole testimony, and utterly disregard it.

The maxim of the law in this respect is *falsus in uno, falsus in omnibus*; false in one thing, false in all things. And it was said by Cowen, J., in People agt. Davis, 15 Wend., 607, that this is a maxim which does not stop at *nisi prius*. (See also the other authorities there cited.)

LIV. When a witness testifies to a conversation of the defendant, at which no other person was present, there are no means of direct contradiction except by the oath of the defendant. If the jury find a train of circumstances inconsistent with the alleged conversation, and the conversation is fully denied by the defendant, they may reject the testimony to such alleged conversation.

NOTE.—Charge of Oakley, Ch. J., in Forrest agt. Forrest.

Mr. Abbott—I have omitted quite a number of the series of propositions, so that these numbers do not run in order, and there are not so many as there would seem to be from the numbering.

Judge Neilson—I will trouble you, Mr. Abbott, to take this copy and note the ones that you have read.

Mr. Abbott—I have read all that are there, except the last one.

Mr. Evarts—We will mark that copy, as your Honor has suggested.

MR. BEACH MOVES TO REOPEN THE CASE.

Mr. Beach—There is a subject, your Honor, which we proposed to present to your Honor's attention before this case was finally submitted to the jury. It is in regard to new evidence which we propose to offer. I understood your Honor to say that the motion should be deferred until the argument was concluded, and then should be presented to your Honor at chambers, in the absence of the jury. We have no desire to spread the matters before the jury, but we wish to make to your Honor an application, founded upon affidavits, presenting the newly-discovered evidence.

Judge Neilson—The counsel will have to agree among themselves about the time.

Mr. Evarts—We can be no party, if your Honor please, to any agreement. We have no knowledge of this matter.

Mr. Beach—I have no objection, Sir, to presenting the affidavits and reading them here.

Judge Neilson—I should not allow that to be done. I remember now intimating that if there was any motion to be made, I should not hear it here in the presence of the jury.

Mr. Evarts—Yes, Sir; I suppose that is regular, if your Honor please.

Mr. Beach—What is regular?

Mr. Evarts—To present it elsewhere.

Mr. Beach—Well, I think it is perfectly regular to present it here; but, still, I do not desire to.

Mr. Morris—We will present it at the adjournment of the Court, Sir, if it meets your Honor's judgment. It ought to be disposed of to-night. We desire to know, so that we can govern ourselves accordingly.

Mr. Evarts—It is a little awkward to suppose that we are to proceed to-night. We have no notice of what you are going to do. We are entitled to notice.

Mr. Beach—I think not, Sir.

Mr. Evarts—After hearing what you lay before the Court, then it will be proper for us——

Mr. Beach—Oh, no, Sir; oh, no, Sir. This does not take the formalities of an ordinary motion. It is an application to the Court, during the pendency of the trial, to open the evidence; which is made upon the instant, in the course of the trial, without notice or the service of papers.

Judge Neilson—My suggestion was based upon the consideration that if new matter was spread out here in the hearing of the jury——

Mr. Morris—We do not desire it.

Judge Neilson [continuing]—they might confound it with the testimony already in the case.

Mr. Morris—We don't desire it, Sir.

Judge Neilson—Yes. Well, I will do anything that the counsel agree upon.

Mr. Beach—Well, Sir, we propose now, without reading them, to offer the affidavits to your Honor—to hand them up, and make the motion.

Mr. Evarts—Then his Honor will let us know what he wishes us to say or do about it.

Judge Neilson—I wish the counsel would consider the convenience of each other.

Mr. Beach—We have no argument to make upon the subject. We wish to submit the papers to your Honor and make the motion, and then whatever course your Honor and the gentlemen may choose to pursue in regard to the future consideration of it is quite immaterial to us.

Mr. Evarts—Have you a copy to hand to us?

Mr. Morris—No, I have not, Mr. Evarts.

Mr. Beach—We will hand up the originals.

Judge Neilson [to the Jury]—Gentlemen, please get ready to retire. I would recommend you, if you receive any letters whatever that do not to all appearance indicate business, you will do well to lay them aside until the case is over. I have found it convenient to pursue that course for this last week.

The Court here adjourned until 11 o'clock on Thursday morning.

110TH DAY'S PROCEEDINGS.

JUDGE NEILSON'S CHARGE.

FINAL SCENES OF THE TRIAL—THE JUDGE DENIES THE APPLICATION TO REOPEN THE CASE—THE AFFIDAVITS PRESENTED BY THE PLAINTIFF'S LAWYERS PUT IN THE CUSTODY OF THE CLERK OF THE COURT—JUDGE NEILSON'S CHARGE BRIEF—NATURE AND RULES OF EVIDENCE—CHARACTER AND CREDIBILITY OF THE WITNESSES—RULES FOR THE GUIDANCE OF THE JURY—THE BLACKMAIL THEORY UNSUPPORTED BY EVIDENCE AND OF NO ACCOUNT—THE DEFENDANT'S CHARACTER.

THURSDAY, June 24, 1875.

At the continuation of the suit of Theodore Tilton against Henry Ward Beecher to-day Judge Neilson denied the application to reopen the case and delivered his charge to the jury. After the assembling of the court, Judge Neilson ruled adversely to the application on the part of the plaintiff asking for a reopening of the case. The Judge said that he would file the affidavits with the Clerk of the Court.

Judge Neilson afterward began to charge the jury. He read from manuscript before him in slow and deliberate tones, which were distinctly audible in all parts of the room. The delivery of the charge occupied about one hour and twenty minutes, and seemed to command the earnest attention of the jurors. The reading of the charge was finished at 12:25 p. m., after which the Judge proceeded to pass upon the requests to charge which had been submitted by defendant's counsel. At 1:07 p. m. the case was given to the jury, who at once retired to their deliberations after the Judge had given orders for dinner to be sent them. Officers Spaulding, Doyle, and Clare were sworn in to guard the jury room.

Just before retiring the fifth juror rose and, addressing the Court, asked if the jurors could have access to certain of the original documents of the case. After a momentary discussion this request was disallowed, Judge Neilson suggesting that if the jury were at any time during their deliberations desirous of information about any particular paper they would receive that information from him.

Judge Neilson began his charge yesterday by refering to the gratification and relief felt by the jurors in getting to the end of the case, and in being enabled to return to their usual avocations. He would refrain from giving his opinion on controverted questions of fact, believing these to lie within the province of the jury. He would also not detain them by going over the testimony of the 111 witnesses in the case. The charge of adultery lay at the foundation of the action. The burden of proving it rested on the plaintiff, and the evidence should be such as to carry conviction to the mind of a prudent and discreet man. At this point Judge Neilson touched upon the difficulty of obtaining direct proof in such a case, and explained the difference between direct, circumstantial, and presumptive evidence.

The evidence bearing on the principal charge was treated of under four division: First, as to the writings; second, as to the oral admissions; third, as to the tacit or implied admissions; and fourth, as to the conduct of the defendant.

The evidence bearing on the credit due to the witnesses was briefly considered, the Judge contenting himself with laying down the law on the subject. The jury were told to accept suggestions of perjury with great reluctance. The evidence touching the measure of damages to be awarded was also touched on.

In regard to the weight of established character Judge Neilson said: "We are wont to say that all

suitors are treated alike, and in most respects they are; but yet in a case of this character a man grown old in prayer and pious service has *prima facie* the benefit of a presumption which the mere man of the world has not." The theory of conspiracy and blackmail was declared to have no evidence to support it, and to be of no consequence whether proved or not.

The charge ended with the following words: "You will retire to your deliberations with an impartial and earnest purpose to be just to the witnesses, just to the parties, and to render a verdict which you may think of hereafter with satisfaction as a duty honestly performed in the presence of God and of men."

The charge was received with an outburst of applause.

THE PROCEEDINGS—VERBATIM.

THE APPEAL TO REOPEN THE CASE DENIED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Mr. Morris, although your affidavits, I think, contain what might under other circumstances be sufficient by way of excuse for any delay, yet, under all the circumstances, I ought not to entertain this application.

Mr. Beach—Do I understand your Honor to return the affidavits?

Judge Neilson—Mr. Morris can withdraw them.

Mr. Beach—I do not propose to withdraw them, Sir.

Judge Neilson—Well, I will file them with the Clerk.

Mr. Beach—Yes.

Judge Neilson—Yes.

Mr. Evarts—If your Honor please, we have not seen, as your Honor is aware, the affidavits, and we understand there were no copies of them, and that the originals were handed to your Honor. We find them published in a morning print in the City of New-York this morning.

Judge Neilson—I can only say that I was applied to by perhaps a dozen reporters; some of the gentlemen came to my house in the evening, and I not only declined to show the papers but to state what they were—utterly declined.

Mr. Evarts—Of course your Honor understood that I did not suppose they came from the copy which your Honor had.

Judge Neilson—No; but it is a relief to me to be able to mention it.

Mr. Evarts—Yes.

Mr. Beach—I don't know, Sir, how these affidavits came in print; yet they were made and filed with your Honor, on a motion for the admission of the new evidence which they disclose. They became a part of the record of the cause from that instant, and ought to have appeared in the official report of the cause.

Judge Neilson—Well, they have been in my possession ever since they were handed to me; no person whatever has seen them.

Mr. Evarts—If that were so, we should have had a right to notice of them, and to have been heard upon them, and to have met them by evidence.

Judge Neilson—I don't know how far you might need to save your rights in that direction.

Mr. Evarts—Your Honor has disposed of the matter as the application has been made to you. If it ever became a subject for us to meet we should have no difficulty in meeting it.

JUDGE NEILSON'S CHARGE TO THE JURY.

Judge Neilson—Gentlemen of the Jury, you will find it fatiguing to stand up, and you will please to retain your seats.

Your term of service, gentlemen, here is drawing to a close. You must find relief in the expectation of returning to your daily avocations, to the unrestrained habits of daily life. You may also be grateful for having been able to give such attention to the case as prepares you for the duty yet to be discharged.

I have a sense of the importance of that duty, and mean to give you all the aid I consistently can. But I must do so within limitations imposed by my habits and convictions, with especial reference to the influence which a Judge may properly seek to have with a jury. I have persistently, and upon principle, refrained from stating to juries my opinions upon controverted questions of fact. The exceptions to this course have been as to points of slight importance. As an illustration of my general method, and as helping you to a proper estimate of your position, I turn to the 13th of Abbott's Reports, page 343, and read a few words from my charge given at length in the report of a case in this court. What I said to that jury I now say to you: "It is your duty to accept fully, and without a shade of mental reservation, the rules of law stated. But, on the other hand, I wish to pay a like degree of respect to your great office. You are the sole judges of the weight of the testimony and of the credibility of the witnesses. A sense of this restrains me from commenting upon the proofs at large, and from indicating to you what my own opinions may be on the questions of fact involved." Your recognition of that as your relation to the court, and to the cause, is due to these parties as well as to yourselves. My recognition of it is due not only to you but to these parties, as the moral force of a verdict depends largely on the fact that it is the unbiased judgment of the twelve men selected from the body of our citizens, and, in the most solemn form known to our laws, consecrated to the service. But, without intruding upon your province, I shall be able to

assist you materially, and as the exigencies of the case require.

The learned counsel have repeated and dwelt upon the evidence, in your hearing, so fully, that I need not detain you by going over these volumes of testimony. A repetition now, in any form, of what you have heard from the 111 witnesses, would send you to your deliberations, days hence, weary and perplexed. That I may not be performing a fruitless service, I must assist you to so arrange and classify the evidence that you can grasp and apply it. That I may not leave your minds troubled by the conflicting authorities you have heard cited, I must state the rules of law according to our present conception of them. If I can help you to a clear apprehension of the precise questions you are to consider, and of the character of the evidence, and the rules and principles applicable to each of those questions, you may be prepared to pass by a rational process through the several stages of inquiry to a result. That great body of testimony can only be resolved by a proper arrangement and distribution. Some of it relates to the principal question in issue, some of it to the credit due to certain witnesses, some of it to the mere question of damages. The pleadings have been stated in your hearing, and you perceive that the charge of adultery, denied by the answer, lies at the foundation of the case. Upon the issue thus joined the burden of proof rests on the plaintiff. You are also to understand that the evidence should be such as to carry conviction to the minds of just and prudent men; should point to the actual guilt more directly than to any other reasonable hypothesis. The wrong charged in this complaint might be proved by direct or by circumstantial evidence. But such a charge is not usually proved, or indeed provable, by direct and positive evidence. The reason is obvious. In most instances where, under social restraints, an apparently proper intimacy degenerates into licentious acts, the evil intent and life put on the garb of innocence. To such cases, to all cases of doubt and difficulty, the law of evidence, searching and flexible, applies peculiar tests—presumptions and inferences drawn from facts and from conduct, according to the dictates of experience, so that, finally, the question of guilt or innocence may be determined by the jury in the light reflected by the surrounding circumstances. A few simple illustrations, stated with reference to a case of this character, may enable you to understand, sufficiently for our present purpose, the difference between direct, circumstantial, and presumptive evidence. If a witness should testify that he had seen the actual commission of the sexual act charged, that would be what is called direct and positive evidence. If a witness should testify that the wife and the paramour, defendant, had occupied the same room all night in such manner as tended to the conclusion that they had slept together, or if he had admitted his guilt, that would be circumstantial evidence. If, to a letter received by the defendant explicitly charging him with the adultery, he had answered, simply saying, "I am sorry, and hope to be forgiven," or if, on being thus charged in a conversation, by one having an interest in the matter, he had made no answer whatever, that, by a natural process of reasoning, would be presumptive evidence. In acting on circumstantial or on presumptive evidence, a jury should exercise great care, proceed cautiously, as men are wont to do when traveling in dim twilight on unfamiliar roads, and must distinguish the notion arising on suspicion or conjecture from the relation existing between the observed and the inferred facts.

THE WRITINGS OF THE CASE.

Within the spirit and terms of the illustrations stated, you will have occasion to consider the existing facts and the inferences that may justly be drawn from them. The inferences must have a healthy growth, spring from the facts naturally, as fruit from the vine, and, although you cannot trace the connection as you could feel the links of the chain which binds material objects together, yet, to satisfy the rule, you should perceive and be fully convinced that the connection does exist. The evidence bearing on the principal question—that of adultery—may be taken up in its order thus: First, as to the writings referred to; secondly, as to the oral admissions; thirdly, as to the tacit or implied admissions; and fourthly, as to the general conduct of the defendant. I purpose briefly to call your attention to some of the more important matters falling under each of those heads. Your conclusions, however, must not be drawn from one of these classes of evidence, but from all the testimony on this branch of the case combined.

In taking up the writings referred to, you will observe that the plaintiff's letter of the 26th of December, 1870, demanding that the defendant should leave his pulpit and the city, was the first open act of hostility. That demand was withdrawn at the interview had by the parties at Mr. Moulton's house on the evening of December 30, 1870. The plaintiff claims that that was in deference to the wishes of his wife. At that time a paper written by Mrs. Tilton in respect to her relations to the defendant was held by Mr. Moulton. The copy of it which the plaintiff had was torn up after having been read or stated to the defendant, and the original was also torn up afterward by Mrs. Tilton, with her husband's assent. Proof of the contents of that paper was ruled out, because the writing was a confidential communication by the wife to the husband, and because he was a party to its destruction. But that ruling was no deprivation, as no charge written by Mrs. Tilton could have been evidence against the defendant. That same evening, Mr. Beecher, with the assent of the husband, called on Mrs. Tilton. He then obtained the paper, commonly called "The Retraction," afterward surrendered to Mr. Moulton.

The next paper in order is that of January 1, 1871. It is in Mr. Moulton's writing, except the line at the bottom, and the signature, written by Mr. Beecher. A question of fact in dispute as to this paper deserves your attention. Mr. Moulton says that it was dictated to him, sentence by sentence, and that it was read over. Mr. Beecher denies that dictation and that reading. As to the degree of credit to which these witnesses, thus in conflict, may be relatively entitled, you are to remember that they speak of what occurred at a time of great excitement. They may not have been equally affected, but while the one was pouring out his thoughts in the agony of self-depreciation, the other may well have been moved in sympathy. The law has tender consideration for an infirmity of memory thus inherited: the witness is not expected to speak of events with the clearness and certainty that he might under other circumstances. As to the subject thus spoken to by those witnesses, you should be prudent in reference to mere probabilities. You are not to indulge in speculations, or lightly consider a matter which has been affirmed because it may not seem reasonable. If you were asked to determine a question from the character, thought, or style of one well known, you would hesitate, because no one is always temperate or master of himself. Our moods and freaks of temper mar the harmony of thought and utterance. Your neighbor may usually have a staid quality of speech, which so well comports with his character that you recognize him by it. But the same man, when unduly moved, may have quite another method, and surprise you by the incongruity. You will, therefore, seek to be guided by the evidence as given. You take, first, this paper, with whatever of latent and apparent quality may tend to support or impeach it; secondly, the statements, explanations, and denials, and the fact that the paper was to be used in correcting the plaintiff's impressions. While Mr. Beecher was speaking, Mr. Moulton was writing, and with his assent. It may well be that in the absence of a deliberate course of dictation he could only note, in a hurried and imperfect manner, detached and striking expressions. You will consider whether he did so in good faith or not, and with what degree of success. But, if the circumstances were not favorable to the making of a correct report, had the writer wished to make it, neither were they favorable to the invention of what was written. You are to consider how this paper, read often and criticised freely in your hearing, is to be regarded, with especial reference to the controverted question of fact to which I have called your attention.

The other papers belonging to this class of evidence, in which the defendant takes blame to himself, have been read several times, and need, in this connection, no special treatment. As a general rule it is the province of the Court to instruct the jury as to the import of a writing in evidence. That is more especially so as to contracts. But if the writings are ambiguous, the circumstances under which they were prepared may be resorted to, and the question of intent and meaning be left to the jury. If it does not appear that words were used in a special sense, you will assume that they were used in their ordinary sense. It appears from the papers before you, that of Jan. 1, 1871, if you adopt it, and the defendant's letters written later, that he was conscious of having committed some wrong or offense affecting the plaintiff and his family. With that observation as to the import of the papers, I submit them to your consideration, that you may, taking them in connection with the proofs at large, determine what that wrong or offense was.

THE ORAL ADMISSIONS.

Passing to the second branch of the evidence as to the principal charge in the order stated, I call your attention to the alleged oral admissions. The confessions of a party made deliberately against his own interest, as to facts known to and understood by him, if clearly proved, are regarded as of a high class of evidence, and deservedly so, because it is contrary to experience for men to admit what hurts them, if not true. Experience proves, rather, that men evade or deny the truth when the truth hurts. Testimony to prove oral admissions should be carefully scrutinized. The jury should be satisfied that the witness clearly understood, correctly remembered, and fairly repeated what was said. But the caution against relying on such testimony too implicitly should find its counterpoise in the caution against the too ready rejection of it. It may be well to remember that many contracts made orally are enforced in courts of justice, that engagements to marry, and, with us, marriage itself, after its consummation, may be shown by proof of words spoken; that, in the absence of all possible collusion, a defendant's confession that he or she was actually guilty of the act of adultery charged, will support an action for a divorce. You are also to remember that most witnesses find it difficult to recall the words heard, and, from necessity, are allowed to state the substance of a conversation. But, in some instances, greater precision may be necessary; a single word may be vital to identify the subject, and determine the effect and application of an admission. The testimony as to actual admission of guilt by the defendant was given by the plaintiff and by Francis D. Moulton and by Emma C. Moulton, his wife. That testimony has been contradicted by the defendant.

THE IMPLIED ADMISSIONS.

The *third* class of evidence in the arrangement stated, is as to tacit or implied admissions. In theory it appeals to a principle peculiar to presumptive evidence. It is assumed that, on suitable occasions, most men have such regard for their own interests that, on be-

ing unjustly charged or maligned, they will speak out in denial or justification. Hence it is that silence may often be regarded as confession. The most obvious difficulty in applying this doctrine arises from the consideration that all men may not act alike in the same circumstances, and that the jury may possibly ascribe to a sense of guilt what really was due to mere surprise, or to some unknown restraint. But, as commonly applied, the doctrine seems quite reasonable. Is it not consistent with our experience, a just inference, that a man asked to pay money not due will deny his indebtedness?—that if unjustly accused he will assert his innocence? It is of the essence of the presumption arising from mere silence that the accusation or charge be made in express terms. When the testimony appears to come within the rule, the inference, if any, to be drawn from, and the excuse for, silence are to be considered by the jury. The testimony of the plaintiff, and of Mr. and Mrs. Moulton, is as to two forms of admission: the one oral, previously noticed; the other tacit or implied, now under consideration. You may not find the application of some of that testimony to one topic, and some of it to another, difficult. But some specific directions may be useful.

In considering those portions of that testimony which relate to the defendant's actual admissions of guilt, you will recall the doctrine stated under a former head, to the effect that a reasonable doubt as to a want of apprehension, or of memory, or of fairness, in the witness proving such admissions imposes upon the jury the exercise of great caution. Upon the testimony you will inquire whether the witnesses are correct in their statements, or whether the defendant was misunderstood by them. In considering the other portions of their testimony as to implied admissions, also contradicted by the defendant, you inquire whether in the conversations had by him with the witnesses his adultery with the plaintiff's wife was spoken of in clear and express terms. If you find that he was thus charged, so that, acting on the impulse common to innocent men, he would have denied it, if without foundation, you will consider the inference to be drawn from, and any apparent excuse for, his silence.

THE DEFENDANT'S CONDUCT.

The remaining class of evidence as to the principal question in issue relates to the conduct of the defendant. In the first place, you will consider his conduct in his intercourse with Mrs. Tilton, as proved by Joseph H. Richards and Kate Carey. The circumstances stated by them are claimed to disclose an undue familiarity. Your attention has been called to a series of events, to the reasons which may have led to certain modes of action, of acquiescence, of restraint; to occasional disturbances, apprehensions, and resentments, lapsing into seasons of peace and patient endurance. The learned counsel have given you their views as to the significance of each fact and circumstance. But, in and through it all, the vital and absorbing question remains, not whether the defendant acted wisely and well, but as he would not have acted if innocent of this particular charge.

I recur to the letter of the 26th of December, delivered by Mr. Bowen, in which the plaintiff said to the defendant, "I demand that, for reasons which you explicitly understand, you immediately cease from the ministry of Plymouth Church, and that you quit the City of Brooklyn as a residence." The question is as to the manner in which this demand was received. The plaintiff's theory seems to have been that, as the offense charged in this complaint had been perpetrated, the reasons, thus generally referred to, would be apprehended. On reading the letter, the defendant said: "This man is crazy." It is for you to consider whether that remark was or was not in the nature of a suggestion, that there were no sensible reasons for making that demand, and whether, in conversation, or in tone and manner, the defendant betrayed any consciousness of guilt.

It may be observed, also, in reference to the interview of Dec. 30, 1870, at Mr. Moulton's house, when the copy of the paper called "The Confession" was torn up, that the oral presentation of the subject, whether in the exact terms of the written paper or not, may have been sufficient to awaken the apprehensions of the defendant, and to enable you to judge, upon the evidence, of his manner.

The policy of silence or suppression, as it has been called, deserves notice with reference to the motives which led the defendant to act upon it. It was adopted upon conference, at an early stage of the trouble, initiated a system of management, and led to many devices. In some aspects it may have been prudential; in other aspects unwise. But, whatever the "ugly circumstance" underlying it may have been, the parties sought peace in that way, and we have no occasion to condemn the effort. Like many artificial expedients, however, it failed. Mr. Beecher and Mr. Moulton held to that course until the committee of investigation was appointed. Mr. Tilton was not equal to such strict adherence, though it is claimed that, fitfully it may be, like one troubled in spirit, he performed some service in that cause until service became hopeless. But there were uncharitable whisperings in the public ear, their source or origin not now material, and finally actual denunciation came.

Your attention has been called to the meetings held by Mr. Beecher, Mr. Moulton, and others, to the discussions had, to the papers prepared or proposed, to the neglect to make early answer to the Woodhull card as published, and to the so-called "Woodhull Scandal," to the alleged disfavor with which the West charges were met and finally suppressed, to the spirit of timidity, vacillation and mystery which characterized the period. Mr. Beecher's course throughout is to be carefully scrutinized. Some of the events claimed to have occurred under that

arrangement are in dispute. You will inquire whether attentions were paid to Mrs. Woodhull to conciliate her at the instance, or with the approbation of the defendant; whether before Miss Turner was sent off to school he favored that as a precautionary measure, or contributed money in that view; and whether he repressed the presentation and prosecution of the West charges. If you find that Mr. Beecher did not thus act, those questions will give you no trouble. But if you find that he took such part in those transactions, or any of them, then you will inquire whether he did so in the apprehension that his sexual intercourse with Mrs. Tilton might be exposed, or from some other and independent cause.

You will also inquire whether the defendant refrained from publishing a denial or refutation of the allegations contained in the paper known as the Woodhull Scandal; from answering the particular inquiry made by Mrs. Bradshaw in her letter to which he sent a reply; or was held in the bondage of fear to Mrs. Morse from a sense of the guilt now charged. You will remember, in this connection, that, as to the several acts of repression admitted by the defendant on his examination, two views, as motives of action, are put forth, the one, that having agreed with Mr. Moulton, to whose sagacity he deferred, that silence should be observed, he merely acted on that; the other, that in those instances he was governed by sympathy for the plaintiff and his family. The learned counsel sought to qualify somewhat the pressure resting upon the defendant from this policy of silence, as applied to the Woodhull scandal, by showing that the church shared that view. I thought that due to the defendant, and it appeared that at a stated meeting of the official representatives of the church, held soon after the publication, the subject was mentioned, and the sense of those present was that no action should be taken. It also appeared that such had been the opinion of the Rev. Mr. Halliday, a gentleman entitled to great consideration in his relations to the church. You have before you the evidence as to what was done and suffered by the defendant under the policy of silence and suppression, and the question is as to his motives. The inference you might be justified in drawing could be readily applied if the wrong he was conscious of having committed, and which he sought to conceal, was so clearly identified as to exclude the idea of any other wrong. But if there were a series of wrongs other than that now charged, as to some one or more of which he might court concealment, the application of the principle requires serious attention. If a person to whom several crimes are imputed be guilty of one offense, and, sensible of that, seeks to escape and avoid arrest, it would be a perversion if the inference or suspicion which would attach were used to eke out the circumstantial evidence, to convict him of one of the other crimes imputed. You might wish to punish a meretricious lover who, on visiting his mistress, is caught at night hiding under a bed, but you would not, because offenders are often caught thus concealed, convict him of burglary with intent to steal. These suggestions may indicate the care with which the real question before us should be considered. They are the more proper because, in any view of the case, you may be disposed to ask why Mr. Beecher, if innocent, should have garnered up in his heart all that pain and fear so long, when he might have made proclamation to the world and trampled out the scandal as with iron boots.

But, gentlemen, the spirit which characterizes and chastens a judicial investigation should be distinguished from that which prevails in other forms of public inquiry and debate. Notwithstanding all the appeals you have heard to the common experience of life, you should not adopt opinions as freely, or reach conclusions as readily as in your ordinary business affairs. When you make a bad bargain, you repent and make up the loss. If we negligently commit an error here we may repent, but the wrong remains irreparable. The question, upon all the proofs, is, whether the defendant understood that he was charged with the adultery, and spoke, wrote, acted, and suffered from, and in consequence of that; or, whether laying that out of view, he understood the charges to be that he had made the improper proposals or advances, and had robbed the plaintiff of a rich inheritance in the love of his wife; and whether, coupled with those charges, he believed that he had wronged the plaintiff by favoring a family separation and the dismissal by Mr. Bowen, and, for those reasons, spoke, wrote, acted, and suffered as described. If the wrong was the adultery, the solution of what followed is easy. But, if the wrongs or offenses, actual or imputed, were of the other character stated, then, a just apprehension of the relation between the defendant's state of mind and his conduct involves several considerations. What was his personal estimate of his relation to the church, to the world, to literature, and of the reputation he should leave behind him?—what his conception of the nature and gravity of the charge of impure solicitations, of alienating a woman's love from her husband, and of the effect of such accusations, if publicly made?—what his notion of the extent to which Mr. Tilton had been injured as a journalist, in his family, and as to their means of subsistence? The learned counsel claims that, upon the evidence, Mr. Beecher had no occasion for grief, as his advice that Mrs. Tilton should separate from her husband was not followed, or as to Mr. Bowen's action, as that was not influenced by Mr. Beecher. You will consider the evidence and that view. But did the defendant, under a misapprehension, believe that he had been instrumental in inflicting those injuries upon the plaintiff; and what, if any, effect had that upon his conduct?

STATEMENTS OF WITNESSES.

I make these suggestions that you may give them such consideration as you think they deserve. Thus much as to the principal question in issue. I have now to call your attention to a question which, as I have said, belongs exclusively to you, namely, the credit due to witnesses. The statements of witnesses are to be considered and weighed with a due regard to their relation to the case, as in interest, to the bias or prejudice they may have in respect to the parties or the subject-matter under investigation, to contradictions, previous inconsistent statements, to their knowledge of facts, and the apparent disposition to make just and true disclosures, and to their known or ascertained characters. A good degree of respect and confidence is due to every citizen who has occasion to speak under oath in a court of justice as to his own rights or the rights of others. But a certain degree of infirmity may, and often does, attach; the memory may be defective, dates and events be confounded. Witnesses, simple-minded and honest, contradict themselves and each other. On a trial some months ago I remember to have been much impressed by the testimony of a worthy man, the president of an insurance company, who, while the case was still on, came back from the City of New-York to acknowledge his error and make a correction. He was as honest in his first as in his last affirmation; there was no actual perjury in either. This offense, as such, is the fruit of a wicked intent, of a willful perversion of known facts, to work an injury to another. The legislation of this State has borne striking testimony to the virtue of our people, in allowing parties to be witnesses in their own behalf; even the prisoner on trial for a crime, to testify to his innocence. But while I believe that perjury is of less common occurrence than is imputed by the popular view, it is a crime of the gravest magnitude, is not qualified by the special circumstances leading to its perpetration. He who, upon any mere theory of honor, would be guilty of it, might, if he had the temptation, commit any other crime. It has been said, and upon high authority, that there is a distinction between a mere falsehood and a lie: the former an untrue statement, made without guile and without knowledge of its want of truth; the latter a statement of what is known to be false, and with intent to injure another. . I am disposed to respect the distinction. So, too, a modern dramatist has said, "The truth always, when it is proper to be spoken," a theory of value as applied to mere social intercourse. But good men have stood for the truth though it cost their lives. So, good men have uttered falsehoods when only their own interests were concerned. Walter Scott, as long as he thought proper, denied that he was the author of the Waverley Novels; it was his secret. It is the duty of a jury, when witnesses contradict each other, to seek to reconcile the conflicting statements, to make allowances for honest errors, and to accept the suggestion of perjury reluctantly and from necessity. All testimony, as I have intimated, is at the risk of imperfect knowledge and imperfect memory. Witnesses, who appear equally entitled to credit, may give different accounts of the same transaction; the difference going to the substance and effect, or only to the immaterial details. In such cases you have substantial identity with circumstantial variety. Too much importance should not be attributed to such differences, to the discredit of witnesses. You may believe that they intended to tell the truth, unless the contrary is reasonably clear, and, as far as you can, seek to harmonize their testimony and discover the substantial truth.

It is proper to refer, in less general terms, to one or two witnesses. Mr. Moulton seems to have intervened as the open and avowed friend of Mr. Tilton. He appears to have undertaken to mediate between the parties, to reconcile them, and, as far as possible, to prevent the specific character of their differences from obtaining publicity. He states that such was the real purpose and character of his intervention, and the defendant, in his letters and otherwise, has borne large and generous testimony to that effect. Yet Mr. Moulton on various occasions, as he himself testifies, and as other witnesses state, declared that the defendant was not guilty of the sexual intercourse which he now says had been admitted. It is for you to consider how far the inconsistency in his statements goes to discredit him. If you shall be of opinion that he intended to state the truth in his examination here, and that his previous declarations were inspired by a spirit of loyalty to the defendant's reputation, and to that of Mrs. Tilton, and from an earnest wish to divert the minds of others from the subject, in carrying out the policy of suppression adopted, you are at liberty to make such allowance for that as shall seem proper.

As to Mr. Tilton, you will consider whether his testimony to the confession of the defendant's guilt can be reconciled with his previous declarations that his wife was innocent. The peculiar theory which he has explained to you, has been sufficiently illustrated by counsel, and may be accepted as far as you think proper. If his purpose was to protect the fame of his wife, and not to injure unduly or maliciously another—if in the fitful conflicts and emotions which may have possessed him, you discover a moral purpose as contrasted with a depraved spirit—you will give him the benefit of that view.

The general rule as to persons who have willfully testified, under oath, to what is false, on any material point, is that their testimony is discredited. You are not bound to disregard it all. The witness, to be entirely discredited, must have given the false testimony with reference to a fact as to which he could not be presumed liable to mistake, and given it with knowledge that it was false. You are to apply the rule cautiously and discreetly. The maxim, willfully false in one thing, false in all, is sound,

subject to the caution stated, and to your right to decide how much credit you will give the witness.

The testimony of Emma C. Moulton is sought to be discredited on quite different ground. It is claimed that there is an inherent improbability in the supposition that a lady of her confessed refinement and delicacy would have conversed so freely with the defendant as to his adultery, or undertaken to advise him on that subject. It is also said that on the occasion when she claims to have had an important interview with the defendant, he was not at her house. You will consider and apply the proof which stands in conflict and in corroboration. The question, gentlemen, rests with you. Two other observations may be proper. Had Mrs. Moulton got the impression that the defendant's guilt was adultery, and in her conversation regarded that as the subject in his mind as it was in her mind? Do you believe that, whether mistaken or not, she testified honestly? Her manner on the stand, and the opinion which the defendant himself had of her moral character and worth, as stated in his letters, commend her to your respect.

I had occasion to state in your hearing my view of the suggestion that this witness testified at the will or on the instruction of the husband. I still hold to the opinion then expressed. There is no proof of artifice, or coercion, or undue influence. The fact, however, remains that her husband is deeply concerned in this controversy, and that her testimony, without repeating, concurs with his, and that is to be considered on the mere question of bias. In sustaining the plaintiff's cause, she is sustaining her husband as a witness.

As to another witness, Benjamin F. Tracy, two suggestions have been made; the first, that having acted as counsel for the defendant he should not have been called as a witness for him in the case; the second, that owing to an arrangement with or promise to the plaintiff he should not have acted as such counsel. It appears from the testimony that before he accepted the relation of counsel for the defendant he consulted the other distinguished gentlemen, who had been retained and have since acted with him in the cause, as to the proper course to be pursued by him, and that he has acted on their advice. It also appears that when circumstances seemed to make his testimony necessary on the trial, he submitted the question to his associate counsel, and acted on their advice in coming forward to testify. The matter, in both aspects, is thus strongly contrasted with those cases where professional men, acting upon their own notions, enter into improper relations. The principle which restrains an attorney or counsel from acting in a litigation against one by whom he had been consulted, and from being a witness for his client on the trial of a cause is salutary, and should be respected. But in cases where the practice of acting in the double capacity of counsel and witness on the trial of a cause has been most strongly reprobated, an exception to the rule has often been recognized. Had such an exception arisen in this instance? The conversation which took place between himself and others in an interview at Mr. Moulton's house, having been received in evidence, that fact may well have imposed upon him the duty of becoming a witness. If that was his view, and was the opinion of his associates to whom he deferred, you will not readily perceive any substantial ground of criticism. The other suggestion, as to his not being at liberty to act as counsel for the defendant, assumes that he had been in professional relations to the plaintiff, or in their confidential intercourse had learned his secrets or obtained information which gave an advantage to the party afterwards represented by him. No such relation existed; Mr. Tracy had not been the attorney or counsel or adviser of this plaintiff. At the interview at Mr. Moulton's house, the paper dated Jan. 1, 1871, and called the "Letter of Contrition," written by Mr. Moulton, except a line or two, was shown to and examined by Mr. Tracy. After that, Mr. Tilton was called in, and before proceeding further, asked Mr. Tracy whether, if difficulty should arise between him and Mr. Beecher, he would act for the latter, and Mr. Tracy said that he would not. Mr. Tilton then made explanations. Did he communicate to Mr. Tracy, and the other persons present, any matter not previously known, and that would enable him to serve Mr. Beecher better than he could otherwise have done? In testifying to conversations with the defendant, and thus what through him Mr. Tracy had known, Mr. Moulton stated to Mr. Beecher that he had told Mr. Tracy "the truth of the matter; told him the fact of the case as it was." "Theodore Tilton had denounced me for so doing, and had said to me that I had no business to reveal the guilt of Elizabeth to Mr. Tracy without his consent." You will therefore observe that, before the promise made by Mr. Tracy, he had, according to Mr. Moulton, become possessed of the case, of what Mr. Moulton calls the fact, and that Mr. Tilton censured Mr. Moulton for making the communications. What confidential communication could Mr. Tilton have made beyond the information which Mr. Moulton had already given? You may also consider, now that the whole case is before you, whether any fact or secret that Mr. Tilton would have withheld was transferred over as a benefit to Mr. Beecher. Moreover, at that interview, as Mr. Tracy understood the conversation, Mr. Tilton's charge was of an inferior grade, and one that could not become the subject of litigation in court.

You will observe, gentlemen, that I have paid what you may think undue attention to this evidence. The testimony as to the interview at Mr. Moulton's house when Mr. Woodruff was present, and when this promise was made, was received at an early stage of the case, and with a view to the evidence as it then stood before me. Other evidence has since been received, and if, connecting what has since been received with what was be-

fore me when I made that decision, you should come to the conclusion that Mr, Beecher had not agreed upon Mr. Tracy as the person to speak and act for him on that occasion, then you will exclude all that testimony, because in order to make it admissible here, Mr. Beecher should have been present or some person representing him been present. And the testimony was received, not on the theory that Mr. Tracy was confidentially related to Mr. Tilton, but that he was thus or otherwise related to Mr. Beecher, and then and there represented him, and therefore the testimony was received as though Mr. Beecher was there. And yet after all you are not at liberty to try this witness in respect to the line of professional duty unless you think it impairs the force of his testimony and shows such bias or prejudice as would require you in the just interpretation of it to make allowance for his feeling of prejudice. Mr. Tracy's position in respect to being counsel in the cause and in respect to being a witness afterwards when an emergency was supposed to have arisen, would appear to have been attended with a good deal of delicacy; and of all persons to whose judgment he could properly have referred, the learned counsel concerned with him in the case, or who were in the case before he consented to come in at all, were wise advisers. They might err, and so might he, but when a man takes all the precaution that the circumstances about him will permit, you make allowances for him, as one who intends to discharge his duty.

As to the witness Kate Carey, it is proper to state that persons called to prove any alleged bad character for truth and veracity should have the general knowledge to be fairly derived from the opinions expressed by the people who knew the witness. Such impeachment is weak in proportion as the circle in which the unfavorable opinion prevails is narrow, and as that opinion can be traced to special difficulties.

THE QUESTION OF DAMAGES.

The third branch of the general division of evidence relates to damages. I call your attention to this simply that you may recognize the place or the head under which a large amount of testimony before us belongs. The gist of the action being the loss of the society, comfort and assistance of his wife, evidence as to their condition of love and harmony, or the contrary, becomes material. The letters of the wife, written before the alleged offense, have been read. I mention this that you may understand why the voluminous correspondence between the plaintiff and his wife was received. A defendant could put in evidence the letters of the plaintiff, as he could any other declarations of his touching a matter in dispute. But neither party could use the letters of the wife, except as to this question of damages, and this question of damages having relation to the state or condition of the household, and of their mental harmony or alienation. You perceive that the rule is founded in good sense. The action is not to punish the defendant, but to indemnify the plaintiff. If the wife, loving and worthy, be misled, the home, in comfort and harmony, be invaded, the loss of the plaintiff is greater than under less favorable conditions. So, too, to reduce the amount of recovery, the defendant may show that the plaintiff was unfaithful to his marriage vows, the theory being that the husband consorting with lewd women suffers from the invasion of his own household less than he would have suffered if pure in heart and life. But the impure association of the plaintiff with other women is no defense to the action. It was held, as early as 1801, by Lord Kenyon, that such conduct went to the husband's right of action; but, in 1803, Lord Alvanley ruled otherwise, and his view has since prevailed. But, without pursuing the subject, you will perceive that we have here a large amount of evidence, including the plaintiff's alleged misconduct, at home and abroad, peculiar to this mere question of damages.

Some further features of the case remain to be noticed. Upon principle and authority, and also with reference to our accepted rules of social order, the intimacy and intercourse which is allowed between a married woman and her legal adviser, physician, or pastor is greater than that which would be considered proper or becoming between the woman and a man holding no such special relation. That principle applies here, and the defendant is entitled to the benefit of it. Lord Brougham, in considering a case where a clergyman was concerned, and in repelling the imputation of want of chastity in him, applied the term "extreme improbability." That learned jurist was given to strong expressions, and the term thus used was extravagant. What can be claimed is a mere presumption of innocence. In this connection it is proper to observe that after many years spent in religious teaching and intellectual service, the defendant comes into court with a character which, until proof given against him, offers a shield of protection. We are wont to say that all suitors are treated alike, and in most respects they are; but yet in a case of this character, a man grown old in prayer and pious service, has prima facie the benefit of a presumption which the mere man of the world has not.

THE CHARGE OF BLACKMAIL.

Mr. Beecher's advances of money, which, through Mr. Moulton, went to the benefit of Mr. Tilton and family, appear to have been mere acts of generosity. That money was not extorted by Mr. Moulton, nor does it appear to have been the fruit of any improper artifices. Although it is of no special moment, I think it proper to say that the uncontradicted evidence shows that Mr. Tilton did not know that he was thus benefited by Mr. Beecher. I said, early in my remarks, that, except on

points of slight importance, I was not in the habit of expressing opinions to jurors upon controverted questions of fact—points of slight importance being the exception. I regard the conspiracy and attempts to blackmail suggested as of that character, and feel therefore at liberty to indicate to you what my opinion is. Those are crimes punishable as such, not to be predicated on mere suspicion. We have before us no evidence which could support such charges, and if we had, the defendant's position would remain precisely the same; because, if innocent, he is to be so declared independently of the question whether there were such artifices or not. The nearest approach to blackmail would seem to have arisen between Mr. Tilton and Mr. Bowen, if the former did threaten to publish a card injurious to the latter unless the money were paid. But we have no interest in that question. Moreover, he did not publish the card, nor was he paid until after investigation. It seems that the covenant between Mr. Bowen and Mr. Tilton in respect to compensation for services and the term of employment in the two newspapers, contained certain provisions for damages, or payment, on a sudden termination of the arrangement, and that those claims in dispute should be determined by arbitrators. In the notices of dismissal put in evidence, Mr. Bowen proposed that mode of adjustment, one as to *The Independent*, one as to *The Union*, as to each of which he proposed an arbitration which might have taken place at once, so far as has appeared. He had a legal right to stand on that, under a very recent decision of the Court of Appeals, giving what has been thought by some to be a novel interpretation of the effect of the covenant—of the clause in the covenant to arbitrate. I am inclined to think that Bowen might have enforced that covenant, that it should be settled by arbitration. At any rate, he proposed that. An arbitration was had. The gentlemen acting as arbitrators—men of character and integrity—found that $7,000 was due, and that was paid. No special purpose, intrigue, desire to get a "Tripartite Covenant" to settle outside difficulties, to prevent incoming complications—no consideration of extraneous matter of that kind would have led those three arbitrators to have found that $7,000 was due, unless, in their judgment, it was actually due.

TESTIMONY UNWORTHY OF CONSIDERATION.

I do not stop, gentlemen, to caution you, or even to assist you to push aside many considerations that are of small moment and that have occupied your attention more or less, as for example the Rossel procession on the Sunday afternoon when it was supposed that Mr. Tilton had walked in the crowd with Mrs. Woodhull and Miss Claflin. The evidence was received when we were busy with the question as to Mr. Tilton's association with Mrs. Woodhull. He had stated that he had sought her acquaintance on an understanding between himself and the defendant, or Mr. Moulton had; and this was an attempt to show that that was carried to a large degree of familiarity, even to such an extent that on Sunday afternoon, in this procession, he walks with her in the street, helps to carry a banner. Quite a number of witnesses have been called on that question—the only possible materiality all the time being, under this question of damages, to show that this plaintiff, instead of being the tender-hearted husband, as plaintiffs sometimes are, and therefore entitled to great consideration and a large amount of damages, was in fact seeking the association, intimacy, and public connection, known connection with persons supposed to be subject to criticism, like Mrs. Woodhull. She may, for aught I know, be a proper subject of criticism; or she may, for aught we know, be to a large degree a merely intellectual woman, carried away by some freaks of extravagance, if not insanity. The testimony as to that procession, you will perceive, therefore does not deserve your consideration, especially if it belongs in the particular class of evidence to which I have assigned it.

THE INVESTIGATING COMMITTEE.

Then also, gentlemen, without further specification, here are two matters of considerable import in local history which have been placed before you, not in full or directly, but sufficiently to impress your minds, as to both of which it is my duty to caution you to avoid being influenced. The first is the investigation of the Church Committee appointed. That was a proceeding affecting the pastor in his relation to the church, and the church in connection with him. It was their business, therefore natural and proper, that the persons charged with that investigation should have been selected from the church. There was no incongruity in their being selected by the pastor himself. They had that investigation, received such evidence as they thought proper, made such report—made a report which has been stated, in substance and in fact, to you, a report favorable to the defendant. I have simply to say that you should not allow that to influence you, for a moment even, in his favor.

THE CHURCH COUNCIL.

The other event, of some public importance, however, grows out of the council held by the churches as suggested before you. The charges by Mr. West having been presented, and not having been prosecuted by the Plymouth Church, the charge being against Mr. Tilton for lying about the pastor, and Mr. Tilton having been dropped—his name having been dropped from the roll without censure, two of the leading churches in this city, considering, it would seem, that that was not proper regard to the church discipline or polity, brought the subject to the notice of other churches, and this advisory council was held here. That was not a proceeding against Mr. Beecher, directly or indirectly, and I should take great

grief to myself if I allowed you to retire under the possible impression that Mr. Beecher had been pursued by these two great churches, or by that council. So you will please dismiss that from your mind except as you cannot dismiss what interests you in Church or State history. I submit it to your minds as a matter not at all to influence you in respect to this investigation.

Gentlemen, the case is now submitted to you. It is of a nature to call for the exercise of your highest intelligence and most scrupulous care. You will retire to your deliberations with an impartial and earnest purpose to be just to the witnesses, just to the parties, and to render a verdict which you may think of hereafter with satisfaction, as a duty honestly performed in the presence of God and of men. [Applause.]

THE REQUESTS TO CHARGE.

I will ask your patience a few moments, gentlemen, in respect to these requests which Mr. Abbott handed up last night, and which were read in your hearing. I will make some suggestions in respect to them.

Mr. Spaulding, step down to Parker's and see if they will send a dinner for the jurors up here into one of the rooms.

The third of those requests is:

The defendant is not required to prove his innocence; he is to be presumed innocent until his guilt is affirmatively established by a clear preponderence of evidence.

I have thus charged.

IV. Plaintiff cannot recover unless the jury are satisfied, by affirmative evidence, that defendant actually had carnal connection with plaintiff's wife.

That is so; my charge contains that.

V. The jury must find for the defendant unless convinced, by the proofs of the actual adultery, beyond all reasonable doubt.

I decline to modify the charge in that respect. What I have said as to proving a thing actually to the satisfaction of just and prudent men, whether by direct or by circumstantial or presumptive evidence, in order to see where the truth really lies, covers whatever direction really might be necessary as to a rule of evidence in a civil case, this being an action for damages, a civil action. This proposition of the thing being proved beyond all reasonable doubt is peculiar to a criminal case, and, as our books show, does not apply here. I do not conceive it to be of any real moment.

VI. The verdict must be for the defendant, unless the result of the whole evidence on both sides be such as to produce in the deliberate conclusion of the jury a legal certainty of guilt.

Well, a reasonable certainty means a legal certainty, I suppose, and in that view I accept that.

VII. The charge of adultery is one that not merely involves a pecuniary claim against the defendant, but criminates the plaintiff's wife, and tends to disgrace her children, and threatens the marriage relation itself; and it is proper for the jury to consider these ordinary and natural consequences of a conviction, in scrutinizing the evidence, and exacting adequate proof to establish an accusation involving such grave, permanent and remediless consequences to others.

We are not trying the others, gentlemen. Very early in the case, and when, perhaps, I had not got reconciled to the deliberation and patience with which we afterward, for a month or two proceeded, I threw out some suggestions now and then about its being a question between the plaintiff and the defendant, not having regard to Mrs. Tilton upon this trial, although in a certain sense, of course, we know that the effect of the determination does lap over and reflect upon her. But, still, that is too remote for us to be guided by The charge of adultery as affecting this defendant is one, I say to you, that involves a pecuniary claim, and also does involve grave moral considerations affecting him. That is the extent to which I think I am called upon to say anything in regard to that question.

VIII. If, on weighing the evidence on both sides. there remains in the mind of the jury doubt or perplexity as to the actual adultery, they must find for the defendant.

Well, if that means that, after considering and weighing all the testimony, you are not, as reasonable and prudent men, satisfied in heart and conscience that the adultery was committed you should find for the defendant, then it is correct. Thus interpreted I charge it.

IX. The higher the crime, or the graver the wrong sought to be established, the more stringently the rules of evidence should be enforced; and a charge of criminal conversation is not to be fixed upon a person but by the highest evidence.

That is correct, gentlemen. We are not dealing with evidence here as if it were an action on a promissory note, or as it were even an action of slander, one gentleman calling another a liar.

X. If there were any evidence in the case pointing to adultery at any specific time and place, the defendant might have some means of supporting, by other witnesses, his own testimony to his innocence.

Doubtless that is so.

But upon the evidence adduced by the plaintiff, the dependant is the only witness who has any actual knowledge of what the relations between himself and Mrs. Tilton were, and is the only person whom the law permits to speak as a witness as to those relations.

That is so, gentlemen.

XI. Circumstantial evidence to establish guilt must be such as to exclude to a moral certainty every hypothesis but that of guilt: in other words, the facts proved must not all be consistent with and point to guilt, but they must be inconsistent with innocence.

In a sense that is true, gentlemen; but I think I have stated in my general charge the true doctrine, and see no occasion to change it.

XIII. The law does not dispense with direct proof of the sexual act, and accept circumstantial evidence in lieu thereof——

Circumstantial evidence of mere intimacy, of course, would not be substituted in place of actual evidence.

——unless there is actual proof of conduct of the par-

ties deviating from open and honorable adherence to the proprieties of chaste society, and showing a lustful disposition.

I do not conceive that there is any substance, however, in this request, because I have already said, in the general charge, that an offense of this character is not usually proved, or indeed provable by direct evidence, and may be proved, from necessity, in any other way that will be satisfactory to the minds and conscience of the jury, and have the certainty proper to a question of such importance.

XIV. The circumstances must be such as would lead the guarded discretion of a reasonable and just man——

I had the words "reasonable and prudent man;" I suppose it is about the same thing——

——to the conclusion of actual guilt.

Well, "to the conclusion of guilt," I put it; because "guilt" is "actual guilt," and whenever you have a question of guilt, or the fact of guilt, it is not well to load it down with adjectives and expletives. It is a question of guilt or innocence that is, of course, for you. "For it is not to lead a harsh and intemperate judgment, moving upon appearances that are equally capable of two interpretations"—I have tried to illustrate that idea—"neither is it to be a matter of artificial reasoning, judging upon such things differently from what would strike the careful and cautious consideration of a discreet man." Well, that is matter of illustration and argument which is sensible; but I think it does not call for anything in addition to what I have said in the general charge.

XV. The proximate acts relied on must lead, by a fair inference, to a conclusion so far inevitable as that the supposition of innocence cannot by any just course of reasoning be reconciled with it.

That is a logical proposition.

XVI. Mere proof of opportunity to commit adultery is no evidence whatever of guilt; there must be coupled with it evidence of circumstances at the same time, which cannot reasonably be explained except by criminal disposition and design.

This proposition is not very clearly worded, and somehow there is a special property in it which I do not quite approve. "Mere proof of opportunity to commit adultery is no evidence whatever of guilt"—certainly you don't need to be told that. I have told you that. "There must be coupled with it evidence of circumstances at the same time"—now, suppose I should say to you, there must be evidence of circumstances affecting that question? It would not be precisely the same in form, but I think it would be in substance; and in either view it ought to reasonably explain the conduct and reasonably satisfy the jury. "When, in addition to the open relation of intimate friendship, there is superadded the pastoral relation"—I have explained to you the theory of that.

XXI. No charge or confession on the part of the plaintiff's wife is evidence against the defendant.

That is so.

None of the letters and writings of Mrs. Tilton put in evidence, upon their face, as matter of law, import a confession of adultery.

Well, of course I have given you to understand the contrary. If they were in evidence before you, and imported ever so much or ever so little, it would be a question of fact for you to apply.

XXX. Where a party has destroyed a paper material to his case, and the contents of the paper are disputed, the presumption arises that, if it had been produced, it would have been against his interest, or in some essential particular unfavorable to his representation of its contents.

Now, you see how sensible that is; if you have a controversy with respect to dealings or contracts with your neighbor, and on the eve of a lawsuit, or of bringing one, or when it is certain there will be litigation, you, having the only copy of the contract, deem it expedient to tear it up, and afterward introduce evidence as to its terms, there the law is very jealous in excluding the interpretation of the party thus tearing the paper up. But we have before us a case to which that principle does not quite apply, because here is a paper which Mrs. Tilton, from the correspondence put in, was desirous of reclaiming. She writes Mr. Beecher to use his influence with "dear Frank" to have the papers somehow destroyed, and also makes an application to Mr. Moulton himself. Finally, on what would appear from indications to be her importunity in respect to it, the paper was torn up, and if you should think that was done at a time when there was no lawsuit in contemplation, and without preparation for substituted evidence in regard to the contents of that paper, you could not apply the suggestion under this proposition which I have read to you.

XXXI. Upon the evidence in the plaintiff's own case there is no proof to the jury that the original of the written charge or accusation by Mrs. Tilton was a charge of adultery, and all the presumptions are against it. The original was never shown to the defendant, and the plaintiff himself destroyed, or caused to be destroyed——

Well, upon the evidence in the plaintiff's own case, and otherwise, it is a question for you whether the charge was of one kind or of the other kind, and if it came into existence first in a very indefinite way, and then why, and when, and by whom, and for what purpose its complexion was afterward changed; all that is a consideration for you.

XXXII. If the jury believe that the "True Story," as it is called, substantially as put in evidence, is the work of this plaintiff, they must find a verdict for the defendant.

If you believe the "True Story" was the work of the plaintiff, that his statement was what it claimed, then you will apply it as matter of evidence, and give it such weight and such construction in connection with his conduct as you think just and proper. It is not a fair subject for a legal proposition to be stated by me.

XXXIV. No letters or writings of any other person than the defendant, although communicated to him, are any evidence whatever against him, except of the fact that their contents were brought to his notice.

That is correct, as far as it goes. I did say, and I have said before, that nothing that Mrs. Morse and those other persons might write would be evidence against the defendant. I mean to say so in reference to the letters of Elizabeth Turner put in evidence. But the reason why any letters, like Mrs. Morse's, for example, like the letter delivered by Mr. Bowen, is received in evidence, is to give point and character to the conduct of the defendant, showing in what spirit and with what consciousness he received the communication at the time. And the motion is that, under favorable circumstances, a person who is guilty may thus be taken off his guard and disclose a sense of his guilt, when he finds himself suddenly confronted with a verbal accusation or with a communication which extracts from him some expression of his manner and spirit. That observation was made by one of the learned counsel at the time one of Mrs. Morse's letters was received in evidence. I think Mr. Evarts assented to that, or stated that proposition.

XXXV. The letters and oral statements that have been adduced, as in the nature of confessions, are to be considered in their entirety, and as together covering a long period of years; and the jury are to consider whether it is credible that the defendant could have made such oral statements of guilt as are attributed to him and denied by him, and whether it is credible that such letters could have been written by him with reference to guilt of adultery.

That quite corresponds, I think, with the instructions I have given you; it is covered by the charge.

XXXVI. The expressions of compunction and remorse in the defendant's writings and alleged conversations belong to the class of merely moral evidence, and neither tend to support, nor are capable of supporting, any legal certainty as to the fact, nature or degree of imputed culpability.

I have had occasion to speak on this subject. Moral evidence is of great value, especially when you have to deal with intellectual questions, with emotions, with a man's consciousness of guilt. A man suddenly charged, accused, or confronted with something that brings up before him any offense that he has been guilty of, has his moral emotions and sensibilities excited, and thus makes revelations, and thus you get at sometimes real evidence of what otherwise you could not have discovered. But they belong undoubtedly to a class of moral evidence, and the question whether they tend to support or are capable of supporting any legal certainty, as to the fact, nature, or degree of culpability, is a subject discussed in the charge, and is there stated, I think, correctly.

XXXVII. Testimony of witnesses that a party charged in conversation admitted his guilt of adultery is the weakest and most dangerous evidence that is received by the law.

I stated to you the proposition as to the degree of care and scrutiny with which that kind of evidence is received, and I think I have said sufficient on the subject.

XXXVIII. The testimony of witnesses (even if fully credited) that the defendant in conversation admitted that he had committed adultery, being met by his sworn denial upon the trial, is not sufficient proof of his guilt, unless the alleged confessions are corroborated by other satisfactory and consistent testimony.

On the character of the charge, that is a question of fact for you to decide in respect to it. I do not consider it material. It is a proposition of law and not of fact.

XXXIX. When a person is charged with immoral conduct, under such circumstances that he has no legal direct evidence of his innocence other than his own oath, the fact that he endeavored to prevent publicity or to avoid public controversy is no evidence of guilt.

I think I have explained that quite fully. I have admonished you to consider the motive which led to a suppression, and also indicated the party apprehending annoyance and distress from publicity, and whether innocent or not he might well wish to avoid that publicity.

XL. In considering whether the testimony of the alleged verbal admissions is corroborated, the jury must look at the whole course of conduct of the plaintiff and his witnesses, in their intercourse with the defendant since the charge was first made, and consider whether it is possible or probable that this conduct and social intercourse could have taken place, if the defendant was charged or believed by them to be an adulterer.

That is a question of fact for you to take into consideration.

XLI. The plaintiff's written statement, that the imputed offense of the defendant was the making of improper proposals, and that defendant denied the charge, might be overthrown by direct proof of the act of adultery, but it cannot be overthrown by oral testimony of a different oral charge and admission.

I think I have said enough to you about the question of improper proposals or advances in connection with the question whether the defendant was conscious of having been thus charged, and whether that led to his emotion and sorrow and trouble, and tended to lead him to the expression, verbal or written, which he finally made.

XLII. As matter of law, the paper of Jan. 1, 1871, called the Apology or Letter of Contrition (Exhibit No. 2), does not on its face import any act of adultery or of sexual indelicacy, and is no proof of either.

That is so. It is for you to determine, as I said before, what it does refer to in connection with other circumstances.

XLIII. None of the defendant's letters and writings put in evidence, upon their face as matter of law, import adultery or sexual indelicacy, or furnish any proof of either, by themselves. The fact of either must be supplied by other legitimate proof, before the law allows the inference that such fact prompted the expressions of the letters and writings.

I have put that to you, gentlemen, in the charge as a question of fact. This letter, like the other paper, called the "Letter of Contrition," does not specify the act or wrong, real or supposed, which was had in view. It makes it a matter of fact for you to determine.

XLIV. None of the defendant's letters or writings put in evidence ascertain or declare the fact of adultery.

Certainly not.

They only declare and express the emotions of the defendant, of commiseration and self-reproach at the broken fortunes of the plaintiff and domestic unhappiness of his family, as presented to the defendant's appreciation and detailed by himself.

Well, I say to you they only declare and express the emotions of the defendant, and I have submitted to you the question what those emotions were, and by what they were excited, colored or distorted.

XLV. If the jury find that the plaintiff's wife left him in December, 1870, on account of his treatment and conduct, and with a view of separating from him, and that the defendant in December, 1870, gave information of the facts to his wife and to an officer of his church, and to the plaintiff's employer, and advised a separation of the wife from her husband, these facts must be considered by the jury as corroborating the defendant's testimony, and discrediting that of the plaintiff on the main issue.

I have said to you, in effect, those facts must be considered by you in interpreting, and as you may interpret, in corroborating or disproving, the defendant's declarations, or illustrating what he may have said. That is all I think I ought to say on the subject. It is a matter for you.

XLVI. The fact that the plaintiff continued to cohabit with his wife, after her alleged communication to him of the charge, and up to July, 1874, is cogent evidence against the truth of the present charge.

Several cases are cited in support of that proposition, and in actions for divorce on the ground of adultery, where the wife is a plaintiff or defendant, being a question between the husband and wife, that proposition is correct; it is a sound rule. The fact that a plaintiff in an action seeking a divorce continued to cohabit with his wife after, or long after her guilt had been communicated to him, is a proper matter peculiar to such an action, because it is in that action that the husband may be charged with having condoned his wife's offense; because, also, the man who finally comes into court and seeks a divorce is the same man whose conduct in living with his wife after the knowledge of her guilt involves an incongruity. The same spirit that leads him to bring his action for divorce would lead him to a separation from his wife as soon as he learned she was guilty. But in this action that principle does not apply. I do not think it is of any moment whatever.

XLVII. The silence of the plaintiff toward the defendant for nearly six months after he says he was in possession of the fact that adultery had been committed, is cogent evidence against the truth of the present charge.

Upon the mere face of the proposition that would be so, and it is so here unless you take into consideration, as you should, the question whether upon the confession of that by the wife, if she did confess, or taking into view the conduct of the plaintiff on the assumption of a confession, did the wife influence him to silence—peace, and did he yield to that influence? Does that account for the circumstance that not until so long after the supposed or alleged confessions did he make any distinct avowal of his grievance? That is for you to consider, gentlemen, and I think you ought to look at it in that light, either to accept or reject the suggestion:

XLVIII. The testimony of the plaintiff that he first disclosed any charge against the defendant, to his own employer, in connection with business arrangements, and united with him in an effort to drive defendant from Brooklyn, and that he made no disclosure of the charge to the defendant until this effort failed, is cogent evidence against the truth of the present charge.

Taken in connection with the next one;

XLIX. The facts that after making the charge, and learning that it was retracted by his wife, the plaintiff became reconciled with the defendant, and restored the social relations of himself and wife with him, is cogent evidence against the truth of the present charge.

That is cogent evidence to the like effect. As to each of those propositions, gentlemen, they are all questions of fact for you to consider, and, according as you may interpret the acts and conduct of the party, the evidence will be more or less strong, in a large degree circumstantial or presumptive, and falling within your province entirely. I am indisposed to speak of the evidence as to what you may draw or not draw as being cogent. You will consider the subject in its various aspects, and satisfy yourselves as to the motive which led the plaintiff to first disclose the facts to Mr. Bowen, if he did do so, and led him to remain in association with his wife, led him to renew the friendly intercourse with the defendant, or led him to whatever characterized his conduct and course in any degree in a peculiar way.

LI. Where, on a material question of fact, the plaintiff swears one way and the defendant directly adverse, and the defendant puts in evidence a written statement made by the plaintiff before the action was commenced——

No matter whether it was before the action had commenced or not

And flatly contradicting his testimony, the jury are bound to consider his testimony on the point as conclusively discredited.

That is true if properly applied. If A brings an action against B on a claim resting in parole, a claim for work and labor or money lent, and now being allowed to be a witness, testifies on the trial to the fact that the defendant was indebted, and denies that he has been paid, and the defendant should produce a letter written by him (the plaintiff) to the defendant, or to any one else, stating that that claim had been settled and paid, that would be conclusive of course in connection with the defendant's evidence denying that the indebtedness remained. That is the application of that proposition. I have explained to you already how you should consider previous inconsistent declarations which you may find have been made by the plaintiff, whether before the action was commenced or afterward, characterizing or affecting his

testimony here, and you are to interpret and apply it. I think it is a matter of fact for you.

LII. The unequivocal admissions of the plaintiff himself and of Mr. Moulton, that they have deliberately and systematically represented the facts involved in this present charge in a manner wholly inconsistent with the present charge, and, in maintenance of the defendant's and Mrs. Tilton's innocence, discredits their testimony to the contrary now given, and requires its rejection by the jury as wholly untrustworthy.

I explained to you, gentlemen, the theory and duty which I suppose that you would respect in that regard, and admonished you to consider how far, if at all, Mr. Moulton's previous contradictory statements could be ascribed to an honorable purpose to suppress scandal, protect the defendant, and to protect Elizabeth and carry out the doctrine of suppression. The same suggestion applies to Mr. Tilton, and you are at liberty to consider, and should consider, the motive which led them to do one thing or to do the other, and whether they did so with a moral purpose or an immoral purpose, honestly or dishonestly, and then determine the effect either in large or less degree, or no degree whatever, as prejudicial to their testimony.

LIII. If the jury believe that the plaintiff or any other witness of his has willfully sworn falsely on a material point, they should disregard the whole testimony of such witness.

I have stated the rule on that. That is a general rule, but is not imperative where any part of the testimony of the witness thus affected is corroborated.

LIV. When a witness testifies to a conversation of the defendant, at which no other person was present, there are no means of direct contradiction except by the oath of the defendant. If the jury find a train of circumstances inconsistent with the alleged conversation, and the conversation is fully denied by the defendant, they may reject the testimony to such alleged conversation.

Certainly you may, because the whole matter belongs to you, and this is one of the incidents that should on your part secure patient attention. [To counsel.] Gentlemen, are you content?

Mr. Beach—We are, Sir.

Mr. Evarts—Yes, Sir.

THE JURY RETIRE TO DELIBERATE.

Judge Neilson—Mr. Spaulding! [Turning to Mr. Mallison.] Who are the officers?

Mr. Mallison—Officers Doyle, Spaulding, and Thayer.

Judge Neilson—Come forward here.

A Juror—If the Court please, will your Honor allow us access to the original records or papers, if we require them? We only require a few.

Judge Neilson—It is not usual for the jury to take out any papers, but the question in any particular instance rests with the counsel.

A Juror—We assume that we would only require two or three.

Judge Neilson—What?

A Juror—We assume that we would only require two or three.

Mr. Beach—We have no objection on our part, Sir.

Mr. Evarts—The difficulty in such cases, if your Honor please, and without reference to this particular case, is in determining what are and what are not within a proper allowance, what the jury may have in their mind. Some papers may not be in existence and others may be in existence, and those not in existence are produced in evidence. We cannot send up those that are not in existence. That is the difficulty.

Judge Neilson—No, there is an embarrassment about it. I think if, in your deliberations, any specific question should arise as to any particular paper, you can send down full information and we will give it to you as far as we are able.

Mr. Beach—That may produce some inconvenience, your Honor, in the absence of parties and of counsel.

Judge Neilson—I should not do it in the absence of counsel—never answer any question sent down by the jury.

Mr. Beach—I do not understand the jurors to request that papers should be handed to them which are not in existence, but there are two or three I understand it would be desirable for them to have. It seems to me there can be no reasonable objection to the submission of original papers of that character. For instance, Sir, in regard to the "Letter of Apology," as it is called, where some question has been made upon the appearance of the instrument itself, that the jury should have that to look at seems to me proper.

Judge Neilson—Will you have the kindness, Mr. Abbott, to look and see if there is any particular paper which you wish to give to the jury? I have no suggestion to make on the subject.

Mr. Morris—We are willing they should take all, so far as we are concerned.

Mr. Mallison (the Clerk) then administered the following oath to the three officers having the jury in charge:

You shall well and truly keep every person sworn on this jury in some private and convenient place, without meat or drink, water excepted; you shall not suffer any person to speak to them, nor speak to them yourself without leave of the Court, except it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict, so help you God.

Mr. Morris—I understand your Honor has directed the jurors' dinner to be served to them. That is excepted.

Judge Neilson—Are there refreshments up stairs?

Officer Spaulding—No, Sir.

Judge Neilson—There will be.

Officer Spaulding—When we get the jurors' orders, so as to take them up.

Judge Neilson—Give a general comprehensive order. At any rate, have it brought there. [To the jurors]—Please retire with the officers, gentlemen.

The jury then retired.

111TH DAY'S PROCEEDINGS.

THE BEECHER JURY DECLARE IT IMPOSSIBLE TO AGREE.

REFERENCE OF THE JUDGE TO THE LOADER AND PRICE AFFIDAVITS—THE CONFESSIONS OF THE PERJURERS NOT ALLUDED TO.

THURSDAY, July 1, 1875.

The City Court resumed the session shortly after 10 o'clock to-day, Judge Neilson taking his seat on the bench for the trial of a case without a jury, the trial term of the Court having expired on Wednesday. The room was almost deserted, only the officers and a few persons interested in the case before the court occupying the seats on the floor.

About half-past 10 this monotony was relieved and the excitement increased by the appearance of Officer Spaulding, one of those in charge of the jury, with a note which he handed up to the Judge. It was the first direct communication from the jury as a body which had been made during the entire seven days during which they have been out. It was brief and to the point, conveying the painful confirmation of the rumors of disagreement. It read as follows:

May it please the Court: We think there is no possibility of our agreeing on a verdict, and we respectfully ask to be discharged.

CHESTER CARPENTER,	A. R. CASE,
GRIFFIN B. HALSTEAD,	EDWARD WHELAN,
HENRY THYER,	WILLIAM T. JEFFREY,
GEORGE HULL,	JOHN MCMURN,
CHRISTOPHER FITTER,	WM. H. DAVIS.
SAMUEL FLATE,	

It was accompanied by a second communication from Juryman Taylor, which explained the absence of his name from the list. His note read:

May it please the Court: I don't think we ought to be discharged just yet. We are still discussing the evidence, and I think we could profitably stay out longer. JOHN F. TAYLOR.

THE JURY IN COURT.

The Court waited less than five minutes for the coming of the jury. At exactly 1:35 p. m. they filed slowly into the room, Mr. Carpenter leading, and followed by Mr. Jeffrey. Mr. Carpenter at once resumed his old seat, thus dissipating the rumors that there had been dissensions in the jury-room as to the election of a foreman.

The court was soon brought to complete order and stillness by the Judge, who requested the audience to keep perfect quiet, and directed the Clerk to call the jury. When he had done so, and the jurors had answered to their names, the following conversation ensued:

Judge Neilson—I learn from a communication received that you do not agree as yet upon a verdict.

Mr. Carpenter [the foreman]—No, Sir.

Judge Neilson—And is the difference between you as to a matter of fact, or some legal matter in respect to which I could help you?

Mr. Carpenter—There are several points. I think, Sir, that it is impossible for this jury to agree; I regret it very much. That is my opinion, and it is the opinion of the jury, all except one. He would yet like to hold out longer, but I think it is without any hope.

Judge Neilson—Are the points to which you refer matters of fact, or of law?

Mr. Carpenter—Facts.

Judge Neilson—Yes, Sir. You will perceive, gentlemen, the embarrassment the Court is under in a trial occupying several months before a jury of great apparent devotion and promptness in the discharge of their duty, and in attending to the evidence, and with the evidence fully, very fully discussed by counsel, then given to the jury. Although this is the sixth or seventh day that you have been out, I received to-day the first suggestion from the jury that they were not likely to agree, or cannot agree. With the consent of counsel I should have put myself in communication with the jury before, by way of inquiry whether you were likely to agree, except for my own conviction, concurred in by some of the counsel, that it was not proper to interrupt the jury when in the midst of their deliberations, and when they make no request of the Court. My own impression was that you, in your place, had the right to remain and continue your inquiries without intrusion, even from the Court, until you requested assistance.

As to the papers sent up to you, I think you understand that I could not send anything up without consent of the counsel on both sides, and I believe all that you have requested in that respect was finally supplied. We have waited with great respect and confidence, believing that the jury, thus continuing their deliberations without making inquiries of the Court, were doing all that could be done toward an agreement, and not doubting your ability to agree, because inability to agree often depends upon the disposition or indisposition to agree. Of course, without quoting the counsel, or assuming to know what they would say if they were at liberty to speak on the subject, I assume that in the view and estimate of all of us and of all persons connected with the case, however remotely, that the wish is very strong that there should be an agreement, that there should be a verdict. The mere humiliation on the part of the court, so far as I represent it, to spend some months without getting a verdict one way or the other, I shall pass over. Still there is a deeper interest than that—one affecting the public, one affecting the parties so

that perhaps it would be difficult to find any case where an agreement by a jury would be so desirable; so imperative, if I might apply that word. In our embarrassments, while you have been silent at your work, various considerations have been pressed upon our attention and the attention of counsel; and perhaps there is one subject to which I may refer without at all reflecting upon your intelligence, or having you suppose that on my part I infer that you need any instruction whatever. Attention has been called to the fact that, after the argument and before the charge, some papers were handed up to me, understood, and, I think, stated here, to be on an application to receive further evidence, and during the evening I examined those papers, as it was assumed I would, and next morning denied that application. It was very informal; counsel were not heard; even the subject matter of the proposed evidence was not stated in your hearing as it was stated to me, nor stated to the counsel for the defendant. I thought proper to deny that application, and assumed from that moment that the jury would forget that circumstance; that a jury sworn to decide according to the evidence actually before them would not allow themselves for a moment to remember that there had been some suggestion about putting in more evidence. And yet, the minds of many have been disturbed upon that subject, as if by possibility there might be lingering in the mind of some one of your number some thought that there had been further evidence and an application for its submission. I would like to feel, gentlemen, that that is not so, and I would like also to feel that you do not take it ill that I call your attention to the subject. Of course, it is a matter that you ought not to think of, nor remember; it is not before you. Although it came up incidentally in the form I have suggested, I think I may assume that you have not allowed yourselves to think of that.

Mr. Carpenter—We have not; it has not been mentioned in the jury-room to my knowledge.

Judge Neilson—Yes. Now, would it be suitable or convenient, gentlemen, to state to me some question that savors of the questions of law upon which I can instruct you; or is it simply and solely a question of fact?

Mr. Carpenter—It is a question of fact, a question of the veracity of witnesses on which we do not agree, your Honor, and I would say I think there is not a possibility of an agreement in this jury. I have come to that conclusion very reluctantly, done all that I could, and with the rest of us—we have all worked hard to compare our views and the evidence, but it cannot be done. If we were there one month, in my opinion, we should come no nearer to it than we are to-day.

Judge Neilson—You speak for all the jury in that matter?

Mr. Carpenter—I speak for the whole of them except one.

Judge Neilson—I have had a note from that one. He thinks that further examination of the testimony ought to be made, and I am disposed myself to feel that very strongly—whether you seem to think that by further examination of the testimony, possibly you might get over some of the difficulty that you have.

Gentlemen of the Jury, will you, appreciating what I have said to you as to the importance of the case, also remembering what very often occurs in courts, that a jury are sometimes requested to return to their deliberations after they have announced that they cannot agree (so that this proceeding is not peculiar at all)—will you, carrying the sympathy and good wishes of the Court with you, retire to your rooms and give this subject further consideration, and communicate with me at about 4 o'clock this afternoon. In your further consideration of the subject I assume you will take it up as brethren, and try if you cannot see in the volumes of the testimony you have before you something to obviate the trouble.

Mr. Carpenter—Shall this be a written communication, your Honor?

Judge Neilson—Send in the fact and I will send for you.

Mr. Carpenter—Yes, Sir.

The jury were then directed to retire.

112TH DAY'S PROCEEDINGS.

THE JURY DISCHARGED.

STATEMENT FROM THE JURY OF THEIR INABILITY TO AGREE—THE JUDGE'S ADDRESS TO THE JURY—THEY ARE DISCHARGED.

FRIDAY, July 2, 1875.

The jury in the Tilton-Beecher case finally decided that they could not agree, and early this morning sent word to that effect to Judge Neilson. They were called into Court a little after 11 o'clock, and, after a few words of explanation, were discharged. Mr. Carpenter, the foreman, had written to Judge Neilson very early in the morning, to the effect that an agreement was impossible. In this view the whole 12 jurors coincided, and all united in the application to be discharged. Judge Neilson had no alternative but to consent, and returned an answer to the effect that they would be sent for as soon as the lawyers and the others interested in the case could be summoned to receive them. The jurors marched slowly into court, the foreman leading, followed immediately by Mr. Case, all eyes were, of course, turned upon them, and complete silence reigned. Mr. Mallison permitted no delay, but, after the formal roll-call, asked, in a loud voice, "Gentlemen, have you agreed on a verdict?"

Mr. Carpenter (the foreman)—We have not. We very much regret that we find it impossible to agree, and ask for a discharge from the Court.

Judge Neilson rising slowly addressed the jury as follows:

Gentlemen of the jury, I learn by a note received from your foreman very early this morning that, in your opinion, you should be discharged, and that some of your number are suffering in their health. I have felt the force of that application very strongly, and have called you in now at the earliest moment when I could feel assured that the persons in interest, and the counsel, so far as they wished to attend, should have an opportunity of being present.

As we are now about to separate, gentlemen, I would like to have you carry away with you a kindly recollection as far as you can, tending to qualify somewhat whatever of oppression you may have felt from being detained so long, and it is perhaps my privilege in that view to ask you to recall the fact, and have it in mind, that not until yesterday had we any suggestion from you that you could not agree. That suggestion came in the form of a very explicit letter, signed by eleven of your number, accompanied by a note written by another of your number objecting to the discharge of the jury and stating that, in his opinion, further attention should be given to the evidence. While I had, of course, perfect confidence in the suggestion made by the eleven of your number, and in the explanation made by the foreman, I felt that something was due to the opinion of the twelfth juryman who sent his own note objecting to the discharge. I had the same thing in mind at 4 o'clock when I sent word to you last. I thought it proper to allow that juryman, Mr. Taylor, to devote his time, so far as he could, to such explanations as in his opinion his co-jurymen might be profited by, and I assume now he has had for that purpose a full and fair opportunity.

I learn from the note just sent in from the jury that you are, as stated now by the foreman, unable to agree; also that the disagreement is in reference to the weight of testimony and the credibility of some of the witnesses. Well, as indicated yesterday, gentlemen, and as every person conversant with the trial of causes well knows, it is utterly impossible for me to help you by any argument, illustration, or suggestion in reference to the weight of testimony, or in reference to the credibility of some of the witnesses; and if I had sought to do so, by any method within my power, now or in the charge itself, I should have found no means of assisting you upon such questions. The course pursued by judges in such instances is well settled and uniform. We all concede that the weight of testimony rests with the jury, and it is for their consideration, and that it is for the jury to say what witnesses they can believe and what they cannot, and that the Court has no right or power to interfere with these questions. I then have the satisfaction of inferring from this ground on which you put your disagreement that it is not from any want of attention on my part, either in committing the case to you in the first place or anything I may have said since, because those are points upon which I could do nothing.

There is another matter, gentlemen, that has excited some public attention, in regard to which I thought I had satisfied myself yesterday. I would like to learn from the jury, now and explicitly, that the suggestion of new evidence, or the application made in your hearing to take further testimony, has not in any way clouded your vision, or occupied your thoughts directly or indirectly during your deliberations. Am I correct in that?

Mr. Carpenter—You are. I would say that I have conversed with many of the jurors since yesterday on that subject and asked them if they have heard it. Not one of them has said that he has heard it mentioned in the jury-box, or since we went out.

Judge Neilson—It has not been in your mind?

Mr. Carpenter—It has not been in my mind.

Judge Neilson—I am gratified to learn that, gentlemen. It only remains for me to accept the suggestion that you make, that you are not able to agree, on the ground mentioned—to wit, the weight of testimony and the credibility of certain witnesses. You will also accept the suggestion that in respect to the health of some of you, it would be cruel to ask you to remain longer, and therefore I will discharge you from the further consideration of the case.

Mr. Carpenter—Thank you.

Clerk Mallison—Gentlemen, you are now discharged. Any day after next Monday you can get your fees at the County Treasurer's office.

END OF VOLUME THREE.

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